RECEIVED by MSC 12/10/2025 3:03:01 PM

TABLE OF CONTENTS

Exh No	Description	Bates No.
1	Royal Oak RME Ord Ch 435	1-23
2	Affidavit of Paul Brake	24-26
3	Excerpts of Paul Brake Deposition	27-45
4	Tier I Letters to Gatsby & Royal Treatment	46-47
5	Tier II Letters to Quality Roots and Exclusive Capital Partners	48-49
6	Quality Roots Complaint	50-102
7	Exclusive Capital Partners Complaint	103-156
8	Planning Commission Minutes	157-162
9	Quality Roots Register of Actions	163-173
10	Order Denying Motion for Preliminary Injunction	174-175
11	City's Motion for Summary Disposition as to Quality Roots	176-238
12	City's Motion for Summary Disposition as to Exclusive Capital Partners	239-304
13	City Commission Minutes dated April 25, 2022	305-320
14	Gatsby Licenses	321-326
15	Denial Letters to Quality Roots and Exclusive Capital Partners	327-346
16	Quality Roots First Amended Complaint	347-408
17	Exclusive Capital Partners Second Amended Complaint	409-460
18	City's Second Motion for Summary Disposition re Quality Roots' Amended Complaint	461-642
19	City's Motion for Summary Disposition as to Exclusive Capital Partners' Second Amended Complaint	643-762
20	Transcript of Motion for Summary Disposition – Quality Roots	763-781

RECEIVED by MSC 12/10/2025 3:03:01 PM

21	Transcript of Motion for Summary Disposition – Exclusive Capital Partners	782-788
22	Orders Granting Motions for Summary Disposition	789-793
23	Exclusive Capital Partners Register of Actions	794-801
24	Opinion and Order Denying Quality Roots' Motion for Reconsideration	802-805
25	Opinion and Order Denying Exclusive Capital Partners' Motion for Reconsideration	806-808
26	Court of Appeals Opinion	809-833
27	Court of Appeals Order Denying Reconsideration	834
28	Royal Oak Charter	835-883
29	Royal Oak Zoning Ordinance, § 770-52.1	884-891

RECEIVED by MSC 12/10/2025 3:03:01 PM

ARTICLE I
Recreational Marihuana Establishments
[Adopted 7-27-2020 by Ord. No. 2020-06]

§ 435-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed as follows:

APPLICANT — Unless specifically stated to mean a state license, means an individual, organization, partnership, company, corporation, enterprise, or other entity that applies for a municipal license as well as the person or persons associated with the applicant.

A. For purposes of this definition, an applicant includes a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

(1) For an individual or sole proprietorship: the proprietor and spouse.

(2) For a partnership and limited liability partnership: all partners and their spouses.

(3) For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

(4) For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

(5) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(6) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(7) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

(8) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

B. For purposes of this definition, an applicant does not include:

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

(2) A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana-infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms "franchise," "franchisor," and "franchisee" shall have the meanings set forth in Section 2 of the Franchise Investment Law, 1974 PA 269, MCLA 445.1502, as may be amended.

(3) A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

(4) A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property, including, but not limited to, brands and recipes.

APPLICATION — An application for a municipal license under this article and includes all supplemental documentation attached or required to be attached thereto; the person filing the application shall be known as the "applicant."

APPLICATION DOCUMENTS — The items required as part of an application submitted to the City prior to them being accepted as complete as provided in § 435-4.

BOARD — The Marihuana Licensing Board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

CLERK — The City of Royal Oak Clerk or his/her designee.

CO-LOCATED FACILITY or CO-LOCATION — Marihuana businesses holding two or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

CULTIVATE or CULTIVATION — To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

DEPARTMENT — The Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan license for a marihuana establishment.

DESIGNATED CONSUMPTION ESTABLISHMENT — A commercial space that is licensed by the Department and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.**[Amended 6-26-2023 by Ord. No. 2023-06]**

EXCESS MARIHUANA GROWER — A license issued to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

GROWER — A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

LICENSE — A current and valid license for a marihuana establishment issued by the State of Michigan.

LICENSEE — A person holding a current and valid Michigan license for a marihuana establishment.

MARIHUANA — That term as defined in Section 3 of the MRTMA, MCLA 333.27953, as may be amended.

MARIHUANA ACCESSORIES — Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

MARIHUANA CONCENTRATE — The resin extracted from any part of the plant of the genus cannabis.

MARIHUANA ESTABLISHMENT — A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the Department pursuant to MCLA 333.27951, as may be amended.

MARIHUANA EVENT ORGANIZER — A person licensed to apply for a temporary marihuana event license under these rules.

MARIHUANA MICROBUSINESS — A person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

MARIHUANA PROCESSOR — A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA RETAILER — A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

MARIHUANA-INFUSED PRODUCT — A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MICHIGAN MARIHUANA FACILITIES LICENSING ACT or MMFLA — Public Act 281 of 2016, MCLA 333.27101 et seq., as may be amended.

MICHIGAN MARIHUANA TRACKING ACT — Public Act 282 of 2016, MCLA 333.27901 et seq., as may be amended.

MICHIGAN MEDICAL MARIHUANA ACT or MMMA — 2008 IL 1, MCLA 333.26421 et seq., as may be amended.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

MUNICIPAL LICENSE — A current and valid license for a marihuana establishment issued under this article, which shall be granted to a municipal license holder only for and limited to a specific municipally licensed premises and a specific municipally licensed property. Said municipal license shall be in addition to the special use permit and site plan approval required to be obtained pursuant to the City Zoning Ordinance.

MUNICIPAL LICENSE HOLDER — An individual, organization, partnership, company, corporation, enterprise, or other entity that holds a current and valid municipal license issued under this article as well as the person or persons associated with the municipal license holder as applicant(s) for that municipal license.

MUNICIPAL LICENSE SLOT — An unissued permit available to be issued to an applicant.

MUNICIPALLY LICENSED PREMISES — The particular building, buildings, or tenant space within which the municipal license holder will be authorized to conduct the facility's activities pursuant to the municipal license.

MUNICIPALLY LICENSED PROPERTY — The real property comprised of a lot, parcel, or other designated unit of real property upon which the municipally licensed premises is situated.

PERSON — A natural person, company, partnership, profit or nonprofit corporation, limited liability company, or any joint venture for a common purpose.

PREMISES — The particular building, buildings, section of land, or tenant space within which a particular use is conducted.

PUBLIC PLACE — Any area in which the public is invited or generally permitted in the usual course of business.

RULES — Rules promulgated by the Department in consultation with the Board to implement the Act, including the LARA Rules, as may be amended.

SAFETY COMPLIANCE ESTABLISHMENT — A person licensed to test marihuana, including certification for potency and the presence of contaminants.

SCHOOL — A preexisting public or private school with a curriculum equivalent to kindergarten through 12th grade.

SECURE TRANSPORTER — A person licensed to obtain marihuana form marihuana establishments in order to transport marihuana to marihuana establishments.

STACKED LICENSE — More than one state license issued to a single licensee to operate as a Class C marihuana grower as specified in each state license at a marihuana establishment.

STATE OPERATING LICENSE or, unless the context requires a different meaning, LICENSE — A license issued by the Department that allows a person to operate a marihuana establishment.

TEMPORARY MARIHUANA EVENT LICENSE — A state license held by a marihuana event organizer for an event where the on-site sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

during the dates indicated on the state license.

WINDOW — The time period set by the City Manager to receive applications for evaluation by the competitive process as specified in this article.

§ 435-2. Municipal license required; eligibility; general provisions.

A. The City hereby authorizes the operation of the following types of marihuana establishments:

(1) Growers, Class A.

(2) Growers, Class B.

(3) Growers, Class C.

(4) Processors.

(5) Retailer.

(6) Safety compliance facilities.

(7) Secure transporters.

(8) Marihuana microbusiness.

(9) Co-located facilities as defined in this article.

B. The following number of municipal licenses can be issued for each authorized marihuana establishment type:

(1) Growers, Class A: one.

(2) Growers, Class B: one.

(3) Growers, Class C: one.

(4) Processors: one.

(5) Retailers: two total but only in the General Business Zone (as defined by § 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by § 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

(6) Safety compliance facilities: one.

(7) Secure transporters: one.

(8) Marihuana microbusiness: two total but only in the General Business Zone (as defined by § 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by § 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

C. No person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article. No marihuana establishments are allowed nor shall a municipal license be considered or granted for those activities and facilities defined as a "special license," being a state license described under Section 8 of the MRTMA and issued by the state pursuant to Section 9 of the MRTMA, MCLA 333.2795 and 333.27959, as may be amended, including, but not limited to, designated consumption establishment, excess marihuana grower, marihuana event organizer, temporary marihuana event, and any special license types hereafter recognized by the state.

D. Marihuana establishments shall operate only as allowed under this article.

E. The City Manager is granted the power to fully and effectively implement and administer the municipal license application process.

F. The requirements set forth in this article shall be in addition to, and not in lieu of, any other licensing or municipal licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this article, each applicant shall pay nonrefundable review fees, application fees, annual fees, renewal fees and inspection fees for municipal licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding marihuana establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The municipal license fee requirement 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.

H. The City has no obligation to process or approve any incomplete application.

I. A municipal license shall remain valid for one year following removal of all stipulations on an issued municipal license.

J. It is the sole and exclusive responsibility of each municipal license holder or applicant at all times during the application period and during its operation to immediately provide the City with all material changes in any information submitted on an application and any other changes that may materially affect any state license or its City municipal license.

K. No municipal license issued under this article may be assigned or transferred to another person or entity except as specified in this article. No municipal license issued under this article is transferrable to any other location except for the municipally licensed premises on the municipally licensed property.

L. The original municipal license issued under this article shall be prominently displayed at the municipally licensed premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

M. A municipal license holder may not engage in any other marihuana establishment in the municipally licensed premises or on the municipally licensed property, or in its name at any other location within the City, without first obtaining a separate municipal license.

N. No municipal license shall be granted or renewed for a marihuana establishment in a residence.

O. Co-located facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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. If these conditions are met, more than one business may be located on one parcel.

§ 435-3. Other laws and ordinances.

In addition to the terms of this article, any marihuana establishment shall comply with all City ordinances, including, without limitation, the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan. **[Amended 10-12-2020 by Ord. No. 2020-12]**

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

[1] A description of the type of marihuana establishment proposed and the anticipated or actual number of employees.

[2] A security plan meeting the requirements of § 435-5 of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § 740-7.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § 770-12, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect, or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § 435-5A(5) of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § 435-4 of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment; **[Amended 10-12-2020 by Ord. No. 2020-12]**

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant. **[Amended 6-26-2023 by Ord. No. 2023-06]**

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request one extension not to exceed six months from the license's original expiration date, which may be granted by the City Clerk.

(c) If a municipal license holder obtains a first extension but has not met all stipulations of the municipal license at the end of the extended period, it may request a second extension, not to exceed six months from the end of the first extended period, upon payment of the nonrefundable application fee for municipal license renewal. The City Clerk may grant a second extension only upon receipt of written evidence supplied by the municipal license holder that either of the following conditions exists:

[1] The license holder has a current, unexpired building permit and is actively engaged in construction of the approved improvements on the municipally licensed property. For purposes of this subsection, "actively engaged in construction" means that the license holder demonstrates that workers are on site performing construction and are being paid for their work and that the license holder has complied with all conditions of the building permit, including but not limited to obtaining regular, required inspections.

[2] All approved improvements on the municipally licensed property are complete, the license holder has applied to the Department for a state marihuana license, and the license holder has not received a response to its application from the Department. If the municipal license holder receives a state license from the Department, the renewal fee paid with the request for a second extension shall be valid for one year from the effective date of the state license.

(d) If neither of the foregoing conditions exists, the municipal license is revoked and considered denied at the end of the first extension period.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § 435-4C, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following: **[Amended 6-26-2023 by Ord. No. 2023-06]**

(a) With the renewal application, a municipal license holder must pay the nonrefundable application fee for annual renewal of a recreational marihuana establishment license.

(b) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § 435-5A(5) of this article.

(c) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

(d) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(e) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § 435-4D(7)(a) will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

§ 435-5. Operational requirements for marihuana establishments.

A. A marihuana establishment issued a municipal license under this article and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

(1) Scope of operation. Marihuana establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The marihuana establishment must hold a valid local municipal license and state marihuana establishment license for the type of marihuana establishment intended to be carried out on the municipally licensed property. The marihuana establishment operator, owner or licensee must have documentation available that local and state sales tax requirements, including holding any licenses, if applicable, are satisfied.

(2) Required documentation. Each marihuana establishment shall be operated from the municipally licensed premises on the municipally licensed property. No marihuana establishment shall be municipally licensed to operate from a movable, mobile or transitory location, except for a municipally licensed or licensed secure transporter when engaged in the lawful transport of marihuana. No person under the age of 18 shall be allowed to enter into the municipally licensed premises without a parent or legal guardian.

(3) Security. Municipal license holders shall at all times maintain a security system that meets state law requirements and, in addition, shall also include the following:

(a) Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, seven days a week, and which will contact local law enforcement if triggered;

(b) A locking safe permanently affixed to the municipally licensed premises that shall store all marihuana and cash remaining in the marihuana establishment overnight;

(c) All marihuana in whatever form stored at the municipally licensed premises shall be kept in a secure manner and shall not be visible from

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

outside the municipally licensed premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the municipally licensed premises; and

(d) All security recordings and documentations shall be preserved for at least 30 days by the municipal license holder and made available to any law enforcement upon request for inspection.

(4) Operating hours. No retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.

(5) Required spacing. **[Amended 6-26-2023 by Ord. No. 2023-06]**

(a) The following spacing requirements for marihuana establishments are required:

[1] Except as provided in Subsection A(5)(c), no marihuana establishment shall be permitted within a 1,000-foot radius of any school.

[2] Except as provided in Subsection A(5)(c), no marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

[3] Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(b) Except as provided in Subsection A(5)(c), spacing requirements become effective upon issuance of a municipal license, whether conditional or not.

(c) Deviation from, including reduction of, the required spacing set forth in Subsection A(5)(c), may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors, and any detrimental effects from the general operation of the establishment, and to minimize any adverse effect on the character of the surrounding area.

(6) Amount of marihuana. The amount of marihuana on the municipally licensed property and under the control of the municipal license holder, owner or operator of the marihuana facility shall not exceed that amount permitted by the state license or the City's municipal license.

(7) Sale of marihuana. The marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The marihuana establishment is prohibited from selling, soliciting, or receiving orders for marihuana or marihuana products over the internet.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

(8) Sign restrictions. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any municipally licensed premises nor be visible outside of the municipally licensed premises on the municipally licensed property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

(9) Use of marihuana. The sale, consumption or use of alcohol or tobacco products on the municipally licensed premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the municipally licensed premises is prohibited.

(10) Indoor operation. All activities of marihuana establishment, including, without limitation, distribution, growth, cultivation, or the sale of marihuana, and all other related activity municipally licensed under the municipal license holder's license or municipal license must occur indoors. The marihuana establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the municipally licensed premises. No consumption of marihuana shall take place on the premises of a marihuana establishment.

(11) Distribution. No person operating a marihuana establishment shall provide or otherwise make available marihuana to any person who is not legally authorized to receive marihuana under state law.

(12) Permits. All necessary building, electrical, plumbing and mechanical municipal licenses must be obtained for any part of the municipally licensed premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of marihuana are located.

(13) Waste disposal. The municipal license holder, owner and operator of the marihuana establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the license or municipal license. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

(14) Proof of insurance. A municipal license holder shall at all times maintain in full force and effect for the duration of the license workers' compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A municipal license holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this subsection. 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

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

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.

(15) Transportation.

(a) Marihuana may be transported by a secure transporter within the City under this article, and to effectuate its purpose, only:

[1] By persons who are otherwise authorized by state law to possess marihuana;

[2] In a manner consistent with all applicable state laws and rules, as may be amended; and

[3] In a secure manner designed to prevent the loss of marihuana.

(b) No vehicle used for the transportation or delivery of marihuana under this article shall have for markings the words "marihuana," "marijuana" or "cannabis" or any similar words; pictures or other renderings of the marihuana plant; advertisements for marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture; or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting marihuana.

(c) No vehicle may be used for the ongoing or continuous storage of marihuana, but it may only be used incidental to, and in furtherance of, the transportation of marihuana.

(16) Additional conditions. The City may impose such reasonable terms and conditions on a marihuana establishment special use as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this article and applicable law.

§ 435-6. Penalties and consequences for violation.

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this article or failure to comply with any of the requirements of this article shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction,

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this article. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this article.

§ 435-7. City liability and indemnification.

A. By accepting a municipal license issued pursuant to this article, the municipal license holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of marihuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a municipal license issued pursuant to this article, all municipal license holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a municipally licensed property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the municipal license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), or any other alleged violation of the law.

C. By accepting a municipal license issued pursuant to this article, a municipal license holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law, including the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Chapter 7 of the Michigan Public Health Code, MCLA 333.7101 et seq., as may be amended.

§ 435-8. Municipal license as revocable privilege.

A. A municipal license granted by this article is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each municipal license is exclusive to the municipal license holder, and a municipal license holder or any other person must apply for and receive the City's approval before a municipal license is transferred, sold, or purchased. A municipal license holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a municipal license without prior state and local approval is grounds for suspension or revocation of the municipal license or for other sanction considered appropriate by the City.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. Nonrenewal, suspension or revocation of municipal license. The City may, after notice and hearing as provided in § 434-4D(10) of this article, suspend, revoke, or refuse to renew a municipal license for any of the following reasons:

(1) The applicant or municipal license holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this section or with any applicable state or local law or regulation.

(2) The applicant or municipal license holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its municipal license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the municipal license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the municipal license.

(3) The marihuana establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

§ 435-9. Authorization to inspect, search and examine.

A marihuana establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department, and the application for a marihuana establishment constitutes consent by the applicant, and all owners, managers, and employees of the marihuana establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the marihuana establishment to ensure compliance with this article or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a municipal license without a search warrant.

Downloaded from https://ecode360.com/RO2029 on 2024-01-04

RECEIVED by MSC 12/10/2025 3:03:01 PM

AFFIDAVIT OF PAUL BRAKE

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

PAUL BRAKE, being first duly sworn, deposes and says that:

1. I have personal knowledge of the facts stated in this Affidavit and if called to testify, I am able to do so.

2. I hold a master's degree in public administration. I completed the Harvard Kennedy School for Senior Executives in State and Local Government, and the University of Virginia, Weldon Cooper School of Public Policy Senior Executive Institute.

3. I hold a certification as a Business Solutions Professional from Michigan State University and am a Certified Economic Developer (CEcD), certified by the International Economic Development Council.

4. I am employed by the City of Royal Oak as City Manager, a position I have held since May 2020.

5. I have previously held municipal management positions in Meridian Township and Grand Blanc, Michigan, and Morgantown, West Virginia, totaling more than 20 years in municipal administration before joining Royal Oak.

6. In my position as city manager, I frequently consult with department heads and other city administrative staff in various areas of concern that may affect decisions that I must make from day to day as the city's chief administrative officer.

7. Under the Royal Oak recreational marijuana licensing ordinance, I am responsible to evaluate applications for marijuana licenses and to assign municipal marijuana "license slots" to applicants judged to be best suited to operate in Royal Oak and in compliance with the state

RECEIVED by MSC 12/10/2025 3:03:01 PM

recreational marijuana law, which allows those applicants to proceed further through the process to possible licensure.

8. In the window of time during which applicants could submit applications for recreational marijuana licenses in 2020-2021, Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications.

9. In evaluating the applications, I consulted various department heads of the City administrative staff for advice relevant to certain aspects of the applications within their specialties, just as I commonly consult with them about other municipal matters and operations.

10. I consulted with my assistant, Susan Barkman; Timothy Twing, Director of Community Development; Joseph Murphy, City Planner; Holly Donoghue, City Engineer; Todd Fenton, Deputy City Manager and Director of Economic Development; Corey O'Donohue, Chief of Police; Jaynmarie Hubanks, City Treasurer; and City Attorney Aaron Leal.

11. The input I received from each department head varied from person to person. Each of them had different opinions about various aspects of the applications. Some gave me their opinions about how the applicants should be ranked. No other person's opinion was dispositive, and there was no consensus or "vote" taken. I alone decided the final rankings of marijuana applications required under the state law and city ordinance.

12. Upon completing my evaluations, I assigned license slots as follows: one applicant for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment.

RECEIVED by MSC 12/10/2025 3:03:01 PM

13. My decisions assigning license slots do not end the process. After public hearing and recommendation by the Planning Commission of its site plan review of successful applicants, the City Commission makes the final decision as to site plan review under the city's zoning ordinance.

14. If any holder of a license slot does not timely pay its fees or adhere to the other time limits established by the city's Recreational Marihuana ordinance, or does not complete or satisfactorily pass any step required by the ordinance, up to and including final approval, it will lose its license slot status.

15. Any applicant who is not initially assigned a license slot and whose application is not denied is put on a standby list. If another license slot becomes available, the next highest ranked application will be assigned an available license slot and permitted to proceed through the remainder of the process upon timely payment of the required fees. This way, the applicant does not need to reapply, pay additional fees, and begin the process again.

16. Once all applicants assigned a license slot successfully complete the remaining process through full licensure and the license slots are exhausted, then I will send a letter to each unsuccessful applicant advising that their application has been denied. If an applicant is denied, then it may not reapply until another license slot becomes available or a new window for receiving applications is opened.

Further, Affiant sayeth not.

PAUL J. BRAKE

Subscribed and sworn to before me
this 7 day of March, 2022

Bonnie Jean Holland
Bonnie Jean Holland Notary Public
Oakland County, Michigan

My Commission Expires: Nov 22, 2023

BONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

RECEIVED by MSC 12/10/2025 3:03:01 PM

BY MR. ETZEL:
Q And you don't have to read the small letter subsections. Just the --
A Right.
Q -- and let me know when you're done reading.
A Okay, I've read it.
Q Okay. It states the applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the act within the City as determined by the city manager or his or her designee.
Do you see that?
A Yes.
Q Did you appoint any designee or designees to come up with a ranking of the applications?
A No.
Q You did that yourself?
A Yes.
Q And so you'll see the competitive criteria that is listed in (a) through (j). You don't have to read it right now, but I take it in order to come up with the ranking you had to familiarize yourself with the ordinance and specifically the competitive criteria?
A Yes.
Q And what did you exactly do to make sure you understood the competitive criteria, and how those should be

RECEIVED by MSC 12/10/2025 3:03:01 PM

the applications?

MS. MCLAUGHLIN: Objection to the form of the question.

Go ahead.

THE WITNESS: So these are colleagues that I work with --

MR. ETZEL: Let me -- your objection is noted, Counsel, and I'll break it up because I think it was a compound question.

BY MR. ETZEL:

Q Did you form a committee of city officials to assist you in screening the applications?

A So I'm listening to your question and when you use the word "committee" is that I've never referenced it as that.

Q Okay.

A And so a collaboration, a workgroup, but I've seen frequently where, you know, you do talk about a committee. That did not exist.

Q Okay.

A So as far as other employees that helped out in this process, I made contact with them. And specifically as it related to the city treasurer, pretty obvious stuff, have they paid their water bill, are the taxes current on the property that they're looking at, is the police

RECEIVED by MSC 12/10/2025 3:03:01 PM

chief involved, you know, is there a criminal background of that sort. So individuals that would have, within their own databases, direct knowledge or information that they could extrapolate were involved in this collaboration or work group.

MR. SENAWI: Can we go off the record for a second?

MR. ETZEL: Sure.

(Break in proceeding taken from 11:21 a.m. to 11:31 a.m.)

BY MR. ETZEL:

Q Okay. Before we took a brief break, Mr. Brake, I had ask you about other city officials who helped you in the application screening process, and I'm going to hand you what's previously marked as Exhibit 13, which is your affidavit. Is that your signature on page 3 of the affidavit?

A It is.

Q And if you go to -- before you signed this affidavit, did you review each paragraph to confirm that each statement was accurate and truthful?

A I did.

Q And has anything changed since you executed this affidavit back in March 9, 2022, that would make any of these statements inaccurate or untruthful?

A Everything is true and continues to be consistent post signature of this document.
Q Okay. And if you go to paragraph 9 you state: In evaluating the applications, I consulted various department heads of the City administrative staff for advice relevant to certain aspects of the applications within their specialties, just as I commonly consult with them about other municipal matters and operations.
Do you see that?
A Yes.
Q The next paragraph you go on to state -- that you identify individuals by name that you consulted with; is that correct?
A Yes.
Q And that's Susan Barkman, Timothy Thwing -- Susan Barkman, I take it, is your personal assistant?
A She's the assistant to -- that's just a -- kind of more of a terminology of someone that's entering into the state management profession. So when you say personal assistant, she is involved in very detailed sort of projects and things like that, but when you get into personal assistant I give -- you know, I'm not sending her to get my dry cleaning and that sort of thing so...
Q Right. I didn't mean to infer that.
A Yeah.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Q But she's assigned to assist you?
A Yeah, that's correct. Yeah. The only thing I noted -- well, I noticed here that Tim Thwing's last name is spelled wrong. There's an H that's in there.
Q Okay.
A But otherwise --
Q So you've identified Mr. Thwing; Joseph Murphy, the city planner; Holly Donoghue, the city engineer; Todd Fenton, deputy city manager and is the director of economic development. I'm sorry. Todd Fenton is the deputy city manager and director of economic development, and then Corey O'Donohue, chief of police.
A Yes.
Q And then Jaynmarie Banks, city treasurer; and city attorney is Aaron Leal. We've -- in various points throughout this case we've referred to this group as a review committee or selection committee, and I don't want to put words in your mouth. How would you describe this group of individuals in relation to administration of the marihuana ordinance?
A Well, as I said before, this is a collaborative or a workgroup?
Q We'll call it workgroup. How's that?
A Okay.
Q Just for sake of --

RECEIVED by MSC 12/10/2025 3:03:01 PM

A Okay.
Q -- so you regularly met with this working group that's identified in paragraph 10 of your affidavit during -- in evaluating and screening the applications; is that a fair statement?
A Most individuals, but not everyone.
Q Okay. There were, as I understand it, a series of meetings in the summer of 2021 --
A Yes.
Q -- where -- based on calendar invites and the like that you met with this group. And obviously there were times when someone wasn't present, but for the purpose of reviewing a specific set of applications; is that a fair statement?
A Yes, that is correct.
Q And what took place at those meetings?
A That we went through each of the applications -- and meaning we didn't read every page by page because, you know, as I mentioned, it's a voluminous amount of information. So it was a matter of the respective individuals that were present even put on information that was pertinent to their respective departments. Where we concentrated most of our efforts is more on the land use component on the specific site because we asked for site plans and the like, and whether or not

RECEIVED by MSC 12/10/2025 3:03:01 PM

Q Right. I mean, would you agree that that saves you time because then you don't have to deal with reading those voluminous applications because you've got Mr. Fenton saying, look, this is -- this -- these applications are disqualified because of this particular issue so then you don't have to go on and look at all the other elements of the application?

MS. MCLAUGHLIN: Objection to the form of the question.

Go ahead.

THE WITNESS: So I still read all of the applications. This came in after the fact.

BY MR. ETZEL:

Q Okay.

A So there could be some that said, you know, after the meeting or beforehand, but that still refute the applications. So did that help in narrowing it down, yes, but to imply that someone said something and I didn't review the applications, that did not occur that way. Am I making myself understood?

Q Yeah. No, you are. You are. I appreciate that. Let me turn to another exhibit because it kind of would be helpful to understand the timing here. I'm handing you what's been previously marked as Exhibit No. 5.

A Okay. I'm going to trade you.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Q Thank you. I appreciate it.

Let me know when you've had a chance to go through that exhibit that's previously marked as Exhibit 5.

A Okay, I've looked at it.

Q Okay. So these meetings with the working group -- and, again, it looks like it's pretty consistent in terms of who was invited to these meetings that began in July -- on July 13 and appear to go through mid September of 2021. In fact, if you go to the last few pages of this exhibit it says, marihuana application review schedule, and it looks like the last meeting was September 9; is that a fair statement?

A My recollection is that we went through that through the month of August. So the actual -- the last meeting that we met was August 25th. We had the dates open just as a placeholder.

Q I see. So it's your recollection that the last meeting to -- with the working group to evaluate applications was August 25th?

A Correct.

Q Okay. And you didn't have meetings after that to sort of -- that weren't geared towards reviewing specific set of applications where you just want to discuss the overall selection or ranking or anything of that nature?

A Not collectively as a group, but in November there was some conversations that I had one-on-one with some of those members.
Q Okay. So just, again, so I understand the sequence here. Are you saying that you personally reviewed all 31 applications before you started meeting with this review group in July of 2021?
A Prior to each of these meetings -- that's why we broke that up over four meetings. Did I go through all 31 before August 4th, no. But on August 4th we identified -- we just said -- we had the system and I think it's the same thing that the applicant has. It's an RME and then like a five digit number, and it's the last two digits that denote the particular application. So it's -- the expectation was that you came to this meeting prepared. That you went through the respective applications that were on this -- as we've, you know, divvied this up from kind of a workload perspective.
Q Okay. Well, let me go back to the beginning of this exhibit. It looks like the first meeting to discuss the recreational marihuana application process was on July 13, 2021. Do you see the first page of Exhibit 5, and you'll see that the -- you're the organizer for this meeting, and it's the -- the required attendees are Aaron Leal, Todd Fenton, Susan Barkman. Do you see

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

that?
A Yeah. Yes.
Q And this is obviously not the entire working group that you identified in your affidavit, but is this -- do you recall what took place at this particular meeting --
A I don't.
Q -- let me finish because it doesn't appear that there are any applications designated for this particular meeting. So this would have been pre-application review as a group.
A So your -- your logic deduction appears correct to me, but as far as to ask, you know, what was discussed at this meeting, I don't have any recollection. I do know in the month of August is when we were getting into issues specific to each of the applications. This might have been who should be involved, when should we schedule this, everyone get their calendars together. I'm -- I'm kind of speculating what took place at that time, but to say, you know, hey, how are we going to go about this. It's, you know, again, we're talking 11 months ago. I don't recall, but I do specifically remember we kind of landed on Wednesdays where we'd plow through. I'm pretty sure the 4th, 11th, 18th, and 25th were all Wednesdays.
Q Okay. But you don't recall specifically what was

discussed at this meeting?
A No, I do not.
Q And this would have been before any applications were reviewed with the whole working group, correct?
A It was. The only other thing that comes to mind now -- so Aaron Leal, he was on the month -- excuse me -- he was on the job for about a month, and it might have been a case of bringing him up to speed to say, this is what we've done, here's process that we've gone through, but, you know, like, again, I'm kind of speculating, you know, when, because, you know, we had a few folks that were coming and going during this process, and Aaron was one of them.
Q Okay. So, again, just to be clear, you had not read -- prior to these meetings starting in July of 2021, you had not reviewed any of the applications yet?
A Other than maybe just looking at them very, very briefly. But as far as in the preparation of the meetings in August, that's when the bulk of that -- when we got into the substantive information per application per site.
Q Okay. So the window closed earlier that year in early February 2021. There was an initial intake process where if an obvious thing was missing from the application, such as like a site plan or a security

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

have to read the entire ordinance to say that that's required.

Q Are you aware of anything in the ordinance that says if an applicant doesn't submit a notarized affidavit that they get -- that they get a chance to correct the application or was that just something that you instituted as you went along?

A The staff would be doing that on my behalf because it's ultimately that I'm responsible for that. So whether or not that was indicated -- because there were instructions that we gave to applicants that was noted on the webpage and said, you know, here, you need to fill this form out and submit this information. And for that matter how you submit the information as separate documents, and most people followed it.

Q So going further on Exhibit No. 5, if you look at the next calendar invite, there's a meeting on August 2nd with a subject Review Applications, and the organizer is Susan Barkman. It's unclear as to whether this was -- who was invited to this, if anyone. Do you know what this pertains to since she's your assistant?

A What -- it was more of an organizational structure where the applications were on our information system. We have a -- where we can note -- what's called a private drive. It's kind of like an intranet, and so

Susan created a folder and made subfolders by each of the RMEs. And it took a fair amount of time, but she had to organize that in such a way and only certain individuals within our information system even had permission. So, you know, when you use Microsoft products, you know, when you log in, and that's based on your sign-in and what permissions that you have. And so my recollection is that Susan -- I think it was more of a deadline that she imposed on herself that said that everything had to be finalized. All these voluminous number of documents had to be organized in such a fashion that even made this manageable to review. So, you know, applications, all the materials were lumped together.

Q Okay.

A And the SeamlessDocs, I'll do the best to explain. I didn't look at it, but it was, you know, a considerable amount of information that came in. I don't know how it's kind of been listed on our system, and it would take some time to organize this in such a way that it's meaningful.

Q All right. So if you look at the second to the last page of this exhibit you'll see the marihuana application review schedule, and if you look at the corresponding meeting invite on Bates number in the

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Do you recognize this document, Mr. Brake?
A I do.
Q And what is this?
A This is the application for Gatsby campus.
Q And it reads -- do you see where it reads up at the top Marihuana Application Review Notes?
A Oh, it is. I misspoke. This is not the application -- when I saw the box here it was -- it looked familiar the way our applications are set up. So, no, this is our review notes.
Q Okay. When you say our review notes, who are you talking about? The working group?
A Yes.
Q Okay. So the working group -- after they reviewed the application they could go on and put their thoughts or comments or criticisms of a particular application; is that a fair statement?
A Yes.
Q And only the review group had access to the review notes; is that fair statement?
A Yes.
Q And was this generated before the August 4th meeting wherein the working group discussed Gatsby's application?
A No. No, this would come in after.

Q Well, I mean, when I think of ranking I think of, okay, here's number one, here's number two, here's number three, here's number four, and so forth, right? That's what I think of ranking, but you disagree that that's not what you did. You did not rank them 1 through 31. You rank them one -- the top two and then this other group, and then a group after that?
A Correct.
Q Okay. And to be clear, did you rank Gatsby over Royal Treatment or Royal Treatment over Gatsby in terms of that first bucket?
A They were both recommended.
Q By whom?
A The decision came from me.
Q So that was your recommendation, right?
A Yes.
Q Okay. But you didn't distinguish between one being better than the other; is that fair?
A When I submitted that to the city commission and the planning commission, no one asked that question. You're asking us in the context as if there was a rubric. A rubric did not exist.

MR. SENAWI: In there lies the problem.

(Exhibit 27 marked for identification)

BY MR. ETZEL:

RECEIVED by MSC 12/10/2025 3:03:01 PM

doesn't work that way. But anyways, getting back to your question of how we went about this. I mean, it wasn't a blind draw. It was carefully reviewing the materials and the application, talking about that, and coming up with the final decision that came from me.

BY MR. SENAWI:

Q Okay. I'm going to use analogies a lot. Okay?

A Okay.

Q So when you're boxing and you hit below the belt a couple of times the ref can take a point away, right?

A Yes.

Q Okay. My client BDE -- and we're going to go -- again, we're going to jump into this -- these exhibits in a minute --

A Okay.

Q -- from my understanding is that their location was on Woodward, and there was no -- so what you guys say there was no access from the alleyway. No defined driveway from the alleyway to get into the property, which I disagree with and we're going to go over in a minute. But it seemed as if we -- if we look at the letter, that was the reason why this location wasn't approved. Would you agree with me on that?

MS. MCLAUGHLIN: Objection to the form of the question.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

the ranking order of the retail applications were from the highest ranking application to the lowest. You've testified about tiers. That there were three tiers. Tier 2, my understanding from your testimony, is the standby list?

A Yes.

Q Okay. In this interrogatory you placed everyone in the standby list in the order in which their application was received. Do you agree with that statement?

A Yes.

Q Okay.

MS. MCLAUGHLIN: One point, sorry. Do we need to identify that the -- that we're done with the attorney eyes only?

MR. SENAWI: Yeah, we're done for a moment and we might go back. Okay? But we're done for a moment. Sorry. Thank you for that.

MS. MCLAUGHLIN: Yeah.

****

END OF ATTORNEYS' EYES ONLY

****

BY MR. SENAWI:

Q So you agree with me that the standby list is ranked in the order it was received?

MS. MCLAUGHLIN: Objection to the form of the

RECEIVED by MSC 12/10/2025 3:03:01 PM

Q During the competitive process, did you compare the applications with one another?
A Yes.
Q And with respect to the ranking order of the applications, once two licenses -- license slots had been awarded was there any need to rank the others?
A No.
Q Are you aware that Gatsby Cannabis operates a facility, a marihuana retailer facility, in another location in the state of Michigan?
A I might have saw that in the application now that you mentioned that, but I would have to go back and verify.
Q Are you aware that Gatsby has been awarded licenses in other communities other than Royal Oak?
MR. ETZEL: Objection to foundation.
MS. MCLAUGHLIN: I'm just asking.
THE WITNESS: Yeah. You know, to say quite definitively, but -- but, you know, I could verify that.
BY MS. MCLAUGHLIN:
Q Did the mayor or city commissioners have access to the applications?
A No. No, not at all. Applications meaning the completed forms, not the template.
Q Right. I'm talking about the completed applications

submitted by applicants who participated in the competitive process.

A They did not have access --

MR. ETZEL: And I'm sorry, but I just want to place an objection as to foundation because he doesn't know what -- if Gatsby or Royal Treatment shared their applications with city commission members or the mayor.

BY MS. MCLAUGHLIN:

Q All right. When the applications were submitted online, the system was set up to send email copies and notifications of those applications to certain city personnel; is that true?

A That's true. And that was through a secured system.

Q Okay. And was that available -- were those email recipients -- did these -- sorry, strike that.

Did those email recipients include the mayor or city commissioners?

A No.

Q So if the mayor and city commissioners had any information about the applicants or the locations for which they were applying before that competitive process was completed, that did not come from the administration?

A Correct.

Q I think you took care of this answer, but I wanted to

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

PGSH Holdings, LLC
986 Cesar E. Chavez
Pontiac, MI 48340

PSGH Holdings, LLC:

Thank you for applying for a Royal Oak marihuana retailer, processor, and grower - class c licenses. We received several strong applications and can tell that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this process.

PSGH Holdings, LLC has been selected to move forward in the licensing process for a retailer, processor and grower class c licenses. The remaining balance for each license is $4,500 or a total off $13,500. This is due within 5 business days from receipt of this letter. To pay this, you have two options:

- Go to the city treasurer's office which is located on the 1st floor of the Royal Oak City Hall at 203 S. Troy Street. Office hours are Monday to Thursday 8:00am to 4:30pm and 8am to noon on Friday.
- Pay online at romi.gov/rme-balance. You will be asked for your application numbers, which are RME 7, RME 9, and RME 10. If you choose to pay online, each license is processed as a separate transaction.

Failure to pay within 5 days will result in your application being removed from consideration.

After payment is completed, you can reach out to the planning division to begin working with their staff on the formal special land use/site plan review process. Their phone number is 248-246-3280.

Thank you again for your patience during this process and interest in starting your business in Royal Oak.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

Royal Oak Treatment, LLC
313 East Hudson
Royal Oak, MI 48067

Royal Oak Treatment, LLC:

Thank you for applying for a Royal Oak marihuana retailer license. We received several strong applications and can tell that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this process.

Royal Oak Treatment, LLC has been selected to move forward in the licensing process for a retail license. The remaining balance for the license is $4,500. This is due within 5 business days from receipt of this letter. To pay this, you have two options:

- Go to the city treasurer's office which is located on the 1st floor of the Royal Oak City Hall at 203 S. Troy Street. Office hours are Monday to Thursday 8:00am to 4:30pm and 8am to noon on Friday.
- Pay online at romi.gov/rme-balance. You will be asked for your application number, which is RME 16.

Failure to pay within 5 days will result in your application being removed from consideration.

After payment is completed, you can reach out to the planning division to begin working with their staff on the formal special land use/site plan review process. Their phone number is 248-246-3280.

Thank you again for your patience during this process and interest in starting your business in Royal Oak.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

Quality Roots Inc.
123 South Main Street, Suite 200
Royal Oak, MI 48067

Quality Roots Inc.,

Thank you for applying for a Royal Oak marihuana retailer license (RME 4 and RME 5). Based on the applications as they were received, it was clear that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this time.

There were more retailer license applications than licenses allowed under the ordinance. At this time neither of your applications was selected to move forward in the licensing process. There are several applications that were well positioned to moved forward if one of the applicants selected for a retail license does not successfully complete the licensing process.

This letter is not a denial of your application. If the other business is successfully licensed, you will receive a denial letter at that time.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

Exclusive Capital Partners
38701 Seven Mile Road, Suite 160
Livonia, MI 48152

Exclusive Capital Partners,

Thank you for applying for a Royal Oak marihuana retailer license (RME 11). Based on the applications as they were received, it was clear that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this time.

There were more retailer license applications than licenses allowed under the ordinance. At this time your application was not selected to move forward in the licensing process. There are several applications that were well positioned to moved forward if one of the applicants selected for a retail license does not successfully complete the licensing process.

This letter is not a denial of your application. If the other business is successfully licensed, you will receive a denial letter at that time.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

This case has been designated as an eFiling case, for more information please visit www.oakgov.com/efiling.

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 2/3/2022 4:43 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

v

CITY OF ROYAL OAK, a Michigan municipal corporation

Defendant.

2022-192383-CZ
Case No. 2022- -CZ
Hon. JUDGE RAE LEE CHABOT

Brian E. Etzel (P54905)
William C. DiSessa (P81906)
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC
Attorneys for Plaintiff
380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

The undersigned is aware of the following civil action pending before this Court and arises out of the transaction or occurrence alleged in this Complaint: *Attitude Wellness v City of Royal Oak* (2022-192288-CZ)

/s/ Brian E. Etzel
Brian E. Etzel (P54905)

COMPLAINT

Plaintiff, Quality Roots, Inc., by its attorneys Williams, Williams, Rattner & Plunkett, P.C., for its Complaint against Defendant, the City of Royal Oak, states as follows:

RECEIVED by MSC 12/10/2025 3:03:01 PM

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Quality Roots, Inc. ("Quality Roots"), is a Michigan for profit corporation with its principal place of business in the City of Birmingham at 2075 E. 14 Mile Road.

2. Defendant, the City of Royal Oak (the "City"), is a Michigan municipal corporation located in Oakland County, Michigan, organized under the Home Rule City Act, MCL 117.1 *et seq*. and subject to the laws of the United States and the State of Michigan, as well as its charter and ordinances.

3. This Court has jurisdiction over the instant case in that the action arises under the Constitution and laws of the State of Michigan, and the matter in controversy exceeds the sum of $25,000, exclusive of interest and costs.

4. This case is also subject to the jurisdiction of this Court pursuant to MCR 2.605 and MCR 3.310 as the claims include requests for injunctive and other equitable relief, and the events or actions giving rise to Plaintiff's claims occurred in Oakland County.

5. If equitable relief is not granted, the amount in controversy will exceed $25,000.00.

6. Venue is proper in this Court under the Revised Judicature Act of 1961, MCL 600.101 *et seq*.

GENERAL ALLEGATIONS

The Michigan Regulation and Taxation of Marihuana Act

7. On December 6, 2018, the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"), MCL 333.27951 *et seq*., became effective in the state of Michigan.

8. Pursuant to Section 6 of MRTMA, MCL 333.27956, municipalities are authorized to completely prohibit or limit the number of adult-use marihuana establishments within their boundaries. MCL 333.27956(1).

RECEIVED by MSC 12/10/2025 3:03:01 PM

9. Likewise, MRTMA authorizes municipalities to adopt ordinances requiring a marihuana establishment with a physical location within the municipalities to obtain municipal licenses prior to operation, although municipalities are not authorized to impose qualifications for licensure that conflict with MRTMA or the rules promulgated by the state. MCL 333.27956(3).

10. If a municipality "limits the number of marihuana establishments that may be licensed in the municipality . . . and that limit prevents the [Marijuana Regulatory Agency] from issuing a state license to all applicants who [are otherwise qualified to receive a state license], the municipality ***shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the municipality.***" MCL 333.27959(4) (emphasis added).

City of Royal Oak's Recreational Marihuana Licensing Ordinance

11. On July 27, 2020, pursuant to its authority under MRTMA, the City of Royal Oak adopted Ordinance No. 2020-06, which incorporated a new Chapter 435 into the Royal Oak Code of Ordinances (the "Ordinance"). **Exhibit A: City of Royal Oak's Recreational Marihuana Licensing Ordinance**.

12. The Ordinance authorizes the City to issue up to two municipal licenses for marihuana retailers. Ordinance, § 435-2(B)(5).

13. The Ordinance authorizes the issuance of municipal marihuana retailer licenses to applicants owning property in the General Business Zone or the General Industrial Zone, with a maximum of one marihuana retailer in the General Business Zone. *Id*. at § 435-2(B)(5).

14. Under the Ordinance, § 435-2(C), "[n]o person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article."

RECEIVED by MSC 12/10/2025 3:03:01 PM

15. The Ordinance authorizes the Royal Oak City Manager to "fully and effectively implement and administer the municipal license application process." *Id*. at § 435-2(E).

16. Completed applications are categorically accepted as proper applications under the Ordinance, and such applications must be processed and considered "on a competitive basis . . ." *Id*. at § 435-4(B)(2).

The 'Competitive Process' Established by the Ordinance

17. The Ordinance's "[c]ompetitive process" is outlined under § 435-4(C).

18. For all marihuana establishment types for which the City limits the number of municipal licenses that may be issued, the City Manager is required to establish a window during which applications for licenses may be submitted. *Id*. at § 435-4(C)(1). For these same types of marihuana establishments, the City Manager is required to open a new window for applications to be submitted every calendar year. *Id*.

19. At the end of each application window, if the number of applications for a particular type of marihuana establishment municipal license exceeds the number of available municipal licenses, the City "shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City." *Id*. at § 435-4(C)(2).

20. Applications included in the competitive process are those that are (1) date and time stamped as having been submitted prior to the close of the relevant application window and (2) considered complete and accepted. *Id*. at § 435-4(C)(3).

21. Under the Ordinance, applicants and applications must be ranked "in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license

RECEIVED by MSC 12/10/2025 3:03:01 PM

slots, starting with the best-suited applicant and application, until all available municipal license slots are filled." *Id*. at § 435-4(C)(4). The Ordinance defines the "Act" as MRTMA.

22. The competitive criteria used in the City's "competitive process" include:

a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;

d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

g. Whether there is planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;

h. Whether the Applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any

RECEIVED by MSC 12/10/2025 3:03:01 PM

other employee-employer factors tending to show a successful workforce;

i. Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

Id. at § 435-4(C)(4).

23. Following implementation of the ranking process as undertaken by the City Manager or his or her designee, an applicant that is awarded a municipal license slot is notified of their award and given five business days to pay a marihuana establishment application fee. *Id*. at § 435-4(D)(2). If an applicant does not pay the fee within the time allotted, the next highest ranked application will be issued the municipal license slot. *Id*.

24. Once an applicant pays the marihuana establishment application fee, the City Clerk refers a copy of the pertinent application to the department head or designated staff person for the following departments for their review and approval: (1) the City Police Department; (2) the Fire Department; (3) the Community Development Department (Building Division, Engineering Division, and Planning Division); and (4) "any other applicable departments."

25. If, after review of the application, there are no deficiencies—or if all deficiencies are corrected in a timely fashion—the City Planning Commission shall consider the applicant's special land use permit and site plan. *Id*.

26. If an applicant satisfies the conditions outlined in the Ordinance pertaining to the licensing process, the City Clerk shall then issue a municipal license to the applicant. *Id*. at § 435-4(D)(7).

RECEIVED by MSC 12/10/2025 3:03:01 PM

27. A municipal license is valid for one year following removal of all stipulations on an issued municipal license. *Id*. at § 435-2(I). If a municipal license is denied, the denial must be in writing and must state the reasons for the denial. *Id*. at § 435-4(D)(8).

28. Pursuant to the Ordinance, § 435-4(D)(9), "[u]pon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § 435-4C, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process."

Plaintiff's Applications for Retail Licenses

29. Quality Roots is an experienced and reputable Cannabis company with successful retail marihuana operations in Hamtramck and Battle Creek. Quality Roots has also been awarded conditional marihuana retail licenses in other municipalities where it plans to open retail establishments later this year.

30. In accordance with the Ordinance, Quality Roots timely applied to Royal Oak for two Provisioning Center Licenses at the following locations: 3115 West Thirteen Mile Road and 28300 Woodward Avenue.

31. On January 29, 2021, Quality Roots submitted timely and complete applications that easily satisfied the Ordinance's competitive criteria for operating a recreational marihuana retail establishment in Royal Oak. The applications detailed Plaintiff's qualifications and experience, and amply demonstrated why Plaintiff was not only qualified, but was best suited among all applicants to operate a retail establishment in compliance with MRTMA.

32. From the time it submitted its applications to Defendant on January 29, 2021 until December 20, 2021, Quality Roots received no communication from Defendant regarding the applications or the application review process in general.

RECEIVED by MSC 12/10/2025 3:03:01 PM

33. On December 20, 2021, Plaintiff received a letter dated December 15, 2021 from the City Manager notifying it that neither of its applications was selected "to move forward in the licensing process." The City Manager noted that "there are several applications that were well positioned to moved [sic] forward if one of the applicants selected for a retail license does not successfully complete the licensing process." Finally, the City Manager clarified that the letter was "not a denial of your application."

34. After submitting its applications, Plaintiff failed to receive any information from the City regarding the City Manager's (or the City Manager's designee's) assessment of the competitive criteria outlined under Section 435-4(C)(4) of the Ordinance.

35. In December 2021, the City notified PGSH Holdings LLC ("Gatsby") and Royal Oak Treatment LLC ("Royal Treatment") that they were chosen to fill the two Municipal License Slots.

36. The City Planning Commission is scheduled to consider approval of Gatsby's and Royal Treatment's Site Plans and Special Land Use Permits on February 8, 2022.

Royal Oak's Disregard of MRTMA, the Open Meetings Act, and Its Own Ordinance

37. Section 9(4) of MRTMA states: "If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to Section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the municipality shall decide among completing applications by a competitive process intended to select applicants who are best suited to operate in compliance of this act within the municipality."

RECEIVED by MSC 12/10/2025 3:03:01 PM

38. Similarly, Section 435-4(C)(4) of the Ordinance provides that "Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with Act within the City has determined by the City Manager or his or her designee."

39. Section 435-4(C)(4) leaves the entire determination as to an Applicant's ranking to the City Manager (or a designee). Ostensibly, the City Manager will conduct the entire "scoring" process that ultimately decides which Applicants prevail and which are left to try later (or be placed indefinitely on a waiting list).

40. Notably, for all but three of the ten "competitive criteria" set forth in the Ordinance, there is no way to distinguish one applicant from another, as these criteria are binary in nature. For example, whether an applicant is currently in default/arrears on any taxes or fees due to the City is either satisfied or not. Similarly, an applicant has either filed for bankruptcy or it has not. An applicant either has a history of criminal convictions or it does not. For these 'binary' or 'check the box' criteria, there is simply no degree by which to rank the applicants' responses.

41. Ultimately, there are only three criteria whereby it is possible to distinguish between competing applications. And even these criteria are entirely subjective in nature.

42. The City failed to promulgate any type of scoring rubric or point system for the "competitive criteria" which has resulted in a completely opaque and subjective application evaluation process.

43. There is no guideline or set of rules to give an applicant any indication as to how they may be evaluated in the so-called competitive process.

44. Moreover, the Ordinance does not include any type of tie breaking procedure, which means that any "ties" between otherwise qualified applicants will be resolved by the subjective whims of the City Manager (or designee).

RECEIVED by MSC 12/10/2025 3:03:01 PM

45. Contrary to MRTMA, the "competitive process" established under the Ordinance and implemented by the City was anything but competitive.

46. Although the Ordinance expressly provides that the ranking of the applicants and their applications will be "determined by the City Manager or his or her designee," there was a *de facto* 'ranking committee' of seven city officials who regularly met in the summer of 2021 for the purpose of evaluating and ranking the applicants/applications, in plain violation of the Ordinance.

47. This 'ranking committee' consisted of the following City officials:

- Arron Leal, City Attorney;
- Paul Brake, City Manager;
- Todd Fenton, Economic Development Manager;
- Tim Thwing, Director of Community Development;
- Corrigan O'Donohue, Former Police Chief and Assistant City Manager;
- Susan Barkman, Assistant to the City Manager; and
- Jaynmarie Hubanks, Treasurer.

48. The members of this 'ranking committee' had access to a restricted files stored on the City's file server containing the applications where they recorded and share their "review notes" for each application.

49. Pursuant to a "Marihuana Application Review Schedule," the 'ranking committee' met in secret closed door sessions every Wednesday from 2:00pm to 4:00pm in August 2021 for the purpose of reviewing, evaluating, and ranking a designated group of applications/applicants.

50. Prior the final Marihuana Application Review Meeting on August 25, 2021, Todd Fenton advised the "ranking committee" that he would not be in attendance but nonetheless provided the committee with his ranking of the "top 5" applications.

RECEIVED by MSC 12/10/2025 3:03:01 PM

51. Notably, none of these Marihuana Application Review meetings were open to the public and there was no notice to the public that any of these meetings were taking place (either before or after the meetings). No official notes or minutes were kept for any of these meetings. As a result, the public has no way of knowing how this 'ranking committee' applied the Ordinance's competitive criteria set forth in § 435-4(C)(4) or to what extent the committee members exercised their subjective judgements or other factors beyond the competitive criteria.

52. The secret, *de facto* 'ranking committee' was not serving in a ministerial, nonpolitical fact-finding role. Instead, it was exercising a critical governmental function by narrowing down the pool of applicants to the two applicants it deemed worthy of the two available Municipal License Slots.

53. The only reason the existence of the 'ranking committee' and the Marihuana Application Review meetings came to light was through records obtained in response to a FOIA request issued to the City in late December 2021.

54. The end-product of the Marihuana Application Review meetings was a final ranking of the Applicants/Applications consisting of three tiers. Tier One consists of Applicants that were approved to move forward with the process for the available License Slots. Tier Two is comprised of Applications that otherwise met all the "competitive criteria" but were placed on a waiting list in the event one of the License Slots became available if one of the Tier One Applicants failed to obtain a license. Tier Three consisted of Applications or Applicants that failed to meet any of the "competitive criteria" of the Ordinance.

55. On information and belief, the City Manager (or his designee) did not merely consult with the 'ranking committee' in fulfilling its duty to *singularly* rank the applicants and applications in order of which were best suited to operate in compliance with MRTMA within the

RECEIVED by MSC 12/10/2025 3:03:01 PM

City. Rather, the 'ranking committee' actively engaged as a collective public body in reviewing, evaluating, and ranking the applicants and applications considered for prospective licensure as part of the City's so-called competitive process.

56. This group's involvement in the competitive process and the ultimate selection of the two applicants designated for the available Municipal License Slots was in plain violation of the directive imposed by Section 435-4(C)(4) of the Ordinance, as well as the Michigan Open Meetings Act ("OMA"), MCL 15.261 *et seq*.

57. Instead of implementing a competitive, merit-based process intended to select those applicants best suited to operate in compliance with MRTMA within the City, Defendant implemented a completely subjective and arbitrary process without any transparency.

58. As a result, the two available License Slots were awarded to two applicants—Gatsby and Royal Treatment—that were not best suited to operate a marihuana retail establishment in the City in terms of either qualifications or experience.

59. Both Gatsby and Royal Treatment include former highly ranked public officials of the City of Royal Oak among their legal representatives.

60. Because the "competitive process" implemented by Defendant lacked any real transparency, guidelines or accountability, the outcome was driven by the subjective and political whims of the "ranking committee" instead of the merits of the applicants and applications.

61. Plaintiff is a highly qualified applicant who will be irreparably harmed if the City is allowed to move forward with issuing licenses to less qualified applicants in violation of the MRTMA, the Open Meetings Act, and the Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The City's Disregard of MRTMA in Establishing Districts Eligible for Marihuana Licenses

62. MRTMA, MCL 333.27959(3), provides that the State will award a recreational marihuana establishment license, if, *inter alia*, "(c) the property where the proposed marihuana establishment is to be located is ***not*** within an area zoned exclusively for residential use and is ***not*** within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1-12, unless a municipality adopts an ordinance that reduces this distance requirement" (emphasis added).

63. The City has not adopted an Ordinance that reduces the distance requirement established by MCL 333.27959(3). To the contrary, the Ordinance explicitly prohibits any marihuana establishments from being set up within a 1,000-foot radius of any school. Ordinance, § 435-5(A)(5)(a).

64. The Royal Oak Technical Campus (of Oakland Schools) is a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA (MCL§ 333.27959(3)(c)). Upon information and belief, the Royal Oak Technical Campus is for high school students in 11th and 12th grades. Accordingly, Royal Oak Technical Campus is considered a public school under the MRTMA. Royal Oak Technical Campus is therefore also considered a "school" as contemplated by the Ordinance, § 435-1.

65. Accordingly, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA.

66. Notwithstanding this basic prohibition, the City has awarded one of the Muncipal License Slots to Gatsby, whose proposed facility falls squarely within the 1,000 foot buffer surrounding the Royal Oak Technical Campus.

RECEIVED by MSC 12/10/2025 3:03:01 PM

67. Notably, counsel for the Royal Oak Technical Campus issued repeated, detailed written warnings to the City when it was still accepting applications for licenses that the 1,000-foot buffer applied to this school.

68. Notwithstanding these warnings, the City has taken the position that the 1,000-foot buffer does not apply to the Royal Oak Technical Campus.

69. The City is poised to approve the site plan of Gatsby on February 8, 2022, which would result in a direct violation of MRTMA and its underlying policy considerations, including (without limitation) (1) ensuring that marihuana retail facilities would not be in close proximity to schools or school children and (2) ensuring that applicants are awarded municipal marihuana establishment licenses on the basis of whether they are best suited to operate in accordance with MRTMA within the City, as opposed to whether they have the most advantageous political connections with previous elected City officials.

COUNT I: VIOLATION OF MRTMA (COMPETITIVE PROCESS)

70. Plaintiff incorporates herein by reference each of the preceding paragraphs.

71. Under MRTMA, MCL 333.27959(4):

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, *the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality*. [Emphasis added.]

72. The City did not engage in a competitive process intended to select applicants for marihuana business licensure who are best suited to operate in compliance with MRTMA within the City of Royal Oak.

73. The City's Ordinance conflicts with MRTMA as its 'competitive process' for awarding the available Municipal License Slots was based upon an unlawful and arbitrary process.

RECEIVED by MSC 12/10/2025 3:03:01 PM

74. Indeed, one of the applicants chosen for one of the two available Municipal License Slots has no record of ever operating a marihuana retail operation in Michigan or any jurisdiction.

75. The City did not select Gatsby or Royal Treatment for the two available Municipal License Slots based on a finding that they are best suited to operate in compliance with MRTMA in the City because there is no record of the City Manager's (or his designee's) evaluation and/or application of the competitive criteria outlined under Section 435-4(C)(4) of the Ordinance.

76. The Ordinance fails to assign any weight or 'score' to any of the competitive criterion enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion.

77. As far as the public knows, the City Manager (or its designee), in evaluating applications under the competitive criteria of Section 435-4(C)(4), could have assigned 91% of the weight of his decision to item 4350-4(C)(4)(i) (steps taken by applicants to "yield greater profitability") and only 9% to the other nine factors.

78. The City and the City Manager's process for choosing the applicants/applications for the two available Municipal License Slots was not designed or applied in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City and, therefore, is in violation of MRTMA, MCL 333.27959(4).

79. Instead, the City's so-called 'competitive process' was conducted in complete secrecy by an unofficial and unaccountable 'ranking committee' consisting of seven City officials, without affording the applicants any opportunity to learn the true reasons for the success or failure of their applications. Indeed, unsuccessful applicants have not been afforded the bare information necessary to determine whether they should pursue an appeal with the City Manager.

RECEIVED by MSC 12/10/2025 3:03:01 PM

80. Moreover, the enumerated 'competitive criteria' to be applied by the City Manager or his or her designee under Section 435-4(C)(4) of the Ordinance largely have nothing to do with whether an applicant is "best suited to operate in compliance with [MRTMA] within" the City. See MCL 333.27959(4).

81. Defendant's Ordinance, both as written and as applied to the evaluation of the applications for marihuana retail licenses in the City, including Defendant's decision to deny Plaintiff a Municipal License Slot, was in violation of MRTMA.

COUNT II: VIOLATION OF MRTMA (SCHOOL BUFFER REQUIREMENT)

82. Plaintiff incorporates herein by reference each of the preceding paragraphs.

83. Under MCL 333.27959(3)(c), an applicant for state adult-use recreational marihuana establishment licensure may only be granted a license if:

> the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement.

84. The City has not adopted an Ordinance that reduces the distance requirement established by MCL 333.27959(3).

85. Rather, the City's Ordinance explicitly prohibits any marihuana establishments from being set up within a 1,000-foot radius of any "school." Ordinance, § 435-5(A)(5)(a).

86. The Ordinance defines a "school" as "a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade." *Id*. at § 435-1.

87. Upon information and belief, the Royal Oak Technical Campus—which is situated within a 1,000-foot radius of the property to be used for Gatsby's prospective marihuana retail establishment—is used for the public education of high school students in 11th and 12th grades.

RECEIVED by MSC 12/10/2025 3:03:01 PM

88. The Royal Oak Technical Campus (of Oakland Schools) is therefore a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA (MCL§ 333.27959(3)(c)).

89. Royal Oak Technical Campus is therefore also considered a "school" as contemplated by the Ordinance, § 435-1.

90. Therefore, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA and the City's own Ordinance.

91. Notwithstanding this basic requirement, the City has awarded one of the two available Municipal License Slots to Gatsby, whose proposed facility falls squarely within the 1,000-foot buffer surrounding the Royal Oak Technical Campus.

92. Defendant ignored repeated and detailed warnings of this particular violation from Royal Oak Technical Campus while the City was still accepting applications for licenses and several months before it selected the applications for the available Municipal Licenses Slots, including Gatsby's.

93. Nonetheless, the City is taking the position that MRTMA's (and the Ordinance's) 1,000-foot buffer regarding schools does not apply to the Royal Oak Technical Campus.

COUNT III: VIOLATION OF MICHIGAN CONSTITUTION

94. Plaintiff incorporates herein by reference each of the preceding paragraphs.

95. The Michigan Constitution guarantees that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17.

96. The due process guarantee of the Michigan Constitution has been held to be "coextensive with its federal counterpart." *Grimes v Van Hook-Williams*, 302 Mich App 521, 530; 839 NW2d 237 (2013).

RECEIVED by MSC 12/10/2025 3:03:01 PM

97. Plaintiff—along with all other unsuccessful applicants—was denied due process of law where the City failed to adhere to the terms of its own Ordinance, issued licenses in an arbitrary and capricious manner, and, on information and belief, issued licenses based on corrupt motivations.

98. Although the Ordinance required *only* the City Manager or his or her designee to assess each application under the 'competitive criteria' outlined under Section 435-4(C)(4) of the Ordinance, a *de facto* 'ranking committee' was formed to evaluate and rank the applications based on the 'competitive criteria'.

99. As a result, the decision to deny Plaintiff a Municipal License Slot was unreasonable, arbitrary, and capricious.

100. The City has allowed unsuccessful applicants no meaningful way to challenge or even review the reasons for their failure to rank higher on the list of potential licensees, as the Ordinance gives no indication of how the City Manager is to weigh or assess any of the so-called competitive criteria outlined under Section 435-4(C)(4) of the Ordinance.

101. The applicants that were chosen for the two Municipal Licenses Slots were chosen based on the subjective whims and improper motivations of certain city officials, instead of whether they were "best suited to operate in compliance with [MRTMA] within the municipality." MCL 333.27959(4).

102. It is difficult, if not impossible, to determine whether applicants were treated in a fair and impartial manner due to the City's Ordinance, which allows the City to conduct the review process without offering any meaningful insight into how the City arrived at its ultimate licensing determinations.

RECEIVED by MSC 12/10/2025 3:03:01 PM

103. Defendant's actions were unreasonable, arbitrary, capricious, and/or unconscionable, and thus constitute an abuse of discretion and deprivation of Plaintiff's protected property and liberty interests in violation of state due process protections.

COUNT IV: VIOLATION OF U.S. CONSTITUTION

104. Plaintiff incorporates herein by reference each of the preceding paragraphs.

105. The Federal Constitution states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." US Const, Am XIV, § 1.

106. Each violation of the Michigan Constitution's due process protections is also violative of federal due process guarantees.

107. Plaintiff's constitutionally protected property and liberty interests were denied when the City failed to adhere to the terms of its own Ordinance, issued licenses in an arbitrary and capricious manner, and, on information and belief, issued licenses on the basis of corrupt motivations.

108. The City has allowed unsuccessful applicants no meaningful way to challenge or review the reasons for their failure to rank higher on the list of potential licensees, leaving the entire licensing process to the secret whims of the City Manager or the City's *de facto* review committee, which was never required to be explained to prospective applicants.

109. On information and belief, the applicants that were chosen for marihuana retail licensure were actually chosen on the basis of the corrupt motivations of certain city officials.

110. The City's actions in the aforementioned regards were unreasonable, arbitrary, capricious, and/or unconscionable, and thus constitute an abuse of discretion and deprivation of Plaintiff's protected property and liberty interests in violation of federal due process protections.

RECEIVED by MSC 12/10/2025 3:03:01 PM

111. Plaintiff has a right to the reasonable use of its property free from arbitrary, unreasonable, and capricious actions.

112. Plaintiff has a right to seek licensure—for which it should have succeeded in its application—under an application system established by the City, and for the City to adhere to the terms of its own Ordinance in reviewing and processing said application.

COUNT V: VIOLATION OF THE OPEN MEETINGS ACT

113. Plaintiff incorporates herein by reference each of the preceding paragraphs.

114. The Open Meetings Act requires that all meetings of a public body be open to the public and held in a place available to the general public. MCL 15.263(1).

115. All decisions of a public body must be made at a meeting open to the public. MCL 15.263(2).

116. All deliberations of a public body constituting a quorum of its members must generally take place a meeting open to the public. MCL 333.27959(3).

117. Ordinarily, the City Manager would not, alone, constitute a public body subject to the requirements of the OMA outlined above.

118. The City Manager (or his designee) did not act alone—as required under the Ordinance, § 435-4(C)(4)—in ranking the applicants/applications using the competitive criteria set forth in Section 435-4(C)(4) of the Ordinance.

119. Instead, a secret 'ranking committee' consisting of seven City officials, including the City Manager, regularly met to evaluate and rank the applicants/applications for the purpose of determining which applicants would fill the two available Municipal License Slots under the Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

120. The de facto 'ranking committee' constituted a public body as contemplated by the OMA and was required to hold all meetings, make all decisions, and conduct all deliberations at meetings open to the public. MCL 15.263(1) through (3).

121. The ranking committee's work in evaluating and ranking the applications for marihuana retail licenses was in violation of the OMA.

122. "A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action." MCL 15.273(1).

123. This Court has the authority to find that Defendant violated the OMA, set aside any decisions or agreements made during the aforementioned improperly closed meetings, award Plaintiff its costs and attorney fees, and grant any other relief authorized by law.

COUNT VI: DECLARATORY RELIEF

124. Plaintiff incorporates herein by reference each of the preceding paragraphs.

125. Under MCR 2.605(A)(1), "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

126. For purposes of MCR 2.605, "an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment." MCR 2.605(A)(2).

127. "An actual controversy exists when a declaratory judgment is necessary to guide the plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545-546; 904 NW2d 192 (2017).

RECEIVED by MSC 12/10/2025 3:03:01 PM

128. In this case, an actual controversy exists where Defendant has violated the provisions of MRTMA, the OMA, and Plaintiff's constitutionally protected due process rights.

129. Plaintiff requires a judgment from this Court in order to guide its future conduct in order to preserve its legal rights.

130. Plaintiff will be harmed if the City is allowed to issued municipal marihuana business licenses under its legally deficient Ordinance using legally deficient procedures.

131. Plaintiff requests, among other things, that this Court enter a judgment declaring that Defendant violated the requirements of MRTMA, the OMA, and the Michigan and federal Constitutions, and that Defendant's implementation of the Ordinance and/or the City's issuance of any municipal marihuana establishment licenses under the Ordinance are invalidated and prohibited.

COUNT VI: PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

132. Plaintiff incorporates herein by reference each of the preceding paragraphs.

133. This Court is authorized to grant injunctive relief to a party in accordance with Michigan law. See MCR 3.310.

134. The objective of preliminary injunctive relief is to "maintain the status quo pending a final hearing regarding the parties' rights." *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 145; 809 NW2d 444 (2011) (quotation marks omitted).

135. "The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy." *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989).

136. In deciding whether a party is entitled to preliminary injunctive relief, court must consider the following four factors:

RECEIVED by MSC 12/10/2025 3:03:01 PM

> (1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued. *Slis v State*, 332 Mich App 312, 337; 956 NW2d 569 (2020).

137. Irreparable harm will befall Quality Roots if this Court does not issue a preliminary injunction. Every day that passes, the arbitrary and capricious actions of the City continue to harm Quality Roots by allowing the two available marihuana retailer licenses to proceed to final authorization. Once the City awards final municipal marihuana retailer licenses to the (unlawfully) top-ranked applicants, Quality Roots will suffer an improperly delayed—if not altogether prevented—entry into the Royal Oak adult-use marihuana market.

138. Moreover, Quality Roots will suffer the imminent loss of its rights to fair and full implementation of the process outlined by the City's own Ordinance, a fair application of the law pursuant to state and federal guarantees of due process, and significant quantities of time, money, and other valuable resources expended in an effort to obtain one of the two available marihuana retailer licenses.

139. There is no legal measurement of damages that can be determined with any degree of certainty sufficient to compensate Quality Roots, and Quality Roots has no other available remedy to protect its business or its legal property and liberty interests absent injunctive relief.

140. Quality Roots has a strong likelihood of success on the merits of this Complaint.

141. The imposition of the requested injunctive relief would not impose any harm upon the City, and so the irreparable harm that would befall Quality Roots absent injunctive relief (imminent loss of its business and legally protected property and liberty interests) would

RECEIVED by MSC 12/10/2025 3:03:01 PM

necessarily outweigh the lack of harm that would affect the City if the Court grants Quality Roots' request for an injunction.

142. The public interest will suffer no harm if this Court grants Quality Roots' request for injunctive relief.

143. Indeed, the public interest favors granting an injunction in this case. The public interest requires that the City: (1) properly adhere to the requirements of MRTMA and its own Code of Ordinances; (2) properly award Quality Roots a municipal marihuana retailer license where Quality Roots is the candidate best suited to operate in compliance with MRTMA in the City; and (3) avoid violating Quality Roots' due process rights.

144. Further still, the Michigan Supreme Court has previously stated that "[i]t is beyond reasonable dispute that a trial court has the authority, and, in appropriate cases, the duty, to enter *permanent* injunctive relief against a constitutional violation." *Mich Coalition of State Emple Unions v Mich Civil Serv Comm*, 465 Mich 212, 219; 634 NW2d 692 (2001) (emphasis in original).

145. Accordingly, Quality Roots respectfully requests that this Court enter an Order enjoining the City from issuing special use permits and final authorizations for operation as municipal marihuana retail establishments in the City of Royal Oak until the issues raised in this Complaint have been adjudicated.

RELIEF SOUGHT

For the reasons outlined in above, Plaintiff respectfully requests that this Court enter Judgment:

A. Reversing the City's ranking determinations under the Ordinance--or any ranking determinations of any City representative or body of City representatives under the Ordinance—of any applicant or application for marihuana retailer establishment licensure;

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. Requiring the City and/or the City Manager of Royal Oak to rank Quality Roots, Inc. as the top-ranked applicant for municipal marihuana retailer establishment licensure;

C. Requiring the City to show cause why a preliminary injunction should not be issued;

D. Enjoining the City from issuing special land use permits, approving site plans, or taking any other action in furtherance of its Ordinance until the issues raised in this Complaint have been adjudicated or otherwise resolved;

E. Awarding Plaintiff attorney fees and costs; and

F. Awarding such other relief as this Court deems equitable and just.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC

/s/ *Brian E. Etzel*
Brian E. Etzel (P54905)
William C. DiSessa (P81906)
Attorneys for Plaintiff
380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

Dated: February 3, 2022

EXHIBIT A

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CITY OF ROYAL OAK, MICHIGAN
ORDINANCE NO. 2020-06

AN ORDINANCE TO AMEND THE CITY OF ROYAL OAK CODE OF ORDINANCES TO IMPLEMENT THE PROVISIONS OF THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT, PROP 1 OF 2018, SO AS TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY BY SETTING FORTH THE MANNER IN WHICH RECREATIONAL MARIHUANA ESTABLISHMENTS CAN BE OPERATED IN THE CITY.

THE CITY OF ROYAL OAK ORDAINS:

SECTION 1. SHORT TITLE. This Ordinance shall be known as may be referred to as the Recreational Marihuana Licensing Ordinance.

SECTION 2. STATEMENT OF PURPOSE. This is an ordinance to amend the City of Royal Oak Code of Ordinances to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Prop 1 of 2018, so as to protect the public health, safety, and welfare of the residents of the City by setting forth the manner in which recreational marihuana establishments can be operated in the City. Further, the purpose of this ordinance is to:

1. Provide a means to regulate and control the commercial production and distribution of marihuana, the lawful production of related products as set forth in, and for purposes of implementing, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et. seq., as may be amended (hereafter referred to as the "MRTMA" or the "Act");

2. Protect public health and safety through reasonable limitations on marihuana commercial entity operations, and limitations upon other marihuana-related activities provided for by the MRTMA, as they relate to noise, air and water quality, neighborhood safety, security for the establishment and its personnel, and other health and safety concerns;

3. Impose fees to defray and recover the costs to the City of the administrative and enforcement costs associated with Marihuana Establishments, and Municipally-Licensed marihuana activities as provided for in the MRTMA;

4. Coordinate with laws and regulations that may be enacted by the State addressing marihuana, including but not limited to the Department of Licensing and Regulatory Affairs Marihuana Regulatory Agency Adult – Use Marihuana Establishments Emergency Rules (LARA Rules), as amended from time to time;

5. Restrict the issuance of Marihuana Establishment Municipal Licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Section, and with State law and regulation, without monitoring by City officials;

RECEIVED by MSC 12/10/2025 3:03:01 PM

6. Recognize that regulations for marihuana may not be adequate at the state level to address the impacts on the City of the commercialization of marihuana, making it appropriate for local regulation of the impact of marihuana establishments;

7. Recognize that nothing in this Ordinance is intended to promote or condone the production, distribution, sale, or possession of marihuana in violation of any applicable law;

8. Recognize that this Ordinance is to be construed to protect the public over Marihuana Establishment interests. Operation of a Marihuana Establishment is a revocable privilege and not a right in the City. There is no property right for an individual or establishment to engage or obtain a municipal license to engage in marihuana as a commercial enterprise in the City;

9. Make it known that because marihuana is a heavily regulated industry in the City, all Municipal License Holders are assumed to be fully aware of the law and the City shall not therefore be required to issue warning before issuing citations for violation of this Ordinance; and

10. Recognize that as of the effective date of this Ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal Law which makes it unlawful to manufacture, distribute, cultivate, produce, possess, dispense, or transport marihuana. Nothing in this Ordinance is intended to grant immunity from any criminal prosecution under Federal Law.

SECTION 3. AMENDMENT. The City of Royal Oak Code of Ordinances is hereby amended by the addition of Chapter 435, Marihuana, which shall read as follows:

"CHAPTER 435. MARIHUANA

ARTICLE I
Recreational Marihuana Establishments

Sec. 435-1. Definitions

The following words, terms and phrases when used in this Article shall have the meanings ascribed as follows:

"*Applicant*", unless specifically stated to mean a state License, means an individual, organization, partnership, company, corporation enterprise, or other entity that applies for a Municipal License as well as the person or persons associated with the Applicant. For purposes of this definition, an Applicant includes a managerial employee of the Applicant, a person holding a direct or indirect ownership interest of more than 10% in the Applicant, and the following for each type of Applicant:

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

RECEIVED by MSC 12/10/2025 3:03:01 PM

- For a partnership and limited liability partnership: all partners and their spouses.

- For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

- For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

- For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

- For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

- For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

For purposes of this definition, an Applicant does not include:

- A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

- A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana- infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms “franchise,” “franchisor,” and “franchisee” shall have the meanings set forth in section 2 of the Franchise Investment Law, 1974 PA 269, MCL 445.1502, as may be amended.

- A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

- A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property including, but not limited to, brands and recipes.

RECEIVED by MSC 12/10/2025 3:03:01 PM

"*Application*" means an Application for a Municipal License under this Ordinance and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the "Applicant."

"*Application Documents*" means the items required as part of an Application submitted to the City prior to them being accepted as complete as provided in Section 435-4.

"*Board*" means the marihuana licensing board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

"*Clerk*" means the City of Royal Oak Clerk or his/her designee.

"*Co-located Facility or Co-location*" means marihuana businesses holding 2 or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

"*Cultivate or Cultivation*" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

"*Department*" means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan License for a Marihuana Establishment.

"*Designated Consumption Establishment*" means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state License.

"*Excess Marihuana Grower*" means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

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

"*License*" means a current and valid License for Marihuana Establishment issued by the State of Michigan.

"*Licensee*" means a Person holding a current and valid Michigan License for a Marihuana Establishment.

"*Marihuana*" means that term as defined in Section 3 of the MRTMA, MCL 333.27953, as may be amended.

"*Marihuana Accessories*" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for us in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,

RECEIVED by MSC 12/10/2025 3:03:01 PM

producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

"*Marihuana Concentrate*" means the resin extracted from any part of the plant of the genus cannabis.

"*Marihuana Establishment*" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the department pursuant to MCL 333.27951, as may be amended.

"*Marihuana Event Organizer*" means a person licensed to apply for a temporary marihuana event license under these rules.

"*Marihuana-Infused Product*" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

"*Marihuana Microbusiness*" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

"*Marihuana Processor*" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

"*Marihuana Retailer*" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

"*Michigan Medical Marihuana Act*" or MMMA means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

"*Michigan Marihuana Facilities Licensing Act*" or MMFLA means Public Act 281 of 2016, MCL 333.27101 et seq. as may be amended.

"*Michigan Marihuana Tracking Act*" means Public Act 282 of 2016, MCL 333.27901 et seq. as may be amended.

"*Municipal License*" means a current and valid license for a Marihuana Establishment issued under this Ordinance, which shall be granted to a Municipal License Holder only for and limited to a specific Municipally-Licensed Premises and a specific Municipally-licensed Property. Said Municipal License shall be in addition to the Special Use Permit and Site Plan approval required to be obtained pursuant to the City Zoning Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

"*Municipal License Holder*" means the an individual, organization, partnership, company, corporation enterprise, or other entity that holds a current and valid Municipal License issued under this Ordinance as well as the person or persons associated with the Municipal License Holder as Applicant(s) for that Municipal License.

"*Municipal License Slot*" means an unissued permit available to be issued to an Applicant.

"*Municipally-Licensed Premises*" means the particular building, buildings, or tenant space within which the Municipal License Holder will be authorized to conduct the Facility's activities pursuant to the Municipal License.

"*Municipally-Licensed Property*" means the real property comprised of a lot, parcel, or other designated unit of real property upon which the Municipally-Licensed Premises is situated.

"*Person*" means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

"*Premises*" means the particular building, buildings, section of land, or tenant space within which a particular use is conducted.

"*Public Place*" means any area in which the public is invited or generally permitted in the usual course of business.

"*Rules*" means rules promulgated by the Department in consultation with the Board to implement this Act, including the LARA Rules as may be amended.

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

"School" means a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade.

"*Secure Transporter*" means a person licensed to obtain marihuana form marihuana establishments in order to transport Marihuana to Marihuana Establishments.

"*Stacked License*" means more than 1 state License issued to a single licensee to operate as a class C Marihuana Grower as specified in each state License at a Marihuana Establishment.

"*State Operating License*" or, unless the context requires a different meaning, "*License*", means a license issued by the Department that allows a person to operate a Marihuana Establishment.

"*Temporary Marihuana Event License*" means a state License held by a marihuana event

RECEIVED by MSC 12/10/2025 3:03:01 PM

organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state License during the dates indicated on the state License.

"*Window*" means the time period set by the City Manager to receive Applications for evaluation by the competitive process as specified in this Ordinance.

Sec. 435-2. Municipal License Required; Eligibility; General Provisions

A. The City hereby authorizes the operation of the following types of Marihuana Establishments:

1. Growers, Class A
2. Growers, Class B
3. Growers, Class C
4. Processors
5. Retailer
6. Safety Compliance Facilities
7. Secure Transporters
8. Marihuana Microbusiness
9. Co-Located Facilities as defined in this Ordinance.

B. The following number of Municipal Licenses can be issued for each authorized Marihuana Establishment type:

1. Growers, Class A: 1
2. Growers, Class B: 1
3. Growers, Class C: 1
4. Processors: 1
5. Retailers: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.
6. Safety Compliance Facilities: 1
7. Secure Transporters: 1
8. Marihuana Microbusiness: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.

C. No person shall operate a Marihuana Establishment at any time or any location within the City unless a currently effective Municipal License for that person at that location has been issued under this Ordinance. No Marihuana Establishments are allowed nor shall a Municipal License be considered or granted for those activities

RECEIVED by MSC 12/10/2025 3:03:01 PM

and facilities defined as a "special license" being a state license described under section 8 of the MRTMA and issued by the state pursuant to section 9 of the MRTMA, MCL 333.2795 and 333.27959, as may be amended, including but not limited to, Designated Consumption Establishment, Excess Marihuana Grower, Marihuana Event Organizer, Temporary Marihuana Event, and any special license types hereafter recognized by the state.

D. Marihuana Establishments shall operate only as allowed under this Ordinance.

E. The City Manager is granted the power to fully and effectively implement and administer the Municipal License Application process.

F. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or Municipal Licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this Ordinance, each Applicant shall pay nonrefundable Review fees, Application fees, annual fees, renewal fees and inspection fees for Municipal Licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Marihuana Establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The Municipal License fee requirement 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.

H. The City has no obligation to process or approve any incomplete Application.

I. A Municipal License shall remain valid for one year following removal of all stipulations on an issued Municipal License.

J. It is the sole and exclusive responsibility of each Municipal License Holder or Applicant at all times during the Application period and during its operation to immediately provide the City with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or its City Municipal License.

K. No Municipal License issued under this Ordinance may be assigned or transferred to another person or entity except as specified in this Ordinance. No Municipal License issued under this Ordinance is transferrable to any other location except for the Municipally-Licensed Premises on the Municipally-Licensed Property.

L. The original Municipal License issued under this Ordinance shall be prominently displayed at the Municipally-Licensed Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

RECEIVED by MSC 12/10/2025 3:03:01 PM

M. A Municipal License Holder may not engage in any other Marihuana Establishment in the Municipally-Licensed Premises or on the Municipally-Licensed Property, or in its name at any other location within the City, without first obtaining a separate Municipal License.

N. No Municipal License shall be granted or renewed for a Marihuana Establishment in a residence.

O. Co-located Facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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. If these conditions are met, more than one business may be located on one parcel.

Sec. 435-3. Other Laws and Ordinances

In addition to the terms of the Ordinance, any Marihuana Establishment shall comply with all City Ordinances, including without limitation the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

Sec. 435-4. Application for and Renewal of Municipal License

A. *Application Documents.* Application Documents for a Municipal License for a Marihuana Establishment shall be submitted to the City Clerk, and on or after the effective date of this Ordinance shall contain the following information. Information obtained from the Applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this Ordinance of all Application Documents by City staff, the Documents will be considered a complete Application.

1. The name, address, phone number and email address of the Applicant and the proposed Marihuana Establishment.

2. The names, home addresses and personal phone numbers for all Applicants and the Marihuana Establishment.

3. One (1) copy of the following:

a. Pre-approval for a Marihuana Establishment license by the State of Michigan.

b. For Class A, B, or C Growers or Processors or Microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the Marihuana Establishment.

c. All documentation of the Applicant's valid tenancy, ownership, or

RECEIVED by MSC 12/10/2025 3:03:01 PM

other legal interest in the proposed Municipally-Licensed Property and Municipally-Licensed Premises. If the Applicant is not the owner of the proposed Municipally-Licensed Property and Municipally-Licensed Premises, a notarized statement from the owner of such property authorizing the use of the property for a Marihuana Establishment.

d. If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

e. A valid, unexpired driver's license or state issued ID for all Applicants for the proposed Marihuana Establishment.

f. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

g. Non-refundable Marihuana Establishment Application Document Review fee.

h. Business and Operations Plan, showing in detail the Marihuana Establishment's proposed plan of operation, including without limitation, the following:

1. A description of the type of Marihuana Establishment proposed and the anticipated or actual number of employees.

2. A security plan meeting the requirements of Section 435-5 of this Ordinance.

3. A description by category of all products to be sold.

4. An affidavit indicating the Applicant will, prior to applying for a building permit:

a. Submit a list of Material Safety Data Sheets for all nutrients, pesticides, and other chemicals proposed for use in the Marihuana Establishment.

b. Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the Marihuana Establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the

RECEIVED by MSC 12/10/2025 3:03:01 PM

establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

c. Obtain a wastewater discharge permit before connecting to or contributing to the Publicly Owned Treatment Works (POTW). Refer to City of Royal Oak Code of Ordinances Section 740-7.

5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the Municipally-Licensed Premises.

6. A plan for the disposal of Marihuana and related byproducts that will be used at the Marihuana Establishment.

i. Whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

j. A site plan of the Municipally-Licensed Premises and the Municipally-Licensed Property prepared in accordance with Section 770-12, Site Plan Review, of the City Zoning Ordinance signed and sealed by a registered architect, or professional engineer. Site plan must include distance between the Municipally-Licensed Premises and all applicable buffered uses identified in Section 435-5(A)(5) of this Ordinance, unless those uses are greater than 1,500 ft. from the Municipally-Licensed Premises.

k. The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

l. Information regarding any other Marihuana Establishment or Medical Marihuana Facility that the Applicant or any of the Applicant's Owners directors, officers or managers is authorized to operate in

RECEIVED by MSC 12/10/2025 3:03:01 PM

any other jurisdiction within the State, or another State, and their involvement in each Marihuana Establishment or Medical Marihuana Facility.

4. Any other information reasonably requested by the City to be relevant to the processing or consideration of the Application.

B. *Review of Application Documents*. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCL 333.27959.4, as may be amended. All Application Documents submitted by a potential Applicant will be reviewed by City staff for completeness with the requirements of Section 435-4 of this Ordinance before being considered a complete Application. All Application Documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential Applicant.

1. City staff has a reasonable amount of time to review the Application Documents and determine if they are complete.

2. Complete Application Documents will be accepted as an Application under this Ordinance and processed. A determination of a complete Application shall not prohibit the City from requiring supplemental information at any time during the Application process.

3. If Application Documents are found to be incomplete, the prospective Applicant will be notified in writing of the deficiencies and given ten (10) business days to correct those deficiencies.

a. If the deficiencies are corrected within the ten (10) business days, the Application Documents will be considered complete and accepted as an Application under this Ordinance.

b. If deficiencies are not corrected within the ten (10) business days, the Application Documents will be returned to the prospective Applicant. If the prospective Applicant wishes to re-submit Application Documents, they must be re-submitted in their entirety with a new Application Document Review fee. This re-submission will be considered a new set of Application Documents and will be newly date and time stamped.

C. *Competitive Process per MCL 333.27959.4, as may be amended.*

1. If a Marihuana Establishment type has a limited number of Municipal Licenses available to be issued due to a cap imposed herein, the City Manager shall open a Window. The timing and duration of the Window shall be determined by the City Manager. If a Municipal License is available for a Marihuana Establishment type limited by cap, the City Manager must open a Window at least once per calendar year.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. At the end of a Window, if the number of Applications for a Marihuana Establishment Municipal License for exceeds the number of available Municipal Licenses, the City shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City.

3. Applications to be included in the competitive process include all those whose Application Documents were date and time stamped as submitted prior to the end of the Window and which were able to be considered complete and accepted as an Application.

4. The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled. The competitive criteria to be used shall be as follows:

   a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

   b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City Ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

   c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;

   d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCL 333.27958.1.(c), as may be amended;

   e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction, that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

RECEIVED by MSC 12/10/2025 3:03:01 PM

f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

g. Whether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;

h. Whether the Applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

i. Whether the Applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more effective teamwork; and

j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

D. *Processing and Review of Applications.*

1. An Application will be held until a Window is established to select the Applications to fill an available Municipal License Slot.

2. An Application will be considered for a Municipal License Slot through the competitive process as specified in this Ordinance. When an Applicant is awarded the Municipal License Slot through the competitive process, the Applicant will be notified and will be given five (5) business days to pay the Marihuana Establishment Application Fee. If an Applicant does not pay the fee within the time allotted, the next Application as ranked by the competitive process during the applicable Window will be issued the Municipal License Slot.

3. Upon payment of the Marihuana Establishment Application Fee by an Applicant, the City Clerk shall refer a copy of the Application to the Department Head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

4. In order for a Marihuana Establishment Application to be approved and a

RECEIVED by MSC 12/10/2025 3:03:01 PM

Municipal License to be issued, all of the following conditions must be met:

a. The Applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

b. The Engineering Division will complete a preliminary review of the wastewater plan submitted.

c. The Engineering Division will confirm that the necessary amount of water for the Marihuana Establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

d. The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed Marihuana Establishment and general site requirements.

e. The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

f. A Special Land Use Permit and Site Plan application has been submitted, Permit fees have been paid, and the Special Land Use Permit and Site Plan has been approved by the City Commission after recommendation from the Planning Commission.

g. The Applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past ten (10) years or conviction of a controlled substance-related felony within the past ten (10) years, except that, consistent with MCL 333.27958.1.(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

h. Other than as set forth in MCL 333.27958.1.(c), as may be amended, within the past five (5) years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

i. The Applicant has not knowingly submitted an application for a License that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the Application

RECEIVED by MSC 12/10/2025 3:03:01 PM

for a Municipal License.

5. Following review by City Departments and prior to approval of a Special Land Use Permit and Site Plan, if deficiencies are found in the Application, the Applicant is notified in writing of the areas of deficiency and given thirty (30) days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the Applicant's Special Land Use Permit and Site Plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty (30) day time period, the Application will be deemed incomplete and denied. Another Application will then fill the Municipal License Slot.

6. All inspections, review and processing of the Application shall be completed within ninety (90) days of payment of the Marihuana Establishment Application Fee or within one hundred twenty (120) days if the location of the Municipally-Licensed Premises is proposed to be amended from an existing Municipally-Licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the Municipal License.

7. If all conditions of this Ordinance have been met, the City Clerk shall issue the Municipal License to the Applicant.

    a. All Municipal Licenses issued have the following stipulations:

        1. Issuance of License Qualification by the State of Michigan for the Municipal License Holder under State law and the City of Royal Oak receiving a copy of that License Qualification prior to occupancy.

        2. Issuance of final certificate of occupancy for the Municipally-Licensed Premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

        3. For Processors and Class A, B, and C Growers and Microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

        4. Issuance of Final Approval by the State of Michigan and the City of Royal Oak receiving a copy of the Final Approval prior to the business opening.

    b. A Municipal License Holder has one (1) year from the date of

RECEIVED by MSC 12/10/2025 3:03:01 PM

issuance to meet all stipulations of the Municipal License. If all stipulations are not met in this timeframe, the Municipal License is revoked and considered denied. A Municipal License Holder may request an extension up to six (6) months to this timeframe, which may be granted by the City Clerk.

8. If a Municipal License is denied, the denial must be in writing and must state the reason(s) for denial.

   a. Applications which are denied will not be refunded the Marihuana Establishment Application Fee.

   b. If the Applicant of a denied Application chooses to re-submit, this re-submission will be considered a new set of Application Documents and will be date and time stamped at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

9. Upon denial, withdrawal, or failure for any reason of an Application within six (6) months of a competitive process being used to rank Applicants and their Applications as detailed in Section 435-4(C), the available Municipal License Slot will be awarded to the next best suited Applicant and Application as determined in that process. However, if more than six (6) months have passed since the last competitive process, a new Window must be opened to fill the Municipal License Slot and all Applications will be treated as new submissions.

10. Denial of an Application or non-renewal of a Municipal License may be appealed to the City Manager, who will set a date and time within ten (10) business days to conduct a hearing where the Applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another Applicant for a Municipal License Slot may be considered by the City.

E. *Renewal Application*. Renewal Applications shall require City approval.

1. Renewal Applications for a Marihuana Establishment maintaining the location of the Municipally-Licensed Premises shall be received by the City Clerk not less than ninety (90) days prior to the expiration of the annual Municipal License. Renewal Applications for a Marihuana Establishment requesting a change in the location of the Municipally-Licensed Premises shall be submitted and received not less than one hundred twenty (120) days prior to the expiration of the Municipal License.

2. A Renewal Application must follow the same approval process as all new

RECEIVED by MSC 12/10/2025 3:03:01 PM

Applications with the exception of the following:

a. A Municipal License Holder that submits an application for a Renewal Municipal License at a previously Municipally-Licensed Premises shall be deemed in compliance with the spacing requirements set forth in Section 435-5(A)(5) of this Ordinance.

b. For any information required as part of the Application process that has not changed, the Municipal License Holder may submit an Affidavit of No Changes in place of the information when submitting a Renewal Application. If any of the items requested in the Application process has changed, such items must be submitted as required in this Ordinance.

c. A Municipal License Holder, as a stipulation of a renewal Municipal License issued by the City, must provide proof of having submitted a license renewal application no later than thirty (30) days after expiration of their State License. Once a renewed State license has been granted, a copy must be provided to the City of Royal Oak.

d. A renewal Municipal License issued by the City takes effect on the date of expiration of the original Municipal License issued and the Municipal License Holder has one year from that date until renewal is again required.

3. A Municipal License Holder whose Municipal License expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Municipal License under this Ordinance. They will be considered denied. The City will not accept Renewal Applications after the expiration date of the Municipal License.

4. A Municipal License Holder issued a renewal Municipal License by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six (6) months of the renewal Municipal License being issued will have their Municipal License revoked and considered denied.

F. *Changes to Application or Municipal License.*

1. If at any time before or after a Municipal License is issued pursuant to this Ordinance, any information required in the Municipal License Application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the Application, the Applicant or Municipal License Holder shall supplement such information in writing within ten (10) days from the date upon which such change occurs.

RECEIVED by MSC 12/10/2025 3:03:01 PM

a. Changes to a new Application will be considered a minor or major change as determined by the City Clerk.

1. Minor changes include a change to person or persons associated with the Applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the Application.

2. Major changes include changing the location of the Marihuana Establishment whether it be to a different site or changing the size of any new buildings, a change of Marihuana Establishment type, a change of Applicant entity, or other similar changes. A major change will result in the Application being returned to the Applicant. If the Applicant wishes to re-submit, the re-submission will be considered a new set of Application Documents and will be date and time stamped for processing at the date and time they are re-submitted. Any fees will not be waived.

2. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.

3. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.

4. A Municipal License may be assigned or transferred only if all of the following are true:

a. A Municipal License has been issued and all stipulations for that license have been met, including written final approval by the State of Michigan for State Licensure.

b. All current Municipal License Holders submit an affidavit approving the transfer.

RECEIVED by MSC 12/10/2025 3:03:01 PM

c. The person(s) or entity proposed to receive the transferred Municipal License submit Application Documents and are issued a Municipal License Transfer Approval. Issuance of a Municipal License Transfer Approval includes the following:

1. Certification of a completed Application per the process of this Ordinance. The Applicant may submit an affidavit of no change to the Municipally Licensed Premises to forego the Application requirements as it pertains to the Municipally Licensed Premises if no physical changes will be completed as part of the assignment or transfer.

2. Payment of a License Transfer review fee as set by the City Commission.

3. Review of the Application per Section 435-4(D)(4)(c).-(f). If an affidavit of no change to the Municipally Licensed Premises is submitted, review of corresponding information and the requirement for a Special Land Use Permit and Site Plan approval would be considered satisfied.

4. Issuance or denial of the Municipal License Transfer Approval will be completed per Section 435-4(D)(4)(g)-(i). Stipulations of 435-4(D)(7)(a) will be considered met when the Applicant has all required licenses or permits in their name. Where an affidavit of no change to the Municipally Licensed Premises has been filed, the stipulation for a required proof of final occupancy will be waived.

5. Until the Municipal License Transfer Approval is issued, the existing Municipal License will remain with the current Municipal Licensee Holder. Transfer of the Municipal License will not change its date of expiration.

G. *Expiration of Application.* If an Application has been held waiting for a Municipal License Window to open for one (1) year, the City will contact the Applicant and request in writing confirmation that the Application is accurate and that the Application should be kept on file. If the Applicant asks the Application to be removed, or if confirmation in writing is not received in ten (10) business days, the Application will be removed from the list of Applications and a letter sent to the Applicant. If the Applicant wishes to re-submit after this point, this re-submission will be considered a new set of Application Documents and will be date and time stamped for processing order at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

Sec. 435-5. Operational Requirements – Marihuana Establishments

RECEIVED by MSC 12/10/2025 3:03:01 PM

A. A Marihuana Establishment issued a Municipal License under this Ordinance and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

1. *Scope of Operation.* Marihuana Establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The Marihuana Establishment must hold a valid local Municipal License and State Marihuana Establishment License for the type of Marihuana Establishment intended to be carried out on the Municipally-Licensed Property. The Marihuana Establishment operator, owner or Licensee must have documentation available that local and State sales tax requirements, including holding any licenses, if applicable, are satisfied.

2. *Required Documentation*. Each Marihuana Establishment shall be operated from the Municipally-Licensed Premises on the Municipally-Licensed Property. No Marihuana Establishment shall be Municipally-Licensed to operate from a moveable, mobile or transitory location, except for a Municipally-Licensed or Licensed Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter into the Municipally-Licensed Premises without a parent or legal guardian.

3. *Security*. Municipal License Holders shall at all times maintain a security system that meets State law requirements, and in addition shall also include the following:

   a. Robbery and burglary alarm systems which are professionally monitored and operated twenty-four (24) hours a day, seven (7) days a week and which will contact local law enforcement if triggered;

   b. A locking safe permanently affixed to the Municipally-Licensed Premises that shall store all Marihuana and cash remaining in the Marihuana Establishment overnight;

   c. All Marihuana in whatever form stored at the Municipally-Licensed Premises shall be kept in a secure manner and shall not be visible from outside the Municipally-Licensed Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Municipally-Licensed Premises; and

   d. All security recordings and documentations shall be preserved for at least thirty (30) days by the Municipal License Holder and made available to any law enforcement upon request for inspection.

4. *Operating Hours.* No Retailer or retail portion of a microbusiness shall

RECEIVED by MSC 12/10/2025 3:03:01 PM

operate between the hours of 8:00 p.m. and 8:00 a.m.

5. *Required Spacing*. The following spacing requirements for Marihuana Establishments are required:

   a. No Marihuana Establishment shall be permitted within a 1,000-foot radius of any school.

   b. No Marihuana Retailer or Marihuana Microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

   c. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

   Spacing requirements become effective upon issuance of a Municipal License, whether conditional or not.

6. *Amount of Marihuana*. The amount of Marihuana on the Municipally-Licensed Property and under the control of the Municipal License Holder, owner or operator of the Marihuana Facility shall not exceed that amount permitted by the state License or the City's Municipal License.

7. *Sale of Marihuana*. The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The Marihuana Establishment is prohibited from selling, soliciting, or receiving orders for Marihuana or Marihuana Products over the internet.

8. *Sign Restrictions.* No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any Municipally-Licensed Premises nor be visible outside of the Municipally-Licensed Premises on the Municipally-Licensed Property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

9. *Use of Marihuana.* The sale, consumption or use of alcohol or tobacco products on the Municipally-Licensed Premises is prohibited. Smoking or consumption of controlled substances, including Marihuana, on the Municipally-Licensed Premises is prohibited.

10. *Indoor Operation*. All activities of Marihuana Establishment, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity Municipally-Licensed under the Municipal License Holder's License or Municipal License must occur indoors. The Marihuana Establishment's operation and design shall minimize any impact

RECEIVED by MSC 12/10/2025 3:03:01 PM

to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Municipally-Licensed Premises. No consumption of marihuana shall take place on the premises of a Marihuana Establishment.

11. *Distribution*. No person operating a Marihuana Establishment shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.

12. *Permits.* All necessary building, electrical, plumbing and mechanical Municipal Licenses must be obtained for any part of the Municipally-Licensed Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.

13. *Waste Disposal.* The Municipal License holder, owner and operator of the Marihuana Establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Municipal License. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

14. *Proof of Insurance.* A Municipal License Holder shall at all times maintain full force and effect for duration of the license, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A Municipal License Holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this Subsection. 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 (5) business days in the event of expiration or cancellation of coverage.

15. *Transportation*.

    a. Marihuana may be transported by a Secure Transporter within the City under this Ordinance, and to effectuate its purpose, only:

        1. By persons who are otherwise authorized by state law to possess Marihuana;

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. In a manner consistent with all applicable state laws and rules, as may be amended; and

3. In a secure manner designed to prevent the loss of Marihuana.

b. No vehicle used for the transportation or delivery of Marihuana under this Ordinance shall have for markings the words "Marihuana", "Marijuana" or "cannabis" or any similar words; pictures or other renderings of the Marihuana plant; advertisements for Marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting Marihuana.

c. No vehicle may be used for the ongoing or continuous storage of Marihuana, but may only be used incidental to, and in furtherance of, the transportation of Marihuana.

16. *Additional Conditions*. The City may impose such reasonable Terms and Conditions on a Marihuana Establishment special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

Sec. 435-6. Penalties and Consequences for Violation

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Sec. 435-7. City Liability and Indemnification

A. By accepting a Municipal License issued pursuant to this Ordinance, the Municipal License Holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of Marihuana Establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a Municipal License issued pursuant to this Ordinance, all Municipal License Holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a Municipally-Licensed Property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the Municipal License, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Section 1964(c) or any other alleged violation of the law

C. By accepting a Municipal License issued pursuant to this Ordinance, a Municipal License Holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C. Section 801 et seq. or Chapter 7 of the Michigan Public Health Code, MCL 333. 7101 et. seq., as may be amended.

Sec. 435-8. Municipal License as Revocable Privilege

A. A Municipal License granted by this Ordinance is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each Municipal License is exclusive to the Municipal License Holder, and a Municipal License Holder or any other person must apply for and receive the City's approval before a Municipal License is transferred, sold, or purchased. A Municipal License Holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a Municipal License without prior state and local approval is grounds for suspension or revocation of the Municipal License or for other sanction considered appropriate by the City.

B. *Nonrenewal, suspension or revocation of Municipal License*. The City may, after

RECEIVED by MSC 12/10/2025 3:03:01 PM

notice and hearing as provided in Section 434-4(D)(10) of this Ordinance, suspend, revoke, or refuse to renew a Municipal License for any of the following reasons:

1. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Section or with any applicable state or local law or regulation;

2. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Municipal License pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the Municipal License and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Municipal License.

3. The Marihuana Establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

Sec. 435-9. Authorization to Inspect, Search and Examine

A Marihuana Establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department and the Application for a Marihuana Establishment constitutes consent by the Applicant, and all owners, managers, and employees of the Marihuana Establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a Municipal License without a search warrant."

SECTION 4. SEVERABILITY. If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining

portions of this ordinance.

SECTION 5. SAVINGS. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

SECTION 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect on August 15, 2020.

RECEIVED by MSC 12/10/2025 3:03:01 PM

This case has been designated as an eFiling case, for more information please visit www.oakgov.com/efiling.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,

v.

CITY OF ROYAL OAK,
a Michigan municipal corporation,

Defendant,

2022-193015-CZ
Case No.
Hon.

JUDGE RAE LEE CHABOT

LEGAL CONSULTING, PLLC
Anthony J. Bologna (P72698)
Attorney for Exclusive Capital Partners
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278
ab@consultingpllc.com

LEGAL CONSULTING

There is no other pending or resolved civil action between the Parties as alleged in this Complaint. However, similar actions stemming from the same transactions and occurrences have been filed, *see* Case No. 2022-192288-CZ and 2022-192383-CZ.

COMPLAINT

Plaintiff Exclusive Capital Partners, LLC ("Exclusive" or "Plaintiff"), by and through its attorneys, Legal Consulting, PLLC, for its Complaint against Defendant, City of Royal Oak, a Michigan municipal corporation ("City" or "Defendant"), state as follows:

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Exclusive Capital Partners, LLC is a Michigan limited liability company that conducts business in Oakland County, Michigan and has a property interest in Royal Oak, MI.

2. Plaintiff has an interest and real property rights at 4712 Fernlee Ave, Royal Oak, MI 48073.

3. Defendant, the City of Royal Oak, is a Michigan municipal corporation located in Oakland County, Michigan, organized under the Home Rule City Act and subject to the laws of the United States and the State of Michigan as well as its charter and ordinances.

4. This Court has jurisdiction over the instance case in that the action arises under the Constitution and laws of the State of Michigan.

5. This Court has jurisdiction over the instance case pursuant to MCR 2.605 and MCR 3.310 as the claims include a request for injunctive and other equitable relief, and the events or actions giving rise to Plaintiff's claims occurred in Oakland County, Michigan.

6. This Court has jurisdiction over the instance case pursuant to MCL 15.270 and MCL 15.271.

7. Jurisdiction is proper under MCL 600.605.

8. Venue in this Court is proper as the dispute and real property at issue in this matter is located in Oakland County, Michigan.

COMMON ALLEGATIONS

THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA

9. In 2018, the voters in the State of Michigan passed a ballot initiative, the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967 ("MRTMA") which, among other things, establishes a legal and regulatory framework for state-

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

licensed businesses to legally grow, process, and sell marihuana for recreational, adult-use purposes.

10. MRTMA permits municipalities to regulate adult-use marihuana establishments, but does not require that municipalities adopt ordinances allowing MRTMA establishments. MCL 333.27959.

11. If a municipality does adopt an ordinance, MRTMA places restrictions on the ordinances. MCL 333.27956(2).

12. MRTMA prohibits such Ordinances from being "unreasonably impracticable." MCL 333.27956(2).

13. Unreasonably impracticable is defined as, " the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment." MCL 333.27953(u).

14. MRTMA prohibits municipalities from imposing qualifications for approval of a municipal permit that conflict with MRMTA or rules promulgated pursuant to it. MCL 333.27956(3).

15. MRTMA mandates that if a municipality limits the number of marihuana establishments that may be licensed within its boundaries, the municipality ***shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the municipality.***". MCL 333.27959(4).

16. The language in this last provision, MCL 333.27959(4), includes both an express, unambiguous command and clear negative implications. It unambiguously states how a municipality that limits its licenses shall award those licenses: "the municipality ***shall*** decide

RECEIVED by MSC 12/10/2025 3:03:01 PM

among competing applications by a competitive process intended to select applicants who are ***best suited to operate in compliance with [MRTMA] within the municipality."*** MCL 333.27959(4). This express language limits the criteria of the competitive process to operation in compliance with the Act [MRTMA].

17. By allowing municipalities to place a limit on the number of marihuana retailers that may open within their boundaries, MRTMA gives municipalities a power that it specifically denies to the state.

18. In giving municipalities this power, however, MRTMA requires municipalities award licenses based on objective measures designed to further MRTMA's purpose which is the express regulation of legalized controlled substance. **The strongest objective standards are those based on something outside of either party's relative power, influence, resources or interests.**

19. Subjective measures or standards are not competitive.

20. MRTMA precludes municipalities from undermining those policies by relying on chance, subjective selection, closed door meetings, or criteria unrelated to MRTMA compliance and more towards the economic desires of the municipality.

ROYAL OAK'S MARIHUANA RETAIL ORDINANCE

21. MRTMA provides that if a municipality decides to opt-in to the adult-use marihuana industry, it may "adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license " MCL 333.27956(3).

22. But the municipality "may not impose qualifications for licensure that conflict with [MRTMA] or rules promulgated by the [Marihuana Regulatory Agency ("MRA")]."

23. On July 27, 2020, Royal Oak decided to opt-in to the adult-use marihuana industry

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

and the City Commission approved Ordinance No. 2020-06 (the "Ordinance"), which governs the licensure of adult-use marihuana businesses in the City. [**Exhibit A**, Ordinance.]

24. On September 28, 2020, the City Commission approved an amendment to the Ordinance, *see* Ordinance No. 2020-12.

25. The Ordinance prohibits any person from operating an adult-use marihuana retailer in the City without a municipal license. Ordinance, § 435-2(C)

26. The Ordinance permits two adult-use retailers to operate in the City: one in the General Industrial zoning district, and one in either the General Industrial or General Business zoning districts. *Id.* § 435-2(B)(5).

27. The two-license cap on marihuana-retailer licenses prevents the Marihuana Regulatory Agency from issuing a state license to all applicants who are otherwise qualified to receive a state license. See MCL 333.27959(1), (3)(b).

28. As a result, Royal Oak must "decide among competing applications" for the licenses "by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality." MCL 333.27959(4).

29. The City has acknowledged as much in its Ordinance. See *id.* § 435-4(C)(1).

30. The Ordinance provides that, if the number of Applications for a Marihuana Establishment Municipal License exceeds the number of available Municipal Licenses, the City "shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City." *Id.* § 435-4(C)(2).

31. "The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee." *Id.* § 435-4(C)(4).

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

32. The "ranking" was never published nor disclosed by the City Manager or his designee. Instead, the City created a "waiting list" keeping over 20 applicants in complete purgatory as to their rank.

33. Further, it is completely unclear how the applicants were "ranked."

34. The ordinance, as written, is completely vague and ambiguous in regards to the ranking and competitive process.

35. The City repeatedly states that the ranking was based on qualitative measurement but has failed to provide anything further to the public in regard to the *qualitative* process.

36. The City created a completely secretive process based on subjective review behind closed doors.

37. Additionally, the City Manager or his designee (singular) were to rank and determine the most qualified applicants.

38. It has now been revealed that it was not the City Manager or an individual designee that ranked and determined the most qualified applicants but it was a collective body of at least seven (7) individual city employees (some known and some unknown) that whittled down 30 applicants to two winning applicants.

39. This collective body ultimately determined who would advance as the winning applicants and did not present all applicants or the ranking to the planning commission or the city commission.

40. This ranking is then "used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled." See *id.* at § 435-4(C)(4).

41. The Ordinance requires the use of certain "competitive criteria" in ranking

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

Applicants and Applications, including criteria that have nothing to do with a business' suitability to operate in compliance with MRTMA in Royal Oak.

42. The Ordinance requires the City to consider "whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment." See *id.* § 435-4(C)(4)(g).

43. On its face, whether an Applicant has made physical improvements to a building has nothing to do with the Applicant's suitability to operate in compliance with MRTMA in Royal Oak.

44. The Ordinance also requires the Commission to consider "[w]hether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures." *Id.* § 435-4(C)(4)(j).

45. Sustainable infrastructure and efficient building elements and fixtures have absolutely no correlation with an applicant's ability to operate in compliance with MRTMA. In fact, MRTMA does not reference or specifically address building elements and fixtures because its purpose is not economic development. To the contrary, its purpose is to select the most qualified applicant to sell marihuana and comply with MRA regulations related to the sale of marihuana.

46. Contrary to the purpose of MRTMA, city officials have publicly stated that they want to favor local businesses which based on the lack of any operating marihuana businesses in Royal Oak, completely defeats the purpose of selecting the most qualified applicant. While it is *admirable* to promote local businesses in the community, it completely violates MRTMA.

EXCLUSIVE APPLIES FOR A MARIHUANA LICENSE

47. Exclusive Capital Partners is a Michigan limited liability company organized,

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

operating, and in good standing in the State of Michigan. The Applicant has extensive business experience and success within the marihuana industry. Michigan's premier, vertically integrated cannabis company composed of state-of-the-art retail locations, a processing and manufacturing facility, and licensed grow operations, as well as Michigan's home to a breadth of iconic cannabis brands, despite obstacles considering the global pandemic, saw a 1,200 percent sales increase year-over-year with $177 million in sales in 2020, solidifying their standing as Michigan's top-selling cannabis company. In addition, Exclusive grew their team by nearly 900 percent and owns the No. 1 retail store in the state in Exclusive Ann Arbor and the No. 1 edible in Kushy Punch.

48. Despite Exclusive's exceptional qualifications and history of operating compliant and successful marihuana businesses, Exclusive did not receive a license.

49. To be clear, Exclusive was not denied a license. According to the City, exclusive was neither denied nor approved but is on a "waitlist." This placed Exclusive in a complete purgatory and forces them to incur substantial costs while they await a *final* determination. What is unclear about the ordinance is if there will ever be a *final* determination.

THE CITY MOVES FORWARD WITH A PROCESS THAT ON ITS FACE VIOLATES THEIR ORDINANCE AS WELL AS OTHER LAWS

50. The City received 31 applications for the two licenses to operate a marihuana retailer business in Royal Oak.

51. As a result, the City was required to select applicants through a competitive process designed to select the applicants who are best suited to operate in compliance with MRTMA in Royal Oak. See Ordinance, § 435-4(C); MCL 333.27959(4).

52. The City Manager designated a committee to review and rank applications pursuant to the criteria listed in the Ordinance (the "Ranking Committee"). This committee was confirmed by the Mayor at the planning commission meeting on February 8, 2022 as well as by the City

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

Manager on January 24, 2022 at an appeal hearing for another applicant.

53. The ordinance DOES NOT permit a ranking committee to review or rank the applications.

54. As previously stated, the Ordinance states: The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the ***City Manager or*** his or her **designee**." *Id.* § 435-4(C)(4).

55. At the very most, the City Manager could have appointed a singular ***designee.***

56. The City Manager did not have the authority to create a committee as was the case here.

57. The existence of this selection committee was not publicly disclosed until February 8, 2022.

58. Nonetheless, the City created a committee which acted on behalf of the city and therefore subjected this committee to the Open Meetings Act.

59. The committee did not conduct the allegedly "competitive process" in public.

60. Upon information and belief, the committee reviewed and ranked Applicants and Applications in non-public meetings.

61. Materials that were obtained via FOIA reflect that the Ranking Committee members included City Manager Paul Brake, Economic Development Manager Todd Fenton, City Treasurer Jaynmarie Hubanks, Director of Community Development Tim Thwing, City Engineer Holly Donoghue, Police Chief Corrigan O'Donohue, City Clerk Melanie Halas, and City Attorney Aaron Leal. This was confirmed by the City Manager.

62. The committee is clearly a body acting on behalf of the City.

63. The FOIA materials also indicate that the Ranking Committee held several (non-

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

public) meetings, and exchanged several communications between meetings about ranking the applicants.

64. The City did not tell the applicants (or the public) that the Ranking Committee had secretly ranked their applications.

65. The City did not tell applicants how their applications were ranked.

66. The City did not tell applicants who ranked their applications.

67. The City did not tell applicants that they were not selected for a Municipal License Slot or why they were not selected.

68. The Ranking Committee somehow selected Gatsby Cannabis even though its proposed location is right across the street from a school (within 77 feet) and all marihuana stores must be at least 1,000 feet away from schools-under both state and local law. See MCL 333.27959(3)(c); Ordinance, § 770-52.1(B)(3).

69. The City's application process is not competitive because it does not score, rank, or otherwise assign any objective measure of comparison to applications. In the absence of any objective metrics related to compliance with MRTMA, referring only to a totality based on the criteria-particularly in the absence of any explanation or transparency whatsoever about the basis for the City's determination-allows the City to select any applicant it wants.

COUNT I
DECLARATORY RELIEF AND INJUNCTIVE RELIEF THAT THE CITY FAILED TO COMPLY WITH ORDINANCE 435-4(C)(4)

70. Plaintiff incorporates by reference the prior paragraphs.

71. The Royal Oak ordinance specifically states: "The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City **as determined by the *City Manager or* his or her *designee*.**" *Id.* § 435-

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

4(C)(4). (emphasis added)

72. The clear and unambiguous language of this section of the ordinance requires the *City Manager* or a singular *designee*l to determine and rank the most qualified applicant.

73. The ordinance DOES NOT permit a committee, group, body, or MORE THAN ONE PERSON to review, rank, and determine the most qualified applicant.

74. On February 8, 2022, long after the closed door ranking by the committee, it was revealed that contrary to the ordinance, it was not the Manager or an individual designee that ranked and determined the most qualified applicants but it was a committee of at least seven (7) individual city employees (some known and some unknown) that whittled down 30 applicants to two winning applicants.

75. The City created a completely secretive process based on subjective review behind closed doors.

76. This committee ultimately determined who would advance as the winning applicants and did not present all applicants or the ranking to the planning commission or the city commission.

77. This ranking by the GROUP was then "used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled." See *id.* at § 435-4(C)(4).

78. Defendant violated its Ordinance by creating a GROUP to review, rank, and determine the most qualified applicant.

79. Plaintiff has a substantial likelihood of success on the merits of its case because Defendant's ordinance related to this count is clear and unambiguous. The process followed by the City is contrary to its Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

80. Plaintiff and the community suffered and will continue to suffer an irreparable harm if Defendant is allowed to violate the Ordinance.

81. The harm that Plaintiff and the public suffer by Defendant's violation of the Ordinance and state law far outweighs any harm that Defendant will suffer by being required to follow its Ordinance and state law.

82. An injunction requiring the City to comply with its Ordinance is in the best interest of public.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant declaring that Defendant violated its Ordinance, declaring that awarded licenses are invalid, enjoining Defendant from proceeding forward with the process and correcting the process by ranking the applicants in a public forum, and grant such other relief as is just and appropriate.

COUNT II
DECLARATORY RELIEF AND INJUNCTIVE RELIEF THAT THE ORDINANCE IS VOID (VOID FOR VAGUENESS DOCTRINE)

83. Plaintiff incorporates by reference the prior paragraphs.

84. The Fourteenth Amendment provides that "[n]o State shall … deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Laws that fail to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" violate this requirement of due process and are void for vagueness. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

85. A law that "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis" is likewise void for vagueness in light of "the attendant dangers of arbitrary and discriminatory application" that such sweeping delegation entails. Id. at 108-0

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

86. A statute may be challenged for vagueness on the grounds that it does not provide fair notice of the conduct proscribed, or that it is so indefinite that it invites arbitrary or discriminatory enforcement. See *Hill v Colorado*, 530 U.S. 703, 732; 120 S Ct 2480; 147 L Ed 2d 597 (2000) and *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004).

87. An [ordinance] is unconstitutionally vague if it contains inadequate standards to guide those charged with its enforcement, or if it impermissibly gives the trier of fact unstructured and unlimited discretion in applying the law. *People v Douglas*, 295 Mich App 129, 138; 813 NW2d 337 (2011).

88. Void-for-vagueness tenets embrace the principle that a law is unconstitutional "if its prohibitions are not clearly defined." *Grayned v City of Rockford*, 408 U.S. 104, 108; 92 S Ct 2294; 33 L Ed 2d 222 (1972).

89. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

90. As is the case here, the ordinance creates a completely subjective basis which resulted in an arbitrary discriminatory application of the ordinance.

91. The ordinance is completely vague as to how the applicants will be ranked. Specifically, there is absolutely no quantitative parameter to analyze and rank the applicants.

RECEIVED by MSC 12/10/2025 3:03:01 PM

92. Due to the vagueness of the ordinance, a completely subjective and uncompetitive process occurred.

93. The process needs to be objective, clear, and unambiguous.

94. It is not the burden of Plaintiff or the public to read the minds of legislators.

95. The ordinance is void for vagueness.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant declaring that the ordinance is void for vagueness, declare that awarded licenses are invalid, enjoining Defendant from proceeding forward with the process, and grant such other relief as is just and appropriate.

COUNT III
VIOLATION OF THE OPEN MEETINGS ACT (MCL 15.270 AND 15.271)

96. Plaintiff incorporates by reference the prior paragraphs.

97. The Open Meeting Act provides that "all meetings of a public body must be open to the public." MCL 15.263(1).

98. Further, "[a]ll decisions of a public body must be made at a meeting open to the public." MCL 15.263(2).

99. "The primary purpose of the OMA is to ensure that public entities conduct all their decision-making activities in open meetings and not simply hold open meetings where they rubber stamp decisions that were previously made behind closed doors." *Schmiedicke v Clare School Bd*, 228 Mich App 259,264; 577 NW2d 706 (1998).

100. The OMA defines a "public body" to include "a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

governmental or proprietary function." See MCL 15.262(a).

101. The OMA defines a "decision" as "a ***determination,*** action, vote, or disposition upon a motion, proposal, ***recommendation***, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." See MCL 15.262(b).

102. Here, the Ordinance empowers the City Manager or his or her designee to ***determine*** the ranking of which Applications are best suited to operate in compliance with MRTMA. See Ordinance,§ 435-4(C)(4).

103. Despite the violation of the Ordinance by creating a committee of more than one, the City Manager created a group committee comprised of several City employees, to review, rank, and determine the most qualified applicants.

104. Out of 30 applicants, this illegal committee selected and advanced what they felt were the most qualified applicants.

105. The evaluation of applications for a Municipal License Slot is undoubtedly governmental in nature, as the Ordinance required the City Manager or his or her designee to scrutinize and rank the Applications as a necessary part of the application review process.

106. A determination from the City Manager or his or her designee was required before the Planning Commission had discretion to recommend Special Land Use Permit applications and the City Commission had discretion to approve or deny the Application. See *id.* at 435-4(D)(4)(f).

107. This committee met in secret and determined the most qualified applicants.

108. Upon information and belief, the City's "competitive process" was designed to avoid and circumvent the OMA's requirements.

109. The first public mention of this committee was by the Mayor at the February 8,

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

2022, planning commission meeting when he described the *process* of selecting the most qualified applicants.

110. This committee is governed by the Michigan Open Meetings Act. *See Booth Newspapers, Inc. v. U of M Board of Regents*, 444 Mich 211 (1993).

111. The entire process has been secretive and void of transparency.

112. NONE of the applicants or the public know what actually occurred during the process or how the applicants were ranked.

113. This committee never held a public meeting while it was determining the most qualified applicants.

114. Defendant failed to provide a reason or basis for holding closed meetings.

115. Defendant never gave the public notice of the closed meetings, or the existence of any meetings.

116. Defendant failed to record proper minutes of the closed meetings.

117. Defendant's closed meetings violate the Open Meetings Act.

118. This court has the authority to declare that City violated the Open Meetings Act, issue an injunction, force the City to cure the defect by redoing the process, and award attorney fees to Plaintiff.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the City violated the Open Meetings Act, enjoin Defendant from moving forward with the process, invalidate the conditional approvals, require the City to cure the process in compliance with the Open Meeting Act, award attorney fees to Plaintiff and any such further and additional relief as may be fair and just under the circumstances.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

COUNT IV
VIOLATION OF MRTMA
(FACIAL CHALLENGE TO THE ORDINANCE)

119. Plaintiff incorporates by reference the prior paragraphs.

120. Under MRTMA, the City is required to award its marihuana retailer license through "a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the [City]." MCL 333.27959(4).

121. On its face, there are several criteria in the City's Ordinance that are clearly not designed to assess which applicants are "best suited to operate in compliance with [MRTMA]" in Royal Oak.

122. The Ordinance requires the City to consider whether an Applicant plans to renovate a building, and whether a proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

123. A municipal ordinance may not stand if it is "in direct conflict with the state statutory scheme." *People v Llewellyn,* 257 NW2d 902, 904 (Mich 1977). "A direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Ter Beekv City of Wyoming,* 846 NW2d 531,541 (Mich 2014).

124. There is an actual case or controversy here because Plaintiff respectfully contends that, on its face, the City's Ordinance violates MRTMA.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance on its face violates MRTMA, and any such further and additional relief as may be fair and just under the circumstances.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

COUNT V
VIOLATION OF MTRMA
(AS APPLIED CHALLENGE TO THE ORDINANCE)

125. Plaintiff incorporates by reference the prior paragraphs.

126. MRTMA requires a competitive process.

127. This process applied is not competitive because no one knows what occurred during the actual process or where any of the applicants ranked.

128. The City's selection process, as applied, was clearly not designed to assess which applicants are "best suited to operate in compliance with [MRTMA]" within Royal Oak.

129. Further, the approved applicants are less qualified than Plaintiff.

130. The ordinance fails to account for factors which actually qualify an applicant and relies on factors that promote economic development. Economic development is a proper aspiration for a city, but it is not the purpose of MRTMA. The purpose of MRTMA is issues licenses to business which are the most qualified to sell marihuana.

131. There is an actual case or controversy here because Plaintiff respectfully contends that, as applied here, the City's Ordinance violates MRTMA.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance on its face violates MRTMA, and any such further and additional relief as may be fair and just under the circumstances.

COUNT VI
VIOLATION OF UNITED STATES CONSTITUTION AND INTERSTATE COMMERCE CLAUSE

132. Plaintiff incorporates by reference the prior paragraphs.

133. The United States Constitution empowers the federal Congress "To regulate Commerce ... among the several States." See US Const, art I,§ 8, cl. 3.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

134. The United States Supreme Court has "long held" that this Clause also prohibits state and municipal laws that unduly restrict interstate commerce. *Tenn Wine & Spirits Retailers Ass'n v Thomas,* 139 S Ct 2449, 2459 (2019); see also *Dean Milk Co v City of Madison,* 340 US 349,354 & n 4 (1951).

135. A law that discriminates against interstate commerce is "virtually *per se* invalid, and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." See *Dep't of Revenue of Ky v Davis,* 553 US 328, 338 (2008) (internal quotation marks and citations omitted).

136. Municipal marihuana ordinances that discriminate on the basis of residency violate the dormant Commerce Clause. See, e.g., *NPG, LLC v City of Portland,* No. 2:20-cv-00208, 2020 WL 4741913 (D Me, Aug 14, 2020) (preliminarily enjoining municipal marihuana ordinance that discriminated on the basis of residency) *Lowe v City of Detroit,* 21-CV-10709, 2021 WL 2471476 (ED Mich, June 17, 2021).

137. The City's Ordinance violates the dormant Commerce Clause because it discriminates against out-of-state residents and punishes people for moving between states.

138. The Ordinance's preferences for business owners from Royal Oak and Oakland County do not advance a legitimate local purpose-and, even if they do, that interest could be adequately served by reasonable nondiscriminatory alternatives.

139. There is an actual case or controversy here because Plaintiff contends that the process used to award the licenses to operate adult-use retailer establishment licenses violates the Commerce Clause of the United States Constitution.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding

RECEIVED by MSC 12/10/2025 3:03:01 PM

marihuana retail licenses, declare that the Ordinance as it relates to residency is void, and any such further and additional relief as may be fair and just under the circumstances.

COUNT VII
VIOLATION OF THE MICHIGAN CONSTITUTION

140. Plaintiff incorporates by reference the prior paragraphs.

141. The Michigan Constitution provides that "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection." Mich Const 1963, art 1, § 1.

142. It further guarantees that "No person shall be denied the equal protection of the laws " Mich Const 1963, art 1, § 2.

143. And it provides that "No person shall be ... deprived of life, liberty or property, without due process of law." Mich Const 1963, art 1, § 17.

144. These provisions guarantee, among other things, a right to intrastate travel, a right to interstate travel, and a right to be free from arbitrary or impermissible discrimination.

145. Municipal marihuana ordinances that discriminate on the basis of residency violate these provisions. See *Lowe*, 2021 WL 2471476, at *8-9.

146. The City's Ordinance violates the Michigan Constitution because its preferences for current or recent business operators in Royal Oak punishes Exclusive's owners for exercising their rights to intrastate and interstate travel, and draw distinctions between them and other applicants that are not rationally related to any legitimate government purpose.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding

LEGAL CONSULTING

marihuana retail licenses, declare that the Ordinance as it relates to residency is void, and any such further and additional relief as may be fair and just under the circumstances.

Legal Consulting, PLLC

By: */s/ Anthony J. Bologna*
Anthony J. Bologna (P72698)
Attorney for Exclusive Capital Partners
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278

Dated: March 10, 2022

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT A

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CITY OF ROYAL OAK, MICHIGAN
ORDINANCE NO. 2020-06

AN ORDINANCE TO AMEND THE CITY OF ROYAL OAK CODE OF ORDINANCES TO IMPLEMENT THE PROVISIONS OF THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT, PROP 1 OF 2018, SO AS TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY BY SETTING FORTH THE MANNER IN WHICH RECREATIONAL MARIHUANA ESTABLISHMENTS CAN BE OPERATED IN THE CITY.

THE CITY OF ROYAL OAK ORDAINS:

SECTION 1. SHORT TITLE. This Ordinance shall be known as may be referred to as the Recreational Marihuana Licensing Ordinance.

SECTION 2. STATEMENT OF PURPOSE. This is an ordinance to amend the City of Royal Oak Code of Ordinances to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Prop 1 of 2018, so as to protect the public health, safety, and welfare of the residents of the City by setting forth the manner in which recreational marihuana establishments can be operated in the City. Further, the purpose of this ordinance is to:

1. Provide a means to regulate and control the commercial production and distribution of marihuana, the lawful production of related products as set forth in, and for purposes of implementing, the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 et. seq., as may be amended (hereafter referred to as the "MRTMA" or the "Act");

2. Protect public health and safety through reasonable limitations on marihuana commercial entity operations, and limitations upon other marihuana-related activities provided for by the MRTMA, as they relate to noise, air and water quality, neighborhood safety, security for the establishment and its personnel, and other health and safety concerns;

3. Impose fees to defray and recover the costs to the City of the administrative and enforcement costs associated with Marihuana Establishments, and Municipally-Licensed marihuana activities as provided for in the MRTMA;

4. Coordinate with laws and regulations that may be enacted by the State addressing marihuana, including but not limited to the Department of Licensing and Regulatory Affairs Marihuana Regulatory Agency Adult – Use Marihuana Establishments Emergency Rules (LARA Rules), as amended from time to time;

5. Restrict the issuance of Marihuana Establishment Municipal Licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Section, and with State law and regulation, without monitoring by City officials;

RECEIVED by MSC 12/10/2025 3:03:01 PM

6. Recognize that regulations for marihuana may not be adequate at the state level to address the impacts on the City of the commercialization of marihuana, making it appropriate for local regulation of the impact of marihuana establishments;

7. Recognize that nothing in this Ordinance is intended to promote or condone the production, distribution, sale, or possession of marihuana in violation of any applicable law;

8. Recognize that this Ordinance is to be construed to protect the public over Marihuana Establishment interests. Operation of a Marihuana Establishment is a revocable privilege and not a right in the City. There is no property right for an individual or establishment to engage or obtain a municipal license to engage in marihuana as a commercial enterprise in the City;

9. Make it known that because marihuana is a heavily regulated industry in the City, all Municipal License Holders are assumed to be fully aware of the law and the City shall not therefore be required to issue warning before issuing citations for violation of this Ordinance; and

10. Recognize that as of the effective date of this Ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal Law which makes it unlawful to manufacture, distribute, cultivate, produce, possess, dispense, or transport marihuana. Nothing in this Ordinance is intended to grant immunity from any criminal prosecution under Federal Law.

SECTION 3. AMENDMENT. The City of Royal Oak Code of Ordinances is hereby amended by the addition of Chapter 435, Marihuana, which shall read as follows:

"CHAPTER 435. MARIHUANA

ARTICLE I
Recreational Marihuana Establishments

Sec. 435-1. Definitions

The following words, terms and phrases when used in this Article shall have the meanings ascribed as follows:

"*Applicant*", unless specifically stated to mean a state License, means an individual, organization, partnership, company, corporation enterprise, or other entity that applies for a Municipal License as well as the person or persons associated with the Applicant. For purposes of this definition, an Applicant includes a managerial employee of the Applicant, a person holding a direct or indirect ownership interest of more than 10% in the Applicant, and the following for each type of Applicant:

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

RECEIVED by MSC 12/10/2025 3:03:01 PM

- For a partnership and limited liability partnership: all partners and their spouses.

- For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

- For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

- For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

- For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

- For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

For purposes of this definition, an Applicant does not include:

- A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

- A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana- infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms "franchise," "franchisor," and "franchisee" shall have the meanings set forth in section 2 of the Franchise Investment Law, 1974 PA 269, MCL 445.1502, as may be amended.

- A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

- A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property including, but not limited to, brands and recipes.

RECEIVED by MSC 12/10/2025 3:03:01 PM

"*Application*" means an Application for a Municipal License under this Ordinance and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the "Applicant."

"*Application Documents*" means the items required as part of an Application submitted to the City prior to them being accepted as complete as provided in Section 435-4.

"*Board*" means the marihuana licensing board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

"*Clerk*" means the City of Royal Oak Clerk or his/her designee.

"*Co-located Facility or Co-location*" means marihuana businesses holding 2 or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

"*Cultivate or Cultivation*" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

"*Department*" means the Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan License for a Marihuana Establishment.

"*Designated Consumption Establishment*" means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state License.

"*Excess Marihuana Grower*" means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to Marihuana Establishments.

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

"*License*" means a current and valid License for Marihuana Establishment issued by the State of Michigan.

"*Licensee*" means a Person holding a current and valid Michigan License for a Marihuana Establishment.

"*Marihuana*" means that term as defined in Section 3 of the MRTMA, MCL 333.27953, as may be amended.

"*Marihuana Accessories*" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for us in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,

RECEIVED by MSC 12/10/2025 3:03:01 PM

producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

"*Marihuana Concentrate*" means the resin extracted from any part of the plant of the genus cannabis.

"*Marihuana Establishment*" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the department pursuant to MCL 333.27951, as may be amended.

"*Marihuana Event Organizer*" means a person licensed to apply for a temporary marihuana event license under these rules.

"*Marihuana-Infused Product*" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

"*Marihuana Microbusiness*" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

"*Marihuana Processor*" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

"*Marihuana Retailer*" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

"*Michigan Medical Marihuana Act*" or MMMA means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

"*Michigan Marihuana Facilities Licensing Act*" or MMFLA means Public Act 281 of 2016, MCL 333.27101 et seq. as may be amended.

"*Michigan Marihuana Tracking Act*" means Public Act 282 of 2016, MCL 333.27901 et seq. as may be amended.

"*Municipal License*" means a current and valid license for a Marihuana Establishment issued under this Ordinance, which shall be granted to a Municipal License Holder only for and limited to a specific Municipally-Licensed Premises and a specific Municipally-licensed Property. Said Municipal License shall be in addition to the Special Use Permit and Site Plan approval required to be obtained pursuant to the City Zoning Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

"*Municipal License Holder*" means the an individual, organization, partnership, company, corporation enterprise, or other entity that holds a current and valid Municipal License issued under this Ordinance as well as the person or persons associated with the Municipal License Holder as Applicant(s) for that Municipal License.

"*Municipal License Slot*" means an unissued permit available to be issued to an Applicant.

"*Municipally-Licensed Premises*" means the particular building, buildings, or tenant space within which the Municipal License Holder will be authorized to conduct the Facility's activities pursuant to the Municipal License.

"*Municipally-Licensed Property*" means the real property comprised of a lot, parcel, or other designated unit of real property upon which the Municipally-Licensed Premises is situated.

"*Person*" means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

"*Premises*" means the particular building, buildings, section of land, or tenant space within which a particular use is conducted.

"*Public Place*" means any area in which the public is invited or generally permitted in the usual course of business.

"*Rules*" means rules promulgated by the Department in consultation with the Board to implement this Act, including the LARA Rules as may be amended.

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

"*School*" means a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade.

"*Secure Transporter*" means a person licensed to obtain marihuana form marihuana establishments in order to transport Marihuana to Marihuana Establishments.

"*Stacked License*" means more than 1 state License issued to a single licensee to operate as a class C Marihuana Grower as specified in each state License at a Marihuana Establishment.

"*State Operating License*" or, unless the context requires a different meaning, "*License*", means a license issued by the Department that allows a person to operate a Marihuana Establishment.

"*Temporary Marihuana Event License*" means a state License held by a marihuana event

RECEIVED by MSC 12/10/2025 3:03:01 PM

organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state License during the dates indicated on the state License.

"*Window*" means the time period set by the City Manager to receive Applications for evaluation by the competitive process as specified in this Ordinance.

Sec. 435-2. Municipal License Required; Eligibility; General Provisions

A. The City hereby authorizes the operation of the following types of Marihuana Establishments:

1. Growers, Class A
2. Growers, Class B
3. Growers, Class C
4. Processors
5. Retailer
6. Safety Compliance Facilities
7. Secure Transporters
8. Marihuana Microbusiness
9. Co-Located Facilities as defined in this Ordinance.

B. The following number of Municipal Licenses can be issued for each authorized Marihuana Establishment type:

1. Growers, Class A: 1
2. Growers, Class B: 1
3. Growers, Class C: 1
4. Processors: 1
5. Retailers: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.
6. Safety Compliance Facilities: 1
7. Secure Transporters: 1
8. Marihuana Microbusiness: 2 total but only in the General Business Zone (as defined by Section 770-41 of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by Section 770-44 of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than 1 may be located in the General Business Zone.

C. No person shall operate a Marihuana Establishment at any time or any location within the City unless a currently effective Municipal License for that person at that location has been issued under this Ordinance. No Marihuana Establishments are allowed nor shall a Municipal License be considered or granted for those activities

RECEIVED by MSC 12/10/2025 3:03:01 PM

and facilities defined as a "special license" being a state license described under section 8 of the MRTMA and issued by the state pursuant to section 9 of the MRTMA, MCL 333.2795 and 333.27959, as may be amended, including but not limited to, Designated Consumption Establishment, Excess Marihuana Grower, Marihuana Event Organizer, Temporary Marihuana Event, and any special license types hereafter recognized by the state.

D. Marihuana Establishments shall operate only as allowed under this Ordinance.

E. The City Manager is granted the power to fully and effectively implement and administer the Municipal License Application process.

F. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or Municipal Licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this Ordinance, each Applicant shall pay nonrefundable Review fees, Application fees, annual fees, renewal fees and inspection fees for Municipal Licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Marihuana Establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The Municipal License fee requirement 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.

H. The City has no obligation to process or approve any incomplete Application.

I. A Municipal License shall remain valid for one year following removal of all stipulations on an issued Municipal License.

J. It is the sole and exclusive responsibility of each Municipal License Holder or Applicant at all times during the Application period and during its operation to immediately provide the City with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or its City Municipal License.

K. No Municipal License issued under this Ordinance may be assigned or transferred to another person or entity except as specified in this Ordinance. No Municipal License issued under this Ordinance is transferrable to any other location except for the Municipally-Licensed Premises on the Municipally-Licensed Property.

L. The original Municipal License issued under this Ordinance shall be prominently displayed at the Municipally-Licensed Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

RECEIVED by MSC 12/10/2025 3:03:01 PM

M. A Municipal License Holder may not engage in any other Marihuana Establishment in the Municipally-Licensed Premises or on the Municipally-Licensed Property, or in its name at any other location within the City, without first obtaining a separate Municipal License.

N. No Municipal License shall be granted or renewed for a Marihuana Establishment in a residence.

O. Co-located Facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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. If these conditions are met, more than one business may be located on one parcel.

Sec. 435-3. Other Laws and Ordinances

In addition to the terms of the Ordinance, any Marihuana Establishment shall comply with all City Ordinances, including without limitation the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

Sec. 435-4. Application for and Renewal of Municipal License

A. *Application Documents.* Application Documents for a Municipal License for a Marihuana Establishment shall be submitted to the City Clerk, and on or after the effective date of this Ordinance shall contain the following information. Information obtained from the Applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this Ordinance of all Application Documents by City staff, the Documents will be considered a complete Application.

1. The name, address, phone number and email address of the Applicant and the proposed Marihuana Establishment.

2. The names, home addresses and personal phone numbers for all Applicants and the Marihuana Establishment.

3. One (1) copy of the following:

a. Pre-approval for a Marihuana Establishment license by the State of Michigan.

b. For Class A, B, or C Growers or Processors or Microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the Marihuana Establishment.

c. All documentation of the Applicant's valid tenancy, ownership, or

RECEIVED by MSC 12/10/2025 3:03:01 PM

other legal interest in the proposed Municipally-Licensed Property and Municipally-Licensed Premises. If the Applicant is not the owner of the proposed Municipally-Licensed Property and Municipally-Licensed Premises, a notarized statement from the owner of such property authorizing the use of the property for a Marihuana Establishment.

d. If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

e. A valid, unexpired driver's license or state issued ID for all Applicants for the proposed Marihuana Establishment.

f. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

g. Non-refundable Marihuana Establishment Application Document Review fee.

h. Business and Operations Plan, showing in detail the Marihuana Establishment's proposed plan of operation, including without limitation, the following:

1. A description of the type of Marihuana Establishment proposed and the anticipated or actual number of employees.

2. A security plan meeting the requirements of Section 4355 of this Ordinance.

3. A description by category of all products to be sold.

4. An affidavit indicating the Applicant will, prior to applying for a building permit:

a. Submit a list of Material Safety Data Sheets for all nutrients, pesticides, and other chemicals proposed for use in the Marihuana Establishment.

b. Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the Marihuana Establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the

RECEIVED by MSC 12/10/2025 3:03:01 PM

establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

c. Obtain a wastewater discharge permit before connecting to or contributing to the Publicly Owned Treatment Works (POTW). Refer to City of Royal Oak Code of Ordinances Section 740-7.

5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the Municipally-Licensed Premises.

6. A plan for the disposal of Marihuana and related byproducts that will be used at the Marihuana Establishment.

i. Whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

j. A site plan of the Municipally-Licensed Premises and the Municipally-Licensed Property prepared in accordance with Section 770-12, Site Plan Review, of the City Zoning Ordinance signed and sealed by a registered architect, or professional engineer. Site plan must include distance between the Municipally-Licensed Premises and all applicable buffered uses identified in Section 435-5(A)(5) of this Ordinance, unless those uses are greater than 1,500 ft. from the Municipally-Licensed Premises.

k. The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

l. Information regarding any other Marihuana Establishment or Medical Marihuana Facility that the Applicant or any of the Applicant's Owners directors, officers or managers is authorized to operate in

RECEIVED by MSC 12/10/2025 3:03:01 PM

any other jurisdiction within the State, or another State, and their involvement in each Marihuana Establishment or Medical Marihuana Facility.

4. Any other information reasonably requested by the City to be relevant to the processing or consideration of the Application.

B. *Review of Application Documents*. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCL 333.27959.4, as may be amended. All Application Documents submitted by a potential Applicant will be reviewed by City staff for completeness with the requirements of Section 435-4 of this Ordinance before being considered a complete Application. All Application Documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential Applicant.

1. City staff has a reasonable amount of time to review the Application Documents and determine if they are complete.

2. Complete Application Documents will be accepted as an Application under this Ordinance and processed. A determination of a complete Application shall not prohibit the City from requiring supplemental information at any time during the Application process.

3. If Application Documents are found to be incomplete, the prospective Applicant will be notified in writing of the deficiencies and given ten (10) business days to correct those deficiencies.

a. If the deficiencies are corrected within the ten (10) business days, the Application Documents will be considered complete and accepted as an Application under this Ordinance.

b. If deficiencies are not corrected within the ten (10) business days, the Application Documents will be returned to the prospective Applicant. If the prospective Applicant wishes to re-submit Application Documents, they must be re-submitted in their entirety with a new Application Document Review fee. This re-submission will be considered a new set of Application Documents and will be newly date and time stamped.

C. *Competitive Process per MCL 333.27959.4, as may be amended.*

1. If a Marihuana Establishment type has a limited number of Municipal Licenses available to be issued due to a cap imposed herein, the City Manager shall open a Window. The timing and duration of the Window shall be determined by the City Manager. If a Municipal License is available for a Marihuana Establishment type limited by cap, the City Manager must open a Window at least once per calendar year.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. At the end of a Window, if the number of Applications for a Marihuana Establishment Municipal License for exceeds the number of available Municipal Licenses, the City shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City.

3. Applications to be included in the competitive process include all those whose Application Documents were date and time stamped as submitted prior to the end of the Window and which were able to be considered complete and accepted as an Application.

4. The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled. The competitive criteria to be used shall be as follows:

   a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

   b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City Ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

   c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;

   d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCL 333.27958.1.(c), as may be amended;

   e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction, that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

RECEIVED by MSC 12/10/2025 3:03:01 PM

f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

g. Whether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;

h. Whether the Applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

i. Whether the Applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more effective teamwork; and

j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

D. *Processing and Review of Applications.*

1. An Application will be held until a Window is established to select the Applications to fill an available Municipal License Slot.

2. An Application will be considered for a Municipal License Slot through the competitive process as specified in this Ordinance. When an Applicant is awarded the Municipal License Slot through the competitive process, the Applicant will be notified and will be given five (5) business days to pay the Marihuana Establishment Application Fee. If an Applicant does not pay the fee within the time allotted, the next Application as ranked by the competitive process during the applicable Window will be issued the Municipal License Slot.

3. Upon payment of the Marihuana Establishment Application Fee by an Applicant, the City Clerk shall refer a copy of the Application to the Department Head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

4. In order for a Marihuana Establishment Application to be approved and a

RECEIVED by MSC 12/10/2025 3:03:01 PM

Municipal License to be issued, all of the following conditions must be met:

a. The Applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

b. The Engineering Division will complete a preliminary review of the wastewater plan submitted.

c. The Engineering Division will confirm that the necessary amount of water for the Marihuana Establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

d. The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed Marihuana Establishment and general site requirements.

e. The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

f. A Special Land Use Permit and Site Plan application has been submitted, Permit fees have been paid, and the Special Land Use Permit and Site Plan has been approved by the City Commission after recommendation from the Planning Commission.

g. The Applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past ten (10) years or conviction of a controlled substance-related felony within the past ten (10) years, except that, consistent with MCL 333.27958.1.(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

h. Other than as set forth in MCL 333.27958.1.(c), as may be amended, within the past five (5) years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

i. The Applicant has not knowingly submitted an application for a License that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the Application

RECEIVED by MSC 12/10/2025 3:03:01 PM

for a Municipal License.

5. Following review by City Departments and prior to approval of a Special Land Use Permit and Site Plan, if deficiencies are found in the Application, the Applicant is notified in writing of the areas of deficiency and given thirty (30) days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the Applicant's Special Land Use Permit and Site Plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty (30) day time period, the Application will be deemed incomplete and denied. Another Application will then fill the Municipal License Slot.

6. All inspections, review and processing of the Application shall be completed within ninety (90) days of payment of the Marihuana Establishment Application Fee or within one hundred twenty (120) days if the location of the Municipally-Licensed Premises is proposed to be amended from an existing Municipally-Licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the Municipal License.

7. If all conditions of this Ordinance have been met, the City Clerk shall issue the Municipal License to the Applicant.

   a. All Municipal Licenses issued have the following stipulations:

      1. Issuance of License Qualification by the State of Michigan for the Municipal License Holder under State law and the City of Royal Oak receiving a copy of that License Qualification prior to occupancy.

      2. Issuance of final certificate of occupancy for the Municipally-Licensed Premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

      3. For Processors and Class A, B, and C Growers and Microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

      4. Issuance of Final Approval by the State of Michigan and the City of Royal Oak receiving a copy of the Final Approval prior to the business opening.

   b. A Municipal License Holder has one (1) year from the date of

RECEIVED by MSC 12/10/2025 3:03:01 PM

issuance to meet all stipulations of the Municipal License. If all stipulations are not met in this timeframe, the Municipal License is revoked and considered denied. A Municipal License Holder may request an extension up to six (6) months to this timeframe, which may be granted by the City Clerk.

8. If a Municipal License is denied, the denial must be in writing and must state the reason(s) for denial.

   a. Applications which are denied will not be refunded the Marihuana Establishment Application Fee.

   b. If the Applicant of a denied Application chooses to re-submit, this re-submission will be considered a new set of Application Documents and will be date and time stamped at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

9. Upon denial, withdrawal, or failure for any reason of an Application within six (6) months of a competitive process being used to rank Applicants and their Applications as detailed in Section 435-4(C), the available Municipal License Slot will be awarded to the next best suited Applicant and Application as determined in that process. However, if more than six (6) months have passed since the last competitive process, a new Window must be opened to fill the Municipal License Slot and all Applications will be treated as new submissions.

10. Denial of an Application or non-renewal of a Municipal License may be appealed to the City Manager, who will set a date and time within ten (10) business days to conduct a hearing where the Applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another Applicant for a Municipal License Slot may be considered by the City.

E. *Renewal Application*. Renewal Applications shall require City approval.

1. Renewal Applications for a Marihuana Establishment maintaining the location of the Municipally-Licensed Premises shall be received by the City Clerk not less than ninety (90) days prior to the expiration of the annual Municipal License. Renewal Applications for a Marihuana Establishment requesting a change in the location of the Municipally-Licensed Premises shall be submitted and received not less than one hundred twenty (120) days prior to the expiration of the Municipal License.

2. A Renewal Application must follow the same approval process as all new

RECEIVED by MSC 12/10/2025 3:03:01 PM

Applications with the exception of the following:

a. A Municipal License Holder that submits an application for a Renewal Municipal License at a previously Municipally-Licensed Premises shall be deemed in compliance with the spacing requirements set forth in Section 435-5(A)(5) of this Ordinance.

b. For any information required as part of the Application process that has not changed, the Municipal License Holder may submit an Affidavit of No Changes in place of the information when submitting a Renewal Application. If any of the items requested in the Application process has changed, such items must be submitted as required in this Ordinance.

c. A Municipal License Holder, as a stipulation of a renewal Municipal License issued by the City, must provide proof of having submitted a license renewal application no later than thirty (30) days after expiration of their State License. Once a renewed State license has been granted, a copy must be provided to the City of Royal Oak.

d. A renewal Municipal License issued by the City takes effect on the date of expiration of the original Municipal License issued and the Municipal License Holder has one year from that date until renewal is again required.

3. A Municipal License Holder whose Municipal License expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Municipal License under this Ordinance. They will be considered denied. The City will not accept Renewal Applications after the expiration date of the Municipal License.

4. A Municipal License Holder issued a renewal Municipal License by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six (6) months of the renewal Municipal License being issued will have their Municipal License revoked and considered denied.

F. *Changes to Application or Municipal License.*

1. If at any time before or after a Municipal License is issued pursuant to this Ordinance, any information required in the Municipal License Application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the Application, the Applicant or Municipal License Holder shall supplement such information in writing within ten (10) days from the date upon which such change occurs.

RECEIVED by MSC 12/10/2025 3:03:01 PM

a. Changes to a new Application will be considered a minor or major change as determined by the City Clerk.

1. Minor changes include a change to person or persons associated with the Applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the Application.

2. Major changes include changing the location of the Marihuana Establishment whether it be to a different site or changing the size of any new buildings, a change of Marihuana Establishment type, a change of Applicant entity, or other similar changes. A major change will result in the Application being returned to the Applicant. If the Applicant wishes to re-submit, the re-submission will be considered a new set of Application Documents and will be date and time stamped for processing at the date and time they are re-submitted. Any fees will not be waived.

2. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.

3. An Applicant or Municipal License Holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the Applicant, any owner, principal officer, director, manager, or employee within ten (10) days of the event.

4. A Municipal License may be assigned or transferred only if all of the following are true:

a. A Municipal License has been issued and all stipulations for that license have been met, including written final approval by the State of Michigan for State Licensure.

b. All current Municipal License Holders submit an affidavit approving the transfer.

RECEIVED by MSC 12/10/2025 3:03:01 PM

c. The person(s) or entity proposed to receive the transferred Municipal License submit Application Documents and are issued a Municipal License Transfer Approval. Issuance of a Municipal License Transfer Approval includes the following:

1. Certification of a completed Application per the process of this Ordinance. The Applicant may submit an affidavit of no change to the Municipally Licensed Premises to forego the Application requirements as it pertains to the Municipally Licensed Premises if no physical changes will be completed as part of the assignment or transfer.

2. Payment of a License Transfer review fee as set by the City Commission.

3. Review of the Application per Section 435-4(D)(4)(c).-(f). If an affidavit of no change to the Municipally Licensed Premises is submitted, review of corresponding information and the requirement for a Special Land Use Permit and Site Plan approval would be considered satisfied.

4. Issuance or denial of the Municipal License Transfer Approval will be completed per Section 435-4(D)(4)(g)-(i). Stipulations of 435-4(D)(7)(a) will be considered met when the Applicant has all required licenses or permits in their name. Where an affidavit of no change to the Municipally Licensed Premises has been filed, the stipulation for a required proof of final occupancy will be waived.

5. Until the Municipal License Transfer Approval is issued, the existing Municipal License will remain with the current Municipal Licensee Holder. Transfer of the Municipal License will not change its date of expiration.

G. *Expiration of Application.* If an Application has been held waiting for a Municipal License Window to open for one (1) year, the City will contact the Applicant and request in writing confirmation that the Application is accurate and that the Application should be kept on file. If the Applicant asks the Application to be removed, or if confirmation in writing is not received in ten (10) business days, the Application will be removed from the list of Applications and a letter sent to the Applicant. If the Applicant wishes to re-submit after this point, this re-submission will be considered a new set of Application Documents and will be date and time stamped for processing order at the date and time they are re-submitted. A new Marihuana Establishment Application Fee will be required.

Sec. 435-5. Operational Requirements – Marihuana Establishments

RECEIVED by MSC 12/10/2025 3:03:01 PM

A. A Marihuana Establishment issued a Municipal License under this Ordinance and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

1. *Scope of Operation.* Marihuana Establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The Marihuana Establishment must hold a valid local Municipal License and State Marihuana Establishment License for the type of Marihuana Establishment intended to be carried out on the Municipally-Licensed Property. The Marihuana Establishment operator, owner or Licensee must have documentation available that local and State sales tax requirements, including holding any licenses, if applicable, are satisfied.

2. *Required Documentation.* Each Marihuana Establishment shall be operated from the Municipally-Licensed Premises on the Municipally-Licensed Property. No Marihuana Establishment shall be Municipally-Licensed to operate from a moveable, mobile or transitory location, except for a Municipally-Licensed or Licensed Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter into the Municipally-Licensed Premises without a parent or legal guardian.

3. *Security.* Municipal License Holders shall at all times maintain a security system that meets State law requirements, and in addition shall also include the following:

   a. Robbery and burglary alarm systems which are professionally monitored and operated twenty-four (24) hours a day, seven (7) days a week and which will contact local law enforcement if triggered;

   b. A locking safe permanently affixed to the Municipally-Licensed Premises that shall store all Marihuana and cash remaining in the Marihuana Establishment overnight;

   c. All Marihuana in whatever form stored at the Municipally-Licensed Premises shall be kept in a secure manner and shall not be visible from outside the Municipally-Licensed Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Municipally-Licensed Premises; and

   d. All security recordings and documentations shall be preserved for at least thirty (30) days by the Municipal License Holder and made available to any law enforcement upon request for inspection.

4. *Operating Hours.* No Retailer or retail portion of a microbusiness shall

RECEIVED by MSC 12/10/2025 3:03:01 PM

operate between the hours of 8:00 p.m. and 8:00 a.m.

5. *Required Spacing*. The following spacing requirements for Marihuana Establishments are required:

   a. No Marihuana Establishment shall be permitted within a 1,000-foot radius of any school.

   b. No Marihuana Retailer or Marihuana Microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

   c. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

   Spacing requirements become effective upon issuance of a Municipal License, whether conditional or not.

6. *Amount of Marihuana*. The amount of Marihuana on the Municipally-Licensed Property and under the control of the Municipal License Holder, owner or operator of the Marihuana Facility shall not exceed that amount permitted by the state License or the City's Municipal License.

7. *Sale of Marihuana*. The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The Marihuana Establishment is prohibited from selling, soliciting, or receiving orders for Marihuana or Marihuana Products over the internet.

8. *Sign Restrictions*. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any Municipally-Licensed Premises nor be visible outside of the Municipally-Licensed Premises on the Municipally-Licensed Property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

9. *Use of Marihuana*. The sale, consumption or use of alcohol or tobacco products on the Municipally-Licensed Premises is prohibited. Smoking or consumption of controlled substances, including Marihuana, on the Municipally-Licensed Premises is prohibited.

10. *Indoor Operation*. All activities of Marihuana Establishment, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity Municipally-Licensed under the Municipal License Holder's License or Municipal License must occur indoors. The Marihuana Establishment's operation and design shall minimize any impact

RECEIVED by MSC 12/10/2025 3:03:01 PM

to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Municipally-Licensed Premises. No consumption of marihuana shall take place on the premises of a Marihuana Establishment.

11. *Distribution*. No person operating a Marihuana Establishment shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.

12. *Permits.* All necessary building, electrical, plumbing and mechanical Municipal Licenses must be obtained for any part of the Municipally-Licensed Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.

13. *Waste Disposal*. The Municipal License holder, owner and operator of the Marihuana Establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Municipal License. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

14. *Proof of Insurance*. A Municipal License Holder shall at all times maintain full force and effect for duration of the license, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A Municipal License Holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this Subsection. 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 (5) business days in the event of expiration or cancellation of coverage.

15. *Transportation*.

a. Marihuana may be transported by a Secure Transporter within the City under this Ordinance, and to effectuate its purpose, only:

1. By persons who are otherwise authorized by state law to possess Marihuana;

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. In a manner consistent with all applicable state laws and rules, as may be amended; and

3. In a secure manner designed to prevent the loss of Marihuana.

b. No vehicle used for the transportation or delivery of Marihuana under this Ordinance shall have for markings the words "Marihuana", "Marijuana" or "cannabis" or any similar words; pictures or other renderings of the Marihuana plant; advertisements for Marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting Marihuana.

c. No vehicle may be used for the ongoing or continuous storage of Marihuana, but may only be used incidental to, and in furtherance of, the transportation of Marihuana.

16. *Additional Conditions*. The City may impose such reasonable Terms and Conditions on a Marihuana Establishment special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

Sec. 435-6. Penalties and Consequences for Violation

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Sec. 435-7. City Liability and Indemnification

A. By accepting a Municipal License issued pursuant to this Ordinance, the Municipal License Holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of Marihuana Establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a Municipal License issued pursuant to this Ordinance, all Municipal License Holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a Municipally-Licensed Property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the Municipal License, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Section 1964(c) or any other alleged violation of the law

C. By accepting a Municipal License issued pursuant to this Ordinance, a Municipal License Holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C. Section 801 et seq. or Chapter 7 of the Michigan Public Health Code, MCL 333. 7101 et. seq., as may be amended.

Sec. 435-8. Municipal License as Revocable Privilege

A. A Municipal License granted by this Ordinance is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each Municipal License is exclusive to the Municipal License Holder, and a Municipal License Holder or any other person must apply for and receive the City's approval before a Municipal License is transferred, sold, or purchased. A Municipal License Holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a Municipal License without prior state and local approval is grounds for suspension or revocation of the Municipal License or for other sanction considered appropriate by the City.

B. *Nonrenewal, suspension or revocation of Municipal License.* The City may, after

RECEIVED by MSC 12/10/2025 3:03:01 PM

notice and hearing as provided in Section 434-4(D)(10) of this Ordinance, suspend, revoke, or refuse to renew a Municipal License for any of the following reasons:

1. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Section or with any applicable state or local law or regulation;

2. The Applicant or Municipal License Holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its Municipal License pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the Municipal License and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the Municipal License.

3. The Marihuana Establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

Sec. 435-9. Authorization to Inspect, Search and Examine

A Marihuana Establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department and the Application for a Marihuana Establishment constitutes consent by the Applicant, and all owners, managers, and employees of the Marihuana Establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the Marihuana Establishment to ensure compliance with this Ordinance or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a Municipal License without a search warrant."

SECTION 4. SEVERABILITY. If any Section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not affect the validity of the remaining

portions of this ordinance.

SECTION 5. SAVINGS. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

SECTION 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect on August 15, 2020.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Exhibit A
Ordinance 2020-07

Text Amendments to Zoning Ordinance for Marihuana Establishments

---

I. Article II Definitions; Rules Applying to Text, § 770-8 Definitions, shall be amended by adding definitions for "marihuana establishment," which shall read as follows:

ARTICLE II
Definitions; Rules Applying to Text

§ 770-8. Definitions.

MARIHUANA ESTABLISHMENT – As defined in Chapter 435, Marihuana, Article I, Recreational Marihuana Establishments, including, but not limited to, the following: designated consumption establishment; event organizer; excess grower; grower; microbusiness; processor; retailer; safety compliance facility; secure transporter; and temporary event.

II. Article IV Zone Regulations and General Provisions, § 770-41 General Business, subsection C Special Land Uses, shall be amended by adding subparagraph (27), which shall read as follows:

ARTICLE IV
Zone Regulations and General Provisions

§ 770-41. General Business.

C. Special Land Uses.

(27) Marihuana retailers or microbusiness, subject to the requirements set forth in § 770-52.1, Marihuana Establishments. All other marihuana establishments shall be prohibited.

III. Article IV Zone Regulations and General Provisions, § 770-44 General Industrial, subsection C Special Land Uses, shall be amended by adding subparagraph (31), which shall read as follows:

RECEIVED by MSC 12/10/2025 3:03:01 PM

ARTICLE IV
Zone Regulations and General Provisions

§ 770-44. General Industrial.

C. Special Land Uses.

(31) Marihuana establishments (except for designated consumption establishments, excess marihuana growers, marihuana event organizers, and temporary marihuana events, all of which are specifically prohibited), subject to the requirements set forth in § 770-52.1, Marihuana Establishments.

IV. Article V Special Provisions, shall be amended by adding §770-52.1 Marihuana Establishments, which shall read as follows:

ARTICLE V
Special Provisions

§ 770-52.1. Marihuana Establishments.

A. Purpose & Intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCL 333.26421 et. seq.), as amended.

B. General Standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § 770-11, Special Land Uses; Permit Procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § 770-12, Site Plan Review, along with documentation that:

(a) The petitioner has pre-qualification status for an applicable license with the State of Michigan; and

RECEIVED by MSC 12/10/2025 3:03:01 PM

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter 435, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter 435, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter 607, Signs, with a maximum area not to exceed 50 square feet or 5% of the building façade area, whichever is less. All other signs, including but not limited to freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting shall be prohibited as permanent architectural details or enhancements on any building façade or the exterior of any structure, including but not limited to windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § 770-30, General Building Design and Project Compatibility, shall be prohibited.

(10) Security devices such as security curtains, steel bars, metal gates, and similar apparatus shall be prohibited on the exterior of a building. Security devices may be permitted inside a building provided that the device is (a) retractable so it is not visible from the sidewalk

RECEIVED by MSC 12/10/2025 3:03:01 PM

or public right-of-way during regular business hours, and (b) equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater run-off and/or the need for stormwater detention, such as but not limited to rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment, and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

V. Article IX Off-Street Parking & Loading, §770-107 Table of Off-Street Parking Requirements, shall be amended by adding minimum required amounts of off-street parking for "marihuana retailers" and "marihuana microbusinesses" under general commercial uses, and "marihuana growers, processors, secure transporters, and safety compliance facilities" under industrial uses, all of which shall read as follows:

ARTICLE IX
Off-Street Parking and Loading

§ 770-107. Table of Off-Street Parking Requirements.

Use	Required Number of Parking Spaces Per Each Unit of Measure	Unit of Measurement
General Commercial Uses		
Marihuana retailers	1.5	Per each 200 square feet of usable floor area.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Use	Required Number of Parking Spaces Per Each Unit of Measure	Unit of Measurement
Marihuana microbusinesses	1.5	Per each 200 square feet of usable retail floor area, plus
	1	Per each 800 square feet of usable growing and processing floor area.
Industrial Uses		
Marihuana growers, processors, secure transporters, and safety compliance facilities	1	Per each 800 square feet of usable floor area.

RECEIVED by MSC 12/10/2025 3:03:01 PM

ROYAL OAK PLANNING COMMISSION
CITY OF ROYAL OAK, MICHIGAN

Tuesday, February 8, 2022

AGENDA

Closed Session
Conference Room 122
6:00 p.m.
Attorney-Client Privilege

Regular Meeting
City Commission Chambers 121
7:00 p.m.

A. Call to Order

B. Approval of Minutes for December 14, 2021

C. Public Comment on Non-Agenda Items

D. New Business

1. **Public Hearing – Capital Improvements Program for 2022-23 Fiscal Year**

2. **Public Hearing – Special Land Use & Site Plan (SP 22-02-01)** to establish marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within existing building (Karl Heinz Auto Center) at **5130 Meijer Dr.** (parcel no. 20-32-301-016)
   PGSH Holdings, LLC, Petitioner
   KB Partners, Inc., Owner of Record
   Krieger-Klatt Architects, Inc. Architect
   Stonefield Engineering & Design, Engineer
   Plunkett Cooney, PC, Representative

3. **Public Hearing – Special Land Use & Site Plan (SP 22-02-02)** to establish marihuana retailer (Royal Treatment) within vacant building at **408 to 424 E. Harrison Ave.** (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, & 25-22-377-032)
   Royal Oak Treatment, LLC, Petitioner & Owner
   Stucky-Vitale Architects, Architect

4. **Master Plan Requests-for-Qualifications**

E. Other Business

1. **Election of Officers**

2. **Non-Action Items**

   a. 2021 Annual Report
   b. Administrative Site Plan Approvals for 4th Quarter of 2021
   c. Notice of Intent to Amend Master Plan from City of Ferndale
   d. RCOC Road Report for 4th Quarter of 2021
   e. Michigan Planner for November/December 2021

F. Adjournment

RECEIVED by MSC 12/10/2025 3:03:01 PM

Closed Session
Conference Room 122

Present	**Absent**
Ann Bueche, Vice-Chairperson	Woody Gontina
Paul Curtis	Eric Klooster
Sharlan Douglas, City Commissioner	
Michael Fournier, Mayor	
Gary Quesada, Chairperson	

Staff
Paul Brake, City Manager
Todd Fenton, Deputy City Manager
Douglas Hedges, City Planner
Aaron Leal, City Attorney
Anne McClorey McLaughlin, Rosati, Schultz, Joppich, & Amtsbuechler, PC
Joseph Murphy, Director of Planning

Moved by Commissioner Douglas
Supported by Mayor Fournier

To enter into closed session to discuss attorney-client privileged correspondence at 6:05 p.m.

Motion adopted unanimously by roll call vote.

Moved by Commissioner Douglas
Supported by Mayor Fournier

To adjourn the closed session at 7:05 p.m.

Motion adopted unanimously.

Regular Meeting
City Commission Chambers 121

Present	**Absent**
Ann Bueche, Vice-Chairperson	Woody Gontina
Paul Curtis	Eric Klooster
Sharlan Douglas, City Commissioner	
Michael Fournier, Mayor	
Gary Quesada, Chairperson	

Staff
Douglas Hedges, City Planner
Aaron Leal, City Attorney
Anne McClorey McLaughlin, Rosati, Schultz, Joppich, & Amtsbuechler, PC
Joseph Murphy, Director of Planning
Julie Rudd, Director of Finance

RECEIVED by MSC 12/10/2025 3:03:01 PM

A. Call to Order

Chairperson Quesada called the February 8, 2022, regular meeting of the Royal Oak Planning Commission for to order at 7:10 p.m.

B. Approval of Minutes for December 14, 2021

Moved by Ms. Bueche
Supported by Mr. Curtis

To approve the minutes of the December 14, 2021, regular meeting of the Royal Oak Planning Commission as presented.

Motion adopted unanimously.

C. Public Comment on Non-Agenda Items

Chairperson Quesada invited members of the audience to comment on any issues that were not part of the meeting's agenda. After all members of the audience came forward Chairperson Quesada closed the public comment portion of the agenda.

D. New Business

1. Public Hearing – Capital Improvements Program for 2022-23 Fiscal Year

Chairperson Quesada opened the public hearing on the capital improvements program for the 2022-2023 fiscal year. As no members of the audience came forward Chairperson Quesada closed the public hearing.

Moved by Commissioner Douglas
Supported by Mayor Fournier

Be it resolved that the planning commission approves the capital improvement program for the 2022-23 fiscal year as presented and recommends its adoption by the city commission as part of the 2022-23 fiscal year budget.

Motion adopted 4 to 1
Yes: Mr. Curtis, Commissioner Douglas, Mayor Fournier, Mr. Quesada
No: Ms. Bueche

2. **Public Hearing – Special Land Use & Site Plan (SP 22-02-01)** to establish marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within existing building (Karl Heinz Auto Center) at **5130 Meijer Dr.** (parcel no. 20-32-301-016)

PGSH Holdings, LLC, Petitioner
KB Partners, Inc., Owner of Record
Krieger-Klatt Architects, Inc. Architect
Stonefield Engineering & Design, Engineer
Plunkett Cooney, PC, Representative

Chairperson Quesada opened the public hearing on the special land use permit. After all members of the audience came forward Chairperson Quesada closed the public hearing.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Moved by Mr. Curtis
Supported by Ms. Bueche

To recommend denial by the **city commission** of a **special land use permit** to establish a marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within an existing building (Karl Heinz Auto Center) at **5130 Meijer Drive** (parcel no. 20-32-301-016) based upon the following:

a. The proposed use and location would be hazardous and disturbing to existing uses or uses reasonably anticipated in the future.

b. The proposed use and location would not be consistent with the intent and purposes of the zoning ordinance and would not comply with all applicable provisions and standards which are established for the use by the zoning ordinance and other applicable codes.

Motion adopted 3 to 2
Yes: Ms. Bueche, Mr. Curtis, Mr. Quesada
No: Commissioner Douglas, Mayor Fournier

3. **Public Hearing – Special Land Use & Site Plan (SP 22-02-02)** to establish marihuana retailer (Royal Treatment) within vacant building at **408 to 424 E. Harrison Ave.** (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, & 25-22-377-032)
Royal Oak Treatment, LLC, Petitioner & Owner
Stucky-Vitale Architects, Architect

Chairperson Quesada opened the public hearing on the special land use permit. After all members of the audience came forward Chairperson Quesada closed the public hearing.

Moved by Commissioner Douglas
Supported by Mayor Fournier

To recommend approval by the **city commission** of a **special land use permit** to establish a marihuana retailer (Royal Treatment) within a vacant building at **408 to 424 East Harrison Avenue** (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, and 25-22-377-032) based upon the following:

a. The proposed use and location will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

b. The proposed use and location will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

c. The proposed use and location will be an improvement in relation to property in the immediate vicinity and to the city as a whole.

Motion adopted 4 to 1
Yes: Mr. Curtis, Commissioner Douglas, Mayor Fournier, Mr. Quesada
No: Ms. Bueche

Moved by Mr. Curtis
Supported by Commissioner Douglas

To recommend approval by the **city commission** of **SP 22-02-02**, a **site plan** to establish a marihuana retailer (Royal Treatment) within a vacant building at **408 to 424 East Harrison Avenue**

RECEIVED by MSC 12/10/2025 3:03:01 PM

(parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, and 25-22-377-032), with the following **contingencies**:

a. A special land use permit for the marihuana retailer shall be approved by the city commission in accordance with § 770-52.1 B (2) of the zoning ordinance.

b. Prior to review by the city commission, the site plan shall be revised to add the photovoltaic solar panels and wind turbines to the exterior elevations (A3.1) and specify their height above the roof line of the building.

c. Building setbacks, off-street parking, landscaping, screening, and all other zoning ordinance standards shall be as depicted on the plan sheets.

d. Low-impact development techniques or green infrastructure shall be as depicted on the plan sheets.

e. Reasonable conditions and safeguards to protect the public health, safety, and general welfare from any detrimental effects from the operation of the marihuana establishment shall be provided as determined necessary and advisable by the city commission in accordance § 770-52.1 B (13) of the zoning ordinance.

f. All four properties shall be combined into a single parcel.

g. Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

h. All paving, utilities, and work within public rights-of-way shall be in accordance with the specifications and standards of the city engineer.

i. Exterior lighting shall be as depicted on the plan sheets. Any additional exterior lighting fixtures shall comply with § 770-96 B of the zoning ordinance and all other city codes and ordinances.

j. All signage shall comply with § 770-52.1 B (7) of the zoning ordinance.

k. A performance bond shall be posted in an amount to be determined by the building official.

l. The site plan shall meet all other code and ordinance requirements, as determined by the building official, fire marshal, and city engineer, including, but not limited to, the state building code, the city's fire prevention ordinance (Chapter 340), the city's recreational marihuana licensing ordinance (Chapter 435), and the city's stormwater detention ordinance (Chapter 644), and all four properties shall be combined into a single parcel, prior to issuance of any building or right-of-way permits.

Motion adopted unanimously.

4. Master Plan Requests-for-Qualifications

Moved by Mayor Fournier
Supported by Commissioner Douglas

Be it resolved that the Royal Oak Planning Commission hereby enables the following firms to submit a response to a request-for-proposals to develop a new master plan: Archive DS; DPZ CoDesign; Houseal Lavigne; MKSK; and Smith Group.

Motion adopted unanimously.

The planning commission directed staff to submit a draft request-for-proposals for review prior to it being sent to the selected firms.

RECEIVED by MSC 12/10/2025 3:03:01 PM

E. Other Business

1. Election of Officers

Moved by Commissioner Douglas
Supported by Mr. Curtis

To postpone elections of officers until the next regular meeting.

Motion adopted unanimously.

2. Non-Action Items

The following informational items were presented to the planning commission with no further action being taken:

a. The planning commission's annual report for 2021.

b. A list of building permit applications and site plans administratively approved by the planning division during the fourth quarter of 2021.

c. A notice required under the Michigan Planning Enabling Act from the City of Ferndale stating their intent to update their master plan.

d. The latest edition of Road Report from the Road Commission of Oakland County.

e. The latest edition of Michigan Planner from the Michigan chapter of the American Planning Association.

F. Adjournment

Moved by Mr. Curtis
Supported by Ms. Bueche

To **adjourn** the February 8, 20221, regular meeting of the Royal Oak Planning Commission at 12:55 a.m.

Motion adopted unanimously.

Gary Quesada
Chairperson, Planning Commission

Douglas A. Hedges, AICP, PCP
City Planner II

RECEIVED by MSC 12/10/2025 3:03:01 PM

Court Explorer

Register of Actions

Go Back

Case Number
2022-192383-CZ
Entitlement
QUALITY ROOTS INC vs. ROYAL OAK CITY
Judge Name
MARY ELLEN BRENNAN
Case E-Filed
YES
Case Filed
02/04/2022
Case Disposed
12/14/2022

Date	Code	Desc
02/27/2025	STO	STIP/ORD FILED MODIFYING JAN 10TH ORDER OF THE COURT
02/21/2025	MPS	MIFILE PROOF OF SERVICE FILED
01/27/2025	ORD	ORDER FILED COA
01/16/2025	MPS	MIFILE PROOF OF SERVICE FILED
01/16/2025	CA	CLAIM OF APPEAL FILED PLF
01/16/2025	OTH	APPENDIX SUPPT APPL APPEAL/PLF FILED
01/10/2025	ORD	ORDER FILED AMD RE CT OF APPEALS
01/08/2025	ORD	ORDER FILED PARTIES TO FILE BRIEF
01/03/2024	SEN	SENT TO COA/FTP/KK
12/26/2023	NTC	NOTICE FILED REQ FOR FILE COA
09/29/2023	RES	RESPONSE FILED OPPOS MTN ADJ/PLF SEE 22-192288-CZ
08/08/2023	MPS	MIFILE PROOF OF SERVICE FILED
08/08/2023	TRN	TRANSCRIPT FILED MTN SUM DISP/12/14/22
07/26/2023	STO	STIP/ORD FILED STRIKE DEP TRNSCRIPTS

Date	Code	Desc
07/25/2023	MPS	MIFILE PROOF OF SERVICE FILED
07/11/2023	MPS	MIFILE PROOF OF SERVICE FILED
06/14/2023	OTH	PLF STATMNT RE SERV REC/POS/FILED
06/14/2023	MPS	MIFILE PROOF OF SERVICE FILED
05/24/2023	MPS	MIFILE PROOF OF SERVICE FILED
05/24/2023	CA	CLAIM OF APPEAL FILED /QUALITY ROOTS/COA/ REDACTED
05/04/2023	OPN	OPINION FILED /ORD RE BDE MTN RECONSID/SEE 22192830CZ
05/04/2023	OPN	OPINION FILED ORD RE PLF MTN RECONSIDERATION 22-19015-CZ
05/04/2023	OPN	OPINION FILED ORD RE PLF MTN RECONSIDERATION
01/13/2023	MTN	MOTION FILED FOR RECON SEE 22192288CZ
01/13/2023	MTN	MOTION FILED FOR RECON/PLF SEE 22192288CZ
01/01/2023	OJR	CASE REASSIGNED FROM JDG CHABOT TO JDG BRENNAN
12/27/2022	TRN	TRANSCRIPT FILED 12/14/22 MTN FOR SUM DISP
12/27/2022	TRN	TRANSCRIPT FILED 12/14/22 MTN
12/21/2022	ORD	ORDER FILED GRANT ROYAL OAK MTN SUM DISP
12/20/2022	MPS	MIFILE PROOF OF SERVICE FILED
12/14/2022	DM	DEFENSE MOTION SD - GR (PART)
12/14/2022	FDS	FINAL DISP-SUMMARY DISP
12/02/2022	STO	STIP/ORDER FILED PROTECTIVE SEE 22192288CZ
11/17/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/BRF/PLF
11/17/2022		SEE 22192288CZ
11/16/2022	RES	RESPONSE FILED MTN SUM DISP/POS/BDE 22-192288-CZ
11/16/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/POS/PLF 22-192288-CZ
11/09/2022	BRF	BRIEF FILED REP SUM DISP/DFT SEE 22-192288-CZ
10/31/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/RO CITY 22-192288-CZ
10/28/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/ROYAL OAK
10/28/2022		SEE 22192288CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
10/28/2022	NTC	NOTICE FILED EARLY SCHED CONF VIA ZOOM
10/21/2022	STO	STIP/ORDER FILED STRIKE CT XI OF AMD CMPLT 22-192288-CZ
10/21/2022	STO	STIP/ORDER FILED STRIKE CT XI OF AMD CMPLT 22-193015-CZ
10/20/2022	WLT	WITNESS LIST FILED /EXH/POS/GREEN SQUARE 22-192288-CZ
10/17/2022	ADJ	ORDER OF ADJOURNMENT FILED FACILITATION/AMD SEE 22192288CZ
10/17/2022	ADJ	ORDER OF ADJOURNMENT FILED AMD/CMPLT FAC SEE 22-192288-CZ
10/14/2022	ADJ	ORDER OF ADJOURNMENT FILED SUM DISP/STP SEE 22-192288-CZ
10/13/2022	RES	RESPONSE FILED OPPOS MTN SUM DISP/PLF 22-192288-CZ
10/13/2022	NOH	NOTICE OF HEARING FILED /POS SEE 2022-192288-CZ/JH
10/12/2022	OCC	ORDER CONSOLIDATING CASES FILED (SEE 22-194753-CZ)
10/12/2022	CON	CONSOLIDATED CASES W/2022-194753-CZ
10/11/2022	OCC	ORDER CONSOLIDATING CASES FILED /STP/ADJ DFT MTN SUM DISP
10/11/2022		SEE 22194223CZ
10/11/2022	CON	CONSOLIDATED CASES W/2022-194223-CZ
09/26/2022	ORD	ORDER FILED GRNT MTN AMD CMPLT 22-192288-CZ
09/22/2022	WLT	WITNESS LIST FILED /POS/ROYAL OAK SEE 22192288CZ
09/22/2022	OTH	ROYAL OAK EXPERT LIST/POS FILED
09/22/2022		SEE 22192288CZ
09/22/2022	EXH	EXHIBIT LIST FILED /POS/ROYAL OAK SEE 22192288CZ
09/21/2022	MPR	MOTION PRAECIPE FILED FOR 12142022 JUDGE 12
09/21/2022	MPS	MIFILE PROOF OF SERVICE FILED
09/21/2022	WLT	WITNESS LIST FILED PRELIM/EXPERT/EXH/POS/PGSH HLDNGS
09/21/2022	WLT	WITNESS LIST FILED PRELIM/EXPERT/EXH/PGSH 22-192288-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
09/21/2022	WLT	WITNESS LIST FILED EXH/PLF SEE 22-192288-CZ
09/15/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/DFT
09/15/2022		SEE 22192288CZ
09/14/2022	NOH	NOTICE OF HEARING FILED /POS
09/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
09/13/2022	MPS	MIFILE PROOF OF SERVICE FILED
09/13/2022	ANS	ANSWER FILED TO AMD COMPLT/DFT
09/13/2022	MTN	MOTION FILED LEAVE AMD CMPLT/SEE 22192288CZ
09/13/2022	OTH	PLF CONCUR MTN ENFRC FILED SEE 22-192288-CZ
09/13/2022	NOH	NOTICE OF HEARING FILED SEE22192288CZ
09/13/2022	MPS	MIFILE PROOF OF SERVICE FILED
09/13/2022	MTN	MOTION FILED SUM DISP/AMD CMPLT/BRF/POS/DFT
09/09/2022	ORD	ORDER FILED GRNT FILE SPL AUTH SUM DISP SEE 22-192288-CZ
09/08/2022	MTN	MOTION FILED FILE SPL AUTH SUM DISP/DFT SEE 22-192288-CZ
09/08/2022	OTH	SPL AUTH TO MTN SUM DISP FILED SEE 22-192288-CZ
09/07/2022	NOH	NOTICE OF HEARING FILED /POS SEE 22192830CZ
09/07/2022	MTN	MOTION FILED FOR LEAVE TO AMD COMPLAINT/PLF
09/07/2022		SEE 22192830CZ
09/07/2022	MTN	MOTION FILED TO ENFRC/STRIKE ARGUMENTS/PLF 22-192288-CZ
09/01/2022	OTH	PGSH CONCUR IN ROYAL OAK MTN SUM FILED
09/01/2022		SEE 22192288CZ
08/31/2022	MPS	MIFILE PROOF OF SERVICE FILED
08/31/2022	OTH	DFTS CONCUR W/MTN FOR SUM DISP/POS FILED
08/29/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED /SEE 22-192288-CZ
08/23/2022	AMC	AMENDED COMPLAINT FILED /SEE 22-192288-CZ
08/23/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED /SEE 22-192288-CZ
08/19/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/POS/PLF
08/19/2022		SEE 22192288CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
08/19/2022	ORD	ORDER FILED EXTND PG LIMITS/QUALITY 22-192288-CZ
08/18/2022	RES	RESPONSE FILED IN OPP TO ROYAL OAK MTN SUM/PLF
08/18/2022		SEE 22192288CZ
08/18/2022	RES	RESPONSE FILED IN OPP TO DFT MTN SUM DISP/PLF
08/18/2022		SEE 22192288CZ
08/18/2022	MTN	MOTION FILED UNOPPOSED TO EXCEED PG LIMIT/POS/ PLF
08/18/2022		SEE 22192288CZ
08/17/2022	RES	RESPONSE FILED TO MTN SUM DISP/PLF SEE 22-192288-CZ
08/11/2022	MTN	MOTION FILED LV AMC/NOH/POS/PLF 22-192288-CZ
08/05/2022	APR	DATE SET FOR CASE EVAL ON 10122022 9:00 AM
07/22/2022	NTC	NOTICE FILED /DM ZOOM HRG
07/13/2022	MPR	MOTION PRAECIPE FILED FOR 07272022 JUDGE 12
07/05/2022	NOH	NOTICE OF HEARING FILED POS/SEE 22-192288-CZ
06/22/2022	MPR	MOTION PRAECIPE FILED FOR 09212022 JUDGE 12
06/22/2022	MPR	MOTION PRAECIPE FILED FOR 07132022 JUDGE 12
06/22/2022	MTN	MOTION FILED COMPEL DISC/BRF/PLF SEE 22-192288-CZ
06/21/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP SEE22192288CZ
06/16/2022	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
06/16/2022	APC	ADJ-COUNSEL 06242022
06/16/2022	OFM	ORDER FOR FACILITATIVE MEDIATION FILED
06/15/2022	APR	DATE SET FOR CASE EVAL ON 10122022 NO TIME SET
06/13/2022	NOH	NOTICE OF HEARING FILED /POS SEE2022192288CZ
06/13/2022	NOH	NOTICE OF HEARING FILED
06/13/2022	MPS	MIFILE PROOF OF SERVICE FILED
06/13/2022	MPR	MOTION PRAECIPE FILED FOR 07132022 JUDGE 12
06/13/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED SEE 2022192288CZ
06/10/2022	OTH	E SCHED C HELD VIA ZOOM
06/10/2022	OTH	REMOVED FROM STANDARD CASE EVAL; FACIL ORDERED

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
06/10/2022	OTH	FACILITATOR NOT YET SELECTED; WILL EMAIL COURT
06/10/2022	APR	DATE SET FOR PRETRIAL ON 06242022 08 30 AM Y 12
06/10/2022		PROCEEDING TO BE HELD REMOTELY BY ZOOM
06/10/2022	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
06/10/2022	APC	ADJ-COUNSEL 12092022 TO 03102023 BY ORDER
06/10/2022	APR	DATE SET FOR TRIAL ON 03102023 08 30 AM Y 12
06/10/2022		PROCEEDING TO BE HELD IN-PERSON
05/31/2022	DSL	DISCLOSURE FILED INITIAL/EXCLUSIVE CAPITAL PARTNERS
05/31/2022		SEE 22193015CZ
05/24/2022	RES	RESPONSE FILED TO REQ ADMIT/DFT SEE 22-192830-CZ
05/20/2022	BRF	BRIEF FILED OPPOS MTN QUASH SUBPOENA/POS/PLF 22-192288-CZ
05/18/2022	RES	RESPONSE FILED AMD CMPLT/POS/RO CITY 22-193015-CZ
05/16/2022	MTN	MOTION FILED TO QUASH SUBPOENA/BRF/NOH/POS/ NONPTY
05/16/2022		SEE 22192288CZ
05/10/2022	MPR	MOTION PRAECIPE FILED FOR 08102022 JUDGE 12
05/09/2022	MPS	MIFILE PROOF OF SERVICE FILED
05/09/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP HRG
05/09/2022	NOH	NOTICE OF HEARING FILED POS/SEE 22-192288-CZ
05/09/2022	RES	RESPONSE FILED IN OPP TO ATTITUDE WELLNESS MTN/ POS/PGSH
05/09/2022		SEE 22192288CZ
05/09/2022	NOH	NOTICE OF HEARING FILED /POS
05/09/2022	MPS	MIFILE PROOF OF SERVICE FILED
05/09/2022	MPS	MIFILE PROOF OF SERVICE FILED
05/09/2022	RES	RESPONSE FILED IN OPP TO ATTITUDE WELLNESS MTN/ PGSH
05/04/2022	DM	DEFENSE MOTION QPO - GR
05/04/2022	MTN	MOTION FILED COMPEL NTC DEP SEE22192288CZ
05/02/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
05/02/2022	OBJ	OBJECTION FILED TAKING DEP/POS/PGSH 22-192288-CZ
05/02/2022	OBJ	OBJECTION FILED TAKING DEP/POS/PGSH
04/28/2022	AMC	AMENDED COMPLAINT FILED EXCLUSIVE CAPITAL SEE 22193015CZ
04/27/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/27/2022	MPR	MOTION PRAECIPE FILED FOR 05042022 JUDGE 12
04/27/2022	NOH	NOTICE OF HEARING FILED /POS
04/27/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/26/2022	INT	INTERROGATORIES FILED /REQ PROD DOCS/ SEE22192830CZ
04/25/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/25/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/25/2022	RES	RESPONSE FILED INTRVN DFT MTN PROTECT ORD/PLF 22-192288-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-192288-CZ
04/25/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/POS/ ATTITUDE WELL
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-192830-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-193015-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/EXCLUSIV 22-192288-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/EXCLUSIV 22-192288-CZ
04/22/2022	REQ	REQUEST FILED ATTY
04/22/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/21/2022	MTN	MOTION FILED TO COMPEL/BRF/NOH/POS
04/21/2022		SEE 22192288CZ
04/21/2022	REQ	REQUEST FILED ADD PARTY/ATTITUDE WELLNESS (OTHER)
04/21/2022	MPS	MIFILE PROOF OF SERVICE FILED

Date	Code	Desc
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-192288-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-192830-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-193015-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS
04/19/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/15/2022	NOH	NOTICE OF HEARING FILED /POS 22-192288-CZ
04/15/2022	NOH	NOTICE OF HEARING FILED /POS
04/15/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/15/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED SEE 22192830CZ
04/15/2022	NOH	NOTICE OF HEARING FILED
04/15/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/15/2022	MTN	MOTION FILED PROTECTIVE ORD/PGSH HOLDINGS
04/15/2022	MPR	MOTION PRAECIPE FILED FOR 07132022 JUDGE 12
04/14/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP 22-192288-CZ
04/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/14/2022	ADJ	ORDER OF ADJOURNMENT FILED /STP MTN SUM DISP AS TO PLF
04/14/2022	DSL	DISCLOSURE FILED INITIAL/QUAL ROOTS/POS SEE 22-192288-CZ
04/14/2022	MTN	MOTION FILED SUM DISP/NOH/POS/RO CITY 22-193015-CZ
04/13/2022	OTH	ONE OF THREE CASES CONSOLIDATED UNDER CASE
04/13/2022	OTH	. . . #22-192288-CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED 4CASES/SEE 22-193015-CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED 22-192288-CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED
04/13/2022	CON	CONSOLIDATED CASES W/2022-192288-CZ
04/13/2022	CON	CONSOLIDATED CASES W/2022-192830-CZ
04/13/2022	CON	CONSOLIDATED CASES W/2022-193015-CZ
04/12/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
04/06/2022	MPR	MOTION PRAECIPE FILED FOR 04132022 JUDGE 12
04/06/2022	MTN	MOTION FILED TO CONSOLIDATE SEE 22192288CZ
04/06/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/06/2022	MTN	MOTION FILED TO CONSOLIDATES/NOH/POS/DFT
04/06/2022	MTN	MOTION FILED TO CONSOL/BRF/NOH/DFT SEE 22-192380-CZ
03/29/2022	ORD	ORDER FILED DENY DFT MTN PROTECTIVE ORDER
03/28/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/28/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/28/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/21/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/21/2022	RES	RESPONSE FILED TO MTN PROT ORD STAY DISC/BRF/POS/ PLF
03/17/2022	NTC	NOTICE FILED RE 03/23/22 MTN HRG
03/16/2022	MPR	MOTION PRAECIPE FILED FOR 03232022 JUDGE 12
03/16/2022	MPR	MOTION PRAECIPE FILED FOR 06152022 JUDGE 12
03/15/2022	NOH	NOTICE OF HEARING FILED /POS
03/15/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/15/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/15/2022	MTN	MOTION FILED STAY DISC PEND DISP MTN/BRF/NOH/ POS/DFT
03/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/14/2022	DSL	DISCLOSURE FILED INITIAL/PLF
03/14/2022	SO	SCHEDULING ORDER FILED RE DFT MTN SUM DISP
03/14/2022	REQ	REQUEST FILED TO DFT/PROD DOCS/POS
03/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/14/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/14/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/14/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/11/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
03/11/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/ROYAL OAK CITY
03/09/2022	ORD	ORDER FILED DENY MTN FOR INJ RELIEF
03/08/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/08/2022	ATC	ANSWER TO COMPLAINT FILED AFM/POS/INT PLF PGSH
03/08/2022	APP	APPEARANCE FILED /NTC/POS/DFT
03/08/2022	APP	APPEARANCE FILED NTC/POS/DFT
03/08/2022	APP	APPEARANCE FILED NTC/POS/DFT
03/08/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/08/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/08/2022	RES	RESPONSE FILED TO MTN FOR PRELIM INJ/SHOW CAUSE/ DFT
03/07/2022	ORD	ORDER FILED GRNT MTN TO INTERVENE
03/04/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/04/2022	BRF	BRIEF FILED RESP IN OPPO MTN PRELIM INJ/POS/PLF
03/04/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/04/2022	RES	RESPONSE FILED TO MTN INTERVENE/POS/PLF
03/03/2022	NTC	NOTICE FILED WAIVE ORAL ARGUMENTS
03/02/2022	MPR	MOTION PRAECIPE FILED FOR 03092022 JUDGE 12
03/02/2022	MPR	MOTION PRAECIPE FILED FOR 03092022 JUDGE 12
03/01/2022	NOH	NOTICE OF HEARING FILED /POS
03/01/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/01/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/01/2022	MPS	MIFILE PROOF OF SERVICE FILED
02/28/2022	MPS	MIFILE PROOF OF SERVICE FILED
02/28/2022	NOH	NOTICE OF HEARING FILED
02/28/2022	MTN	MOTION FILED /INTERVENE/BRF/PGSH
02/28/2022	APP	APPEARANCE FILED /POS/DFT
02/28/2022	APP	APPEARANCE FILED /POS/DFT
02/28/2022	APP	APPEARANCE FILED /NTC/POS/DFT
02/28/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
02/22/2022	MPS	MIFILE PROOF OF SERVICE FILED
02/22/2022	MTN	MOTION FILED PRELIM INJ/SHOW CAUSE/NOH/BRF/PLF
02/10/2022	APP	APPEARANCE FILED /POS/DFT
02/10/2022	REQ	REQUEST FILED /APP/DFT
02/10/2022	MPS	MIFILE PROOF OF SERVICE FILED
02/07/2022	MPS	MIFILE PROOF OF SERVICE FILED
02/07/2022	SUM	P/S ON SUMMONS FILED 02/07/22
02/03/2022	SI	SUMMONS ISSUED
02/03/2022	C	COMPLAINT FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 3/9/2022 2:06 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC,

Plaintiff,

Case No. 2022-192383-CZ
Hon. Rae Lee Chabot

v.

CITY OF ROYAL OAK,

Defendant,

and

PGSH HOLDINGS, LLC,

Intervening Defendant.
_____/

ORDER
DENYING MOTION FOR INJUNCTIVE RELIEF

This matter is before the Court on a motion seeking injunctive relief pursuant to MCR 3.310. The Court has waived oral argument pursuant to MCR 2.119(E)(3). After reviewing the relevant pleadings, the motion must be denied. The Michigan Court of Appeals has addressed the law regarding injunctive relief as follows:

> The purpose of a preliminary injunction is to preserve the "status quo pending a final hearing regarding the parties' rights." *Mich AFSCME Council 25* [*v Woodhaven-Brownstown Sch Dist*], 293 Mich App [143,] 145 [2011] (quotation marks and citation omitted). "A court's issuance of a preliminary injunction is generally considered equitable relief." *Id.* To obtain a preliminary injunction, the moving party "bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction." *Detroit Fire Fighters Ass'n, IAFF Local 344 v Detroit,* 482 Mich 18, 34 (2008). This four-part test involves the trial court's determination that
>
> > (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking

RECEIVED by MSC 12/10/2025 3:03:01 PM

> the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Mich AFSCME Council 25*, 293 Mich App at 148, 809 NW2d 444 (quotation marks and citation omitted).][1]

In the case at bar, Plaintiff has not demonstrated a likelihood of success on the merits nor irreparable harm. Therefore, the motion for injunctive relief is hereby denied.

IT IS SO ORDERED
3-9-2022

/s/ Rae Lee Chabot

Honorable Rae Lee Chabot

JSG

[1] *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647-648 (2012).

FILED Received for Filing Oakland County Clerk 3/11/2022 4:58 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

JSG

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan municipal corporation, and PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Defendants.

Case No. 2022-192383-CZ

HON. RAE LEE CHABOT

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

NOTICE OF HEARING

RECEIVED by MSC 12/10/2025 3:03:01 PM

PLEASE TAKE NOTICE that the Defendant CITY OF ROYAL OAK's *Motion for Summary Disposition* will be brought on for hearing before the Honorable Rae Lee Chabot of the Oakland County Circuit Court on a **date and time to be set by the court**.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

DATED: March 11, 2022

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

Case No. 2022-192383-CZ

-vs-

HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan municipal corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 12/10/2025 3:03:01 PM

Defendant, CITY OF ROYAL OAK, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., moves the Court for summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim upon which relief can be granted, and (C)(10) for lack of a genuine issue of material fact. This motion is more fully supported by the Brief in Support of Defendant's Motion for Summary Disposition and the exhibits appended to it.

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

As has become increasingly common, by adopting ordinances to allow licensing of recreational marijuana establishments (RME) under the Michigan Regulation and Taxation of Marihuana Act (MRTMA) and by implementing those local regulations, municipalities have bought themselves litigation by the unsuccessful applicants in virtually every instance. This case is no different. Plaintiff claims that because it is an existing marijuana business with more experience than those initially selected through the competitive process required by state law and City ordinance, it is per se the "best suited" to operate in compliance with MRTMA within Royal Oak. But even the statute does not define what is "best suited" or guarantee that any applicant for an adult use (recreational) marijuana license will be successful. Naturally, an unsuccessful applicant will be disappointed, but

RECEIVED by MSC 12/10/2025 3:03:01 PM

disappointment does not translate to a right either to challenge the award of (in Royal Oak's case) a "license slot," to another applicant or to compel the issuance of a license to the losing bidder.[1]

Plaintiff seeks declaratory and injunctive relief in this case, requesting that the Court declare the City of Royal Oak's process unlawful under the MRTMA and enter equitable relief preventing the City from continuing its process and ultimately, if appropriate, issuing RME licenses to the successful applicants. But the allegations in the Complaint and the factual background do not support relief sought in this case, warranting summary disposition in Defendant's favor.

FACTUAL BACKGROUND

In 2018, the electorate of the State of Michigan voted to adopt Initiated Law 1 of 2018, the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951, *et seq.*, by a margin of 55-45%. Wojcik, *Royal Oak Extending Recreational Marijuana Opt-Out Period*, Royal Oak Review, Dec 23, 2019, https://www.candgnews.com/news/royal-oak-extending-recreational-marijuana-optout-period-116316. last accessed March 7, 2022. In the City of Royal Oak, approval was even greater, with 70% of Royal Oak voters approving of the new measure to legalize recreational marijuana. *Id.*

As a result, after a period of opting out of the marijuana licensing process (*Id.*), the Royal Oak City Commission adopted a recreational marijuana establishment licensing ordinance (RME ordinance) in July 2020, Chapter 435 "Marihuana" (**Ex 1**), under the authority granted by MRTMA, MCL 333.27956(2) and (3). The ordinance authorized licenses for growers (one each for classes A, B and C), one processor, a total of two (2) retail establishments and two (2) microbusinesses, as defined

[1] Michigan law provides for writ of mandamus, a vehicle to compel the exercise of discretion by a public official, where the plaintiff has "a clear legal right to performance of the specific duty sought to be compelled and that the defendant has a clear legal duty to perform such act...." *Grabow v Macomb Twp*, 270 Mich App 222, 226; 714 NW2d 674 (2006) (internal quotations and citations omitted), but not the manner in which the official is to exercise that discretion to reach a particular outcome sought by the petitioner. *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994). Apparently, Plaintiff recognizes that it has no right to mandamus to compel the City of Royal Oak or its Manager to exercise his discretion under the City's RME ordinance in Plaintiff's favor.

RECEIVED by MSC 12/10/2025 3:03:01 PM

in the MRTMA. RME Ord, § 435-2(A) and (B). Because there are limitations of the number for each type of license, the Ordinance further provides for the City Manager to open a "window" for receipt of applications for the various types of RME licenses. RME Ord, § 435-4(C)(1), to evaluate the applications and assign a "license slot" to successful applicants for each type of license. RME Ord, § 435-4(A)(2). If there are more applications received than available licenses, the ordinance directs the City Manager to conduct a "competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City." RME Ord, § 435-4(C)(2). The City Manager is to conduct this process by considering various criteria established by the Ordinance. RME Ord, § 435-4(C)(4)(a)-(j).

In accordance with the ordinance, Royal Oak City Manager Paul Brake opened a window from December 7, 2020- February 1, 2021, for receipt of RME license applications. Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications. (**Ex 2**, Affidavit of Paul Brake, ¶ 8[2]). Plaintiff, Quality Roots, applied for two (2) RME retailer licenses (**Ex 3**). Mr. Brake conducted his evaluation and assigned license slots to one applicant, Intervening Defendant PGSH Holdings (Gatsby), for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment. *Id.*, ¶ 12.

The City Manager notified Plaintiff that its application was not initially chosen as a result of the competitive process for the retailer license slot in the zoning district where it applied. (**Ex 3**, Dec 15, 2021 letter to Plaintiff). Plaintiff was one of several applicants placed on a "standby" or waiting list, so that if an applicant failed to complete or pass the remainder of the process, the available license

[2] City Manager Brake's Affidavit was also attached as Exhibit 2 to Defendant's Response to Plaintiff's Motion for Preliminary Injunction and Order to Show Cause.

RECEIVED by MSC 12/10/2025 3:03:01 PM

slot(s) could be filled by the next highest ranked applicant. *Id.*, ¶ 15. Manager Brake did not deny Plaintiff's application, but allowed Plaintiff to remain in consideration if one of the other license slots was unable to be filled. *Id.*; Ex 3. If the other recipients of a license slot complete the process and are eventually licensed, then the City Manager will issue a letter denying Plaintiff's application. *Id.* The City Commission has not yet scheduled site plan approval for any license slot recipient, one of the further necessary steps for completion prior to issuance of an RME license. *Id.*, ¶ 13.

Plaintiff has filed this suit seek declaratory and injunctive relief based on a purported violation of the dormant Commerce Clause, rights of due process and equal protection under both the U.S. and Michigan Constitutions, and facial and as-applied challenges to the City's ordinance allegedly in violation of the MRTMA.

LEGAL ARGUMENT

I. ROYAL OAK HAS NOT VIOLATED THE OPEN MEETINGS ACT.

Plaintiff claims that the process implemented by the Royal Oak city manager by consulting with other department heads to seek their advice in making his determination of which applicants to award license slots violated the Open Meetings Act (OMA), MCL 15.261, *et seq*.

The OMA provides that all decisions and deliberations of a "public body" must be held at a meeting open to the public and held in a place available to the general public. MCL 15.263(1)-(3). The OMA expressly defines "public body":

> "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

"Public body" connotes a collective entity. *Herald Co v City of Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). In *Herald*, the Supreme Court concluded that, "[A]n individual executive acting in his

RECEIVED by MSC 12/10/2025 3:03:01 PM

executive capacity is not a public body for the purposes of the OMA." *Id.*, at 130.

In *Herald*, the Bay City manager made a hiring recommendation, per the city charter, to serve as the new chief of the city's fire department. The city manager created a committee to advise him in that task. The manager took the advice and developed a hiring recommendation to the city council. A local newspaper challenged this process under the OMA, claiming that the committee was a public body to which the OMA applied, and that the committee's meetings had been in violation of the OMA.

The Supreme Court ultimately disagreed with the plaintiff's argument. It also distinguished the plaintiff's citation to other cases[3] where the Court had held that committees created by statute or by other public bodies themselves exercised governmental authority were public bodies and subject to the OMA. *Id.*, at 133-135.

The Royal Oak RME ordinance, § 435-2(E), provides that, "The City Manager is granted the power *to fully and effectively* implement and administer the municipal license application process." (Emphasis added.) § 435-4(C) of the ordinance confers the following decision-making authority for the selection process to determine recipients of City licenses:

> 1. If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.
> 2. At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.
>
> ***
>
> 3. The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City *as determined*

[3] *Menominee Co Taxpayers Alliance, Inc v Menominee Co Clerk,* 139 Mich App 814; 362 NW2d 871 (1984); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211; 507 NW2d 422 (1993).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> *by the City Manager or his or her designee*. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. (Emphasis added.)

Under the ordinance, then, the City Manager is the decision-making authority for awarding license slots, and City Manager Brake made those decisions for certain types of licenses available in this instance. Ex 2, ¶ . As an individual executive official and the chief administrative officer exercising his executive administrative authority[4], the city manager is not a "public body" to which the OMA applies. *Herald, supra.*

Nor does City Manager Brake's seeking advice from other City officials or even meeting with them violate the OMA. Manager Brake attests that he consulted with other City officials, whom Plaintiff has termed the "Ranking Committee," in an attempt to make that so-called "committee" a public body and subject to the OMA. However, the Supreme Court rejected this very argument in *Herald*:

> Nor do we agree with the contention that the committee that was formed by the city manager was subject to the requirements of the OMA under the rationale in *Booth*. The city manager may have delegated some of his authority to the committee he created and, were the city manager himself subject to the OMA, the committee he created might also have been subject to the OMA pursuant to *Booth*. *Here, however, because the city manager was not subject to the OMA, Booth has no application*. Because the city manager's committee in this case was not "empowered by state constitution, statute, charter, ordinance, resolution, or rule," it was not a public body for purposes of the OMA, and the committee's actions did not violate that statute. *Id.*, at 135-136 (emphasis added).

This circumstance is on all-fours with the case before this Court. Importantly, there is no provision in the Royal Oak RME ordinance for decision-making by committee. Ex 1, Chapter 435. Rather, the ordinance confers upon the City Manager the authority "to fully" implement the scheme created in the ordinance. The so-called "ranking committee" here has no legal status as a public body, but is simply a collection of administrative staff providing opinions and advice to the City Manager to

[4] See discussion of executive authority in *Coeus v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued January 20, 2022 (Docket No. 353844) – **Ex 4**.

RECEIVED by MSC 12/10/2025 3:03:01 PM

help *him* carry out *his* functions and duties under the ordinance.

The city manager sought input from the various administrative staff, but he alone made the decisions under his authority conferred by the ordinance. Ex 2, ¶ 11. He did not even delegate his authority in any respect to the other administrative officials, but simply sought their advice as to the specific areas of expertise relevant to the applications. *Id.* No other person's opinion was dispositive and there was no consensus or vote taken to reach the final decision to award license slots. *Id.*

The City Manager's status as an individual executive official exercising his own authority conferred by the ordinance is not a public body to which the OMA applies. *Herald, supra.* Thus, the holding in *Herald* directly applies to this case and there has been no violation of the OMA here. Plaintiff has failed to state a claim upon which relief can be granted, and there is no genuine issue of material fact that would make the City Manager a "public body" subject to the OMA.[5]

II. PLAINTIFF'S CLAIMS ARE NOT RIPE, AS PLAINTIFF HAS NOT BEEN DENIED A LICENSE.

The doctrine of ripeness is closely related to the standing doctrine in that it focuses on the timing of the action. *Van Buren Chrtr Twp v Visteon Corp*, 319 Mich App 538, 553-554; 904 NW2d 192 (2017), *Mich. Chiropractic Council v. Comm'r of Office of Fin. & Ins. Servs.*, 475 Mich. 363, 379; 716 NW2d 561 (2006) (opinion by Young J.) (emphasis omitted), overruled on other grounds by *Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.*, 487 Mich. 349; 792 NW2d 686 (2010). The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. *Id.* A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Id.*; *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (2008).

[5] The OMA also authorizes a cause of action for its violation against "a public body [that] is not complying with [the OMA]." MCL 15.271(1). If, as Plaintiff posits, the city manager or the so-called ranking committee is not complying with the OMA, then that public body, and not the City of Royal Oak, is the proper party to sue for violation of the OMA. See MCR 2.201(C)(5).

RECEIVED by MSC 12/10/2025 3:03:01 PM

"'A challenge to the validity of a zoning ordinance 'as applied' ... is subject to the rule of finality.'" *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 764; 630 NW2d 646 (2001), quoting *Paragon Properties Co v Novi,* 452 Mich 568, 576; 550 NW2d 772 (1996). "The legislatively established authorities for enacting zoning ordinances, and for granting variances, must render a final decision on a zoning request before the issue is ripe for judicial review." *Vestevich, supra*, citing *Paragon, supra*, at 573–583. Plaintiff is effectively challenging the application of the ordinance by the City Manager here, but there is not yet a final decision.

In the present case, Quality Roots has not been denied a license. If either of the two applicants granted a license slot fails to complete the process, Plaintiff might still obtain a license slot. However, this is entirely speculative at this point. If the City Manager ultimately denies Plaintiff's applications, as explained in Ex 3, then it has a right to appeal that determination. Ex 1, § 435-4(D)(10). In either case, there has not been a final decision to deny Plaintiff's applications. Plaintiff's filing here is therefore premature as not ripe, and if its applications are ultimately denied, it must exhaust administrative remedies available to it under the ordinance before resorting to litigation. See *Judges of the 74th Judicial Dist v Bay County*, 385 Mich 710, 727-728; 190 NW2d 219 (1971); *School Dist of the City of Benton Harbor v State Tenure Comm*, 372 Mich 270; 126 NW2d 102 (1964).

There is no genuine issue of material fact that the licensing process is not final and Plaintiff's claims here are therefore not ripe and entirely speculative at this juncture. Defendant is therefore entitled to summary disposition. MCR 2.116(C)(10).

RECEIVED by MSC 12/10/2025 3:03:01 PM

III. PLAINTIFF'S CONSTITUTIONAL CLAIMS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiff claims a violation of the due process guarantees of the federal and Michigan Constitutions, US Const, Am XIV, § 1, as well as Const 1963, art I, § 17[6]. The Michigan constitutional provision is construed coextensively with its federal counterpart. *Cummins v Robinson Twp,* 283 Mich App 677, 700–701; 770 NW2d 421 (2009); *Shepherd Montessori Center Milan v Ann Arbor Charter Twp,* 486 Mich 311, 319-320; 783 NW2d 695 (2010). Therefore, federal law interpreting the U.S. Constitution guarantees of due process and equal protection applies to construction of the Michigan versions of those protections.

In order to assert *any* of the constitutional claims, Plaintiff must establish a liberty or property interest protected by the rights asserted. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 740; 605 NW2d 18 (1999). "'Constitutionally protected property interests are not created by the Constitution itself but rather by 'existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.' " *RSWW Inc v Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005). To establish a property interest, a person must have more than an abstract desire for it or unilateral expectation of it; rather, it must have a "legitimate claim of entitlement to it"- in this case, a clear right or entitlement to a recreational marijuana establishment license slot. *Id.,* citing *Board of Regents v Roth*, 408 US 564, 577 (1972); *Braun v Ann Arbor Charter Twp*, 519 F3d 564, 573 (CA 6, 2008); *Youkhanna v Sterling Heights*, 332 FSupp3d 1058, 1068 (ED Mich, 2018).

"[A] party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *Id* at 435, quoting *Med Corp, Inc v*

[6] "No person shall be … deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

RECEIVED by MSC 12/10/2025 3:03:01 PM

City of Lima, 296 F3d 404, 409 (CA 6, 2002). In this case, Plaintiff applied for licenses to operate recreational marijuana retailer establishments. Whether to award or to deny the license is wholly within the City Manager's discretion. RME Ord, § 435-2(E). Therefore, Plaintiff's interest in its application and in a license is, at best, merely a unilateral expectation, and does not create a property right. Nor may Plaintiff claim a property right in government procedures themselves. *Janosek v City of Cleveland*, 718 F3d 578, 582 (CA 6, 2013), citing *Richardson v Twp of Brady,* 218 F3d 508, 517 (CA 6, 2000). Therefore, Plaintiff does not have a property right which is protected by the Constitution here.

This conclusion does not change because of Plaintiff's allegations of arbitrary or capricious actions. "To succeed on a substantive due process claim based on this theory, a plaintiff is required to show that '(1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action.'" *Paterek v Village of Armada*, 801 F3d 630, 648 (CA 6 2015), quoting *Braun, supra.*

The U.S. Sixth Circuit Court of Appeals considered a claim of deprivation of property without due process of law in a case involving an applicant for a license permitted by state law and local ordinance. *Wojcik v City of Romulus*, 257 F3d 600 (CA 6 2001) is particularly applicable in this case, where the court affirmed that Michigan law confers a property interest to a liquor license only upon *a current holder* of the license. The Court relied on its opinion in *Shamie v City of Pontiac*, 620 F2d 118 (CA 6 1980), stating that "a first-time liquor license applicant was not entitled to procedural due process rights under Michigan law." *Wojcik, supra.* The Court continued:

> [U]nder Michigan law an applicant for a liquor license, as distinguished from a license holder facing renewal or revocation proceedings, does not have a protected interest. The holder of a liquor license may well have a legitimate claim of entitlement to its renewal. One applying for a liquor license has no such claim of entitlement. In the former case there is a 'property' interest; in the latter there is none. *Shamie v City of Pontiac*, 443 F Supp 679, 683 (E D Mich 1977), aff'd in part, 620 F.2d 118. Similarly, first-time applicants for an entertainment permit are likewise not entitled to due process. *Bradfield v Blesma*, 675 F. Supp. 382 (W D Mich 1987).

Wojcik, 257 F3d at 610.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The *Wojcik* Court relied upon *Morse v Liquor Control Comm'n*, 319 Mich 52, 66 (1947). In that case, a liquor licensee of a class 'A' license was denied upon application a class 'B' license. Affirming the denial, the Supreme Court held:

> Notwithstanding that the liquor business is entirely lawful, no one has an inherent right to a liquor license which is a privilege granted by the State under proper restrictions. (Citation omitted.) A liquor license is not a contract in the sense that the licensee has thereby acquired any vested or property rights, but is in the nature of a permit subject to the control of the State in the exercise of its police power. (Citation omitted.) Although [the] defendant … may be granted a renewal of his hotel class 'A' license … we find that he is not entitled to a hotel class 'B' license.

Like *Wojcik, Shamie* and *Bradfield*, this case involves a license application in a pervasively regulated industry. The MRTMA is designed similarly to the Liquor Control Code of 1998, MCL 436.1101, *et seq*, featuring implementation by regulatory rules and oversight by a state board (the Liquor Control Commission) with local government regulation as to number and types of licenses available. There is no reason to treat Plaintiff, a first-time applicant for a Royal Oak recreational marijuana establishment license, any differently than if it had applied for a liquor license. There is no legitimate claim of entitlement to an RME license any more than for a liquor license. Therefore, Plaintiff does not have a property interest for purposes of its claims of due process violations under the U.S. and Michigan Constitutions alleged in Counts III and IV of the Complaint.

The Michigan Court of Appeals adopted the foregoing rationale and upheld summary disposition on these very grounds in *Coeus, LLC v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued Jan 20, 2022 (Docket No. 353844), (**Ex 4**). There, the plaintiff sued the city under various theories, including Michigan constitutional claims of due process and equal protection, for the city's grant of a medical marijuana license to another applicant and denial of plaintiff's application. The Court applied the foregoing law related to first-time liquor license applicants to the plaintiff who applied for a first-time medical marijuana license, and held that Plaintiff had no property interest in a medical marijuana license that had not been issued. *Id.*, sl. op. at p 10.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The second clause of Art I, § 17 provides Plaintiff no help, either. That clause reads, "The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." The appellate courts have unanimously interpreted this clause to apply only to "investigations and hearings". *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 210; 684 NW2d 910 (2004) ("Plainly, the constitutional provision at issue here provides no protection unless plaintiff's claims arose out of an investigation. See *Johnson v Wayne Co.,* 213 Mich App 143, 155, 540 NW2d 66 (1995) (fair and just treatment clause did not apply because case did not involve a hearing or investigation))." Plaintiff has not alleged an investigation or a hearing, and its due process claim therefore fails to state a claim upon which relief can be granted. MCR 2.116(C)(8).

IV. ROYAL OAK'S ORDINANCE DOES NOT VIOLATE MRTMA.

MRTMA, specifically MCL 333.27956 and 27959, provides municipalities with discretion to adopt an ordinance that sets forth a competitive process, which Royal Oak here did. The Royal Oak City Commission adopted its RME ordinance in accordance with §§ 6 and 9(4) of MRTMA:

> Sec. 6. 1. [A] municipality *may* completely prohibit or limit the number of marihuana establishments within its boundaries. …
>
> 2. A municipality *may* adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that:
>
> (a) establish reasonable restrictions on public signs related to marihuana establishments;
>
> (b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;
>
> ***
>
> 3. A municipality *may* adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.
>
> 4. A municipality *may* charge an annual fee of not more than $5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality. MCL 333.27956(1)-(4) (emphasis added).

RECEIVED by MSC 12/10/2025 3:03:01 PM

The provisions of the RME ordinance that Plaintiff claims violate MRTMA in fact do not conflict with MRTMA. The qualifications imposed by the ordinance to obtain a license do not conflict with MRTMA or the "rules promulgated by the department". MCL 333.27956(2) and (3).

MCL 333.27959(4) allows municipalities to use local criteria when deciding among competing applications by a competitive process for licenses:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act . . . *the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality*." (Emphasis added.)

Plaintiff recognizes that the statute requires that the City select applicants who are best suited to operate in compliance with MRTMA but entirely disregards the crucial language, "within the municipality", when focusing on the command in the above section. "[W]ords in a statute must be read harmoniously to give effect to the statute as a whole, and 'every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.'" *People v Jones,* 301 Mich App 566, 578 (2013), quoting *People v Peltola,* 489 Mich 174, 181 (2011). In reading Section 9(4) of MRTMA in whole, where the number of applications exceeds the available licenses, a municipality must create a competitive process that is *intended* to select applicants that are best suited to operate in compliance with MRTMA, as well as best suited to operate in the particular municipality.

Read in full and in its proper context, § 9(4) of MRTMA gives municipalities a level of local discretion in selecting criteria that comply with MRTMA and that satisfy the municipality's own goals and particularized concerns of each community. It makes sense that MRTMA would confer municipalities discretion in deciding what applicants are best for their own communities, because § 6(1) of the Act gives broad local discretion in choosing whether to even allow marijuana businesses in the first place. MCL 333.27956(1). It would be illogical to place strict requirements on municipalities in one section of MRTMA, while at the same time giving broad discretion to municipalities in another.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Additionally, the statute clearly (and correctly) contemplates high interest in adult use marijuana businesses where they are authorized by ordinance, and that municipalities would receive more applications than licenses available. Thus, local ordinances must supplement the Act's requirements to establish the process intended to select the best applicants to operate in each municipality. Otherwise, the MRTMA could have prohibited *any* additional requirements other than those expressed in the statute. It did not. Instead, the only limitations it placed on other ordinances is that they must "not [be] unreasonably impracticable and do not conflict with this act." MCL 333.27956(2). Therefore, in foreseeing this problem, the statutory language grants communities the ability to distinguish between many equally qualified applicants, as the City did. Furthermore, the phrase "intended to select applicants" is also crucial here. The language in MCL 333.27959(4) focuses on the intent of the municipalities, not any other entity, in directing them to choose an applicant through a process best suited to operate within their communities.

Plaintiff's interpretation of § 9(4) of MRMTA is flawed and inaccurate since the City adopted criteria in the ordinance that allows it to select the applicants best suited to operate in the City while also complying with MRTMA. If the City could not add to the statute's selection criteria in MRTMA, there would be no reason for the statute to allow municipalities to restrict the number of licenses. Here, a prerequisite to applying for a license in the City was prequalification from the Marijuana Regulatory Agency (MRA). RME Ord, § 435-4(A)(3)(a). Once prequalified by the MRA, the applicants are already in compliance with MRTMA and there would be no reason (or ability) for the City to turn down any of the 31 license applications it received. That was clearly not the legislative intent of MRTMA, as it unambiguously provides, "a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries". MCL 333.27956(1).

The competitive process MRTMA requires is meant to select applicants from a pool of otherwise qualified applicants who have already demonstrated their ability to comply with MRTMA.

RECEIVED by MSC 12/10/2025 3:03:01 PM

But an applicant may be "best suited" relative to other applicants who have demonstrated an ability to comply with MRTMA because it can operate in a manner which brings additional benefits to the community, or better achieves the community's other objectives, or simply provides a better fit for the community. To have a competitive process among applicants who all have demonstrated their ability to operate in compliance with MRTMA, it follows that the City should have – and that MRMTA contemplates the City will have – the ability to consider and weigh the full range of what an applicant brings to the table.

The MRA requires a two-step process for state marijuana licensing. The State will not allow the applicant's State step two application for a State adult use marijuana license to proceed without an attestation signed by the municipality where the applicant wishes to operate and leaves it to each municipality to select the best suited to operate. The State does not interfere with the selection process. The City adopted a process that was intended to select the applicants best suited to operate a marijuana business in the City and in compliance with MRTMA. There is no doubt the process was competitive for retailer establishment licenses since the City received 31 applications. The ordinance expands upon the applicant requirements of MRTMA and does not directly conflict with MRTMA. A "direct conflict" exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. *Ter Beek v City of Wyoming,* 495 Mich 1, 20; 846 NW2d 531 (2014), *People v. Llewellyn,* 401 Mich. 314, 322, n 4; 257 NW2d 902 (1977).

The Michigan Supreme Court, in *Miller v Fabius Twp Bd, St Joseph Cty,* 366 Mich 250 (1962), held that a statute and ordinance can coexist when the only difference between them is that the ordinance goes further in its prohibition, not countering the statute's prohibition. *Id.* at 256-257. The Court in *Miller* also held that, "…an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict" and "[u]nless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of

RECEIVED by MSC 12/10/2025 3:03:01 PM

uniformity in detail". *Id.* at 256, 257. More recently, the Michigan Supreme Court, in 2020, held that a local ordinance is not preempted by State statute if the ordinance is not in direct conflict with the statute. *DeRuiter v Byron Twp,* 505 Mich 130 (2020). In *DeRuiter,* the Court ruled that the local zoning ordinance that was the subject of that case only added to the statute, Michigan Medical Marihuana Act (MMMA), MCL 333.26421, *et seq*, and did not contradict the requirements in the statute. *Id.* at 147.

In the absence of a direct conflict between the City's licensing standards and evaluation criteria, there is no conflict. The City ordinance cannot be found to violate MRTMA by adding additional selection criteria and considerations to establish a competitive process to determine which applicants – among all of the qualified applicants – "are best suited to operate in compliance with [MRTMA] within the municipality" in accordance with MCL 333.27959(4).

Plaintiff also complains of the award of a license slot to Intervening Defendant Gatsby Cannabis, because it is located less than 1,000 feet from a purported "school." Whether the Oakland Technical Center qualifies as a school or not, the City has the authority to reduce the statutory distancing requirement.

MRTMA provides certain standards in MCL 333.27958 for state licensure of a marijuana establishment. One of these criteria is that, "the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement[.]" MCL 333.27958(3)(c). To this end, in conjunction with the RME licensing ordinance, Royal Oak also adopted amendments to its zoning ordinance under its zoning authority conferred by the Michigan Zoning Enabling Act, MCL 125.3101, *et seq*., allowing marijuana uses in certain zoning districts as a special land use. Zoning Ordinance (ZO), § 770-52.1(B). (**Ex 5**). The special land use

RECEIVED by MSC 12/10/2025 3:03:01 PM

process requires site plan review and recommendation by the Planning Commission before a final decision by the City Commission. *Id.*

The Royal Oak ordinance does contain the 1,000-foot distancing requirement. ZO, § 770-52.1(B)(3). However, it also bestows discretionary authority to deviate from the strict requirements of the ordinance upon the City Commission: "Deviations from applicable setback, parking, a*nd other requirements* may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section." ZO, § 770-52.1(B)(14) (emphasis added). Thus, the City Commission will have to decide whether the purported school falls within the definition of a school to which the buffer requirement applies, and if so, whether it will authorize a deviation from the distancing standard in conjunction with Gatsby's application for site plan approval.

Thus, the City Ordinances do not violate the MRTMA. Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). There is further no genuine issue of material fact, and Royal Oak is entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH
& AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

PROOF OF SERVICE

I certify that on March 11, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 1

RECEIVED by MSC 12/10/2025 3:03:01 PM

City of Royal Oak, MI
Saturday, March 5, 2022

Chapter 435. Marihuana

[HISTORY: Adopted by the City Commission of the City of Royal Oak as indicated in article histories. Amendments noted where applicable.]

Article I. Recreational Marihuana Establishments

[Adopted 7-27-2020 by Ord. No. 2020-06]

§ 435-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed as follows:

APPLICANT

Unless specifically stated to mean a state license, means an individual, organization, partnership, company, corporation, enterprise, or other entity that applies for a municipal license as well as the person or persons associated with the applicant.

A. For purposes of this definition, an applicant includes a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

(1) For an individual or sole proprietorship: the proprietor and spouse.

(2) For a partnership and limited liability partnership: all partners and their spouses.

(3) For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

(4) For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

(5) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(6) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(7) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(8) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

B. For purposes of this definition, an applicant does not include:

(1) A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

(2) A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana-infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms "franchise," "franchisor," and "franchisee" shall have the meanings set forth in Section 2 of the Franchise Investment Law, 1974 PA 269, MCLA 445.1502, as may be amended.

(3) A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

(4) A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property, including, but not limited to, brands and recipes.

APPLICATION

An application for a municipal license under this article and includes all supplemental documentation attached or required to be attached thereto; the person filing the application shall be known as the "applicant."

APPLICATION DOCUMENTS

The items required as part of an application submitted to the City prior to them being accepted as complete as provided in § **435-4**.

BOARD

The Marihuana Licensing Board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

CLERK

The City of Royal Oak Clerk or his/her designee.

CO-LOCATED FACILITY or CO-LOCATION

Marihuana businesses holding two or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

CULTIVATE or CULTIVATION

To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

DEPARTMENT

The Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan license for a marihuana establishment.

DESIGNATED CONSUMPTION ESTABLISHMENT

A commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

EXCESS MARIHUANA GROWER

RECEIVED by MSC 12/10/2025 3:03:01 PM

A license issued to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

GROWER

A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

LICENSE

A current and valid license for a marihuana establishment issued by the State of Michigan.

LICENSEE

A person holding a current and valid Michigan license for a marihuana establishment.

MARIHUANA

That term as defined in Section 3 of the MRTMA, MCLA 333.27953, as may be amended.

MARIHUANA ACCESSORIES

Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

MARIHUANA CONCENTRATE

The resin extracted from any part of the plant of the genus cannabis.

MARIHUANA ESTABLISHMENT

A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the Department pursuant to MCLA 333.27951, as may be amended.

MARIHUANA EVENT ORGANIZER

A person licensed to apply for a temporary marihuana event license under these rules.

MARIHUANA MICROBUSINESS

A person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

MARIHUANA PROCESSOR

A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA RETAILER

A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

MARIHUANA-INFUSED PRODUCT

A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MICHIGAN MARIHUANA FACILITIES LICENSING ACT or MMFLA

Public Act 281 of 2016, MCLA 333.27101 et seq., as may be amended.

MICHIGAN MARIHUANA TRACKING ACT

RECEIVED by MSC 12/10/2025 3:03:01 PM

Public Act 282 of 2016, MCLA 333.27901 et seq., as may be amended.

MICHIGAN MEDICAL MARIHUANA ACT or MMMA
2008 IL 1, MCLA 333.26421 et seq., as may be amended.

MUNICIPAL LICENSE
A current and valid license for a marihuana establishment issued under this article, which shall be granted to a municipal license holder only for and limited to a specific municipally licensed premises and a specific municipally licensed property. Said municipal license shall be in addition to the special use permit and site plan approval required to be obtained pursuant to the City Zoning Ordinance.

MUNICIPAL LICENSE HOLDER
An individual, organization, partnership, company, corporation, enterprise, or other entity that holds a current and valid municipal license issued under this article as well as the person or persons associated with the municipal license holder as applicant(s) for that municipal license.

MUNICIPAL LICENSE SLOT
An unissued permit available to be issued to an applicant.

MUNICIPALLY LICENSED PREMISES
The particular building, buildings, or tenant space within which the municipal license holder will be authorized to conduct the facility's activities pursuant to the municipal license.

MUNICIPALLY LICENSED PROPERTY
The real property comprised of a lot, parcel, or other designated unit of real property upon which the municipally licensed premises is situated.

PERSON
A natural person, company, partnership, profit or nonprofit corporation, limited liability company, or any joint venture for a common purpose.

PREMISES
The particular building, buildings, section of land, or tenant space within which a particular use is conducted.

PUBLIC PLACE
Any area in which the public is invited or generally permitted in the usual course of business.

RULES
Rules promulgated by the Department in consultation with the Board to implement the Act, including the LARA Rules, as may be amended.

SAFETY COMPLIANCE ESTABLISHMENT
A person licensed to test marihuana, including certification for potency and the presence of contaminants.

SCHOOL
A preexisting public or private school with a curriculum equivalent to kindergarten through 12th grade.

SECURE TRANSPORTER
A person licensed to obtain marihuana form marihuana establishments in order to transport marihuana to marihuana establishments.

STACKED LICENSE
More than one state license issued to a single licensee to operate as a Class C marihuana

RECEIVED by MSC 12/10/2025 3:03:01 PM

grower as specified in each state license at a marihuana establishment.

STATE OPERATING LICENSE or, unless the context requires a different meaning, LICENSE
A license issued by the Department that allows a person to operate a marihuana establishment.

TEMPORARY MARIHUANA EVENT LICENSE
A state license held by a marihuana event organizer for an event where the on-site sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

WINDOW
The time period set by the City Manager to receive applications for evaluation by the competitive process as specified in this article.

§ 435-2. Municipal license required; eligibility; general provisions.

A. The City hereby authorizes the operation of the following types of marihuana establishments:

(1) Growers, Class A.

(2) Growers, Class B.

(3) Growers, Class C.

(4) Processors.

(5) Retailer.

(6) Safety compliance facilities.

(7) Secure transporters.

(8) Marihuana microbusiness.

(9) Co-located facilities as defined in this article.

B. The following number of municipal licenses can be issued for each authorized marihuana establishment type:

(1) Growers, Class A: one.

(2) Growers, Class B: one.

(3) Growers, Class C: one.

(4) Processors: one.

(5) Retailers: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

(6) Safety compliance facilities: one.

(7) Secure transporters: one.

(8) Marihuana microbusiness: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General

RECEIVED by MSC 12/10/2025 3:03:01 PM

Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

C. No person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article. No marihuana establishments are allowed nor shall a municipal license be considered or granted for those activities and facilities defined as a "special license," being a state license described under Section 8 of the MRTMA and issued by the state pursuant to Section 9 of the MRTMA, MCLA 333.2795 and 333.27959, as may be amended, including, but not limited to, designated consumption establishment, excess marihuana grower, marihuana event organizer, temporary marihuana event, and any special license types hereafter recognized by the state.

D. Marihuana establishments shall operate only as allowed under this article.

E. The City Manager is granted the power to fully and effectively implement and administer the municipal license application process.

F. The requirements set forth in this article shall be in addition to, and not in lieu of, any other licensing or municipal licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this article, each applicant shall pay nonrefundable review fees, application fees, annual fees, renewal fees and inspection fees for municipal licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding marihuana establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The municipal license fee requirement 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.

H. The City has no obligation to process or approve any incomplete application.

I. A municipal license shall remain valid for one year following removal of all stipulations on an issued municipal license.

J. It is the sole and exclusive responsibility of each municipal license holder or applicant at all times during the application period and during its operation to immediately provide the City with all material changes in any information submitted on an application and any other changes that may materially affect any state license or its City municipal license.

K. No municipal license issued under this article may be assigned or transferred to another person or entity except as specified in this article. No municipal license issued under this article is transferrable to any other location except for the municipally licensed premises on the municipally licensed property.

L. The original municipal license issued under this article shall be prominently displayed at the municipally licensed premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

M. A municipal license holder may not engage in any other marihuana establishment in the municipally licensed premises or on the municipally licensed property, or in its name at any other location within the City, without first obtaining a separate municipal license.

N. No municipal license shall be granted or renewed for a marihuana establishment in a residence.

O. Co-located facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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

RECEIVED by MSC 12/10/2025 3:03:01 PM

is consistent with zoning and other provisions of the City Code of Ordinances. If these conditions are met, more than one business may be located on one parcel.

§ 435-3. Other laws and ordinances.

In addition to the terms of this article, any marihuana establishment shall comply with all City ordinances, including, without limitation, the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan.
[Amended 10-12-2020 by Ord. No. 2020-12]

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

[1] A description of the type of marihuana establishment proposed and the

RECEIVED by MSC 12/10/2025 3:03:01 PM

anticipated or actual number of employees.

[2] A security plan meeting the requirements of § **435-5** of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § **740-7**.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § **770-12**, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect, or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § **435-5A(5)** of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § **435-4** of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any

RECEIVED by MSC 12/10/2025 3:03:01 PM

public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment;
[Amended 10-12-2020 by Ord. No. 2020-12]

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant.

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state

RECEIVED by MSC 12/10/2025 3:03:01 PM

or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request an extension up to six months to this time frame, which may be granted by the City Clerk.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § **435-4C**, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following:

(a) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § **435-5A(5)** of this article.

(b) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

(d) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

RECEIVED by MSC 12/10/2025 3:03:01 PM

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § **435-4D(7)(a)** will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

§ 435-5. Operational requirements for marihuana establishments.

A. A marihuana establishment issued a municipal license under this article and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

(1) Scope of operation. Marihuana establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The marihuana establishment must hold a valid local municipal license and state marihuana establishment license for the type of marihuana establishment intended to be carried out on the municipally licensed property. The marihuana establishment operator, owner or licensee must have documentation available that local and state sales tax requirements, including holding any licenses, if applicable, are satisfied.

(2) Required documentation. Each marihuana establishment shall be operated from the

RECEIVED by MSC 12/10/2025 3:03:01 PM

municipally licensed premises on the municipally licensed property. No marihuana establishment shall be municipally licensed to operate from a movable, mobile or transitory location, except for a municipally licensed or licensed secure transporter when engaged in the lawful transport of marihuana. No person under the age of 18 shall be allowed to enter into the municipally licensed premises without a parent or legal guardian.

(3) Security. Municipal license holders shall at all times maintain a security system that meets state law requirements and, in addition, shall also include the following:

(a) Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, seven days a week, and which will contact local law enforcement if triggered;

(b) A locking safe permanently affixed to the municipally licensed premises that shall store all marihuana and cash remaining in the marihuana establishment overnight;

(c) All marihuana in whatever form stored at the municipally licensed premises shall be kept in a secure manner and shall not be visible from outside the municipally licensed premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the municipally licensed premises; and

(d) All security recordings and documentations shall be preserved for at least 30 days by the municipal license holder and made available to any law enforcement upon request for inspection.

(4) Operating hours. No retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.

(5) Required spacing.

(a) The following spacing requirements for marihuana establishments are required:

[1] No marihuana establishment shall be permitted within a 1,000-foot radius of any school.

[2] No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

[3] Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(b) Spacing requirements become effective upon issuance of a municipal license, whether conditional or not.

(6) Amount of marihuana. The amount of marihuana on the municipally licensed property and under the control of the municipal license holder, owner or operator of the marihuana facility shall not exceed that amount permitted by the state license or the City's municipal license.

(7) Sale of marihuana. The marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The marihuana establishment is prohibited from selling, soliciting, or receiving orders for marihuana or marihuana products over the internet.

(8) Sign restrictions. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any municipally licensed premises nor be visible outside of the municipally licensed premises on the municipally licensed property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(9) Use of marihuana. The sale, consumption or use of alcohol or tobacco products on the municipally licensed premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the municipally licensed premises is prohibited.

(10) Indoor operation. All activities of marihuana establishment, including, without limitation, distribution, growth, cultivation, or the sale of marihuana, and all other related activity municipally licensed under the municipal license holder's license or municipal license must occur indoors. The marihuana establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the municipally licensed premises. No consumption of marihuana shall take place on the premises of a marihuana establishment.

(11) Distribution. No person operating a marihuana establishment shall provide or otherwise make available marihuana to any person who is not legally authorized to receive marihuana under state law.

(12) Permits. All necessary building, electrical, plumbing and mechanical municipal licenses must be obtained for any part of the municipally licensed premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of marihuana are located.

(13) Waste disposal. The municipal license holder, owner and operator of the marihuana establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the license or municipal license. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

(14) Proof of insurance. A municipal license holder shall at all times maintain in full force and effect for the duration of the license workers' compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A municipal license holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this subsection. 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.

(15) Transportation.

(a) Marihuana may be transported by a secure transporter within the City under this article, and to effectuate its purpose, only:

[1] By persons who are otherwise authorized by state law to possess marihuana;

[2] In a manner consistent with all applicable state laws and rules, as may be amended; and

[3] In a secure manner designed to prevent the loss of marihuana.

(b) No vehicle used for the transportation or delivery of marihuana under this article shall have for markings the words "marihuana," "marijuana" or "cannabis" or any similar words; pictures or other renderings of the marihuana plant; advertisements for marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture; or any other word, phrase or symbol indicating or tending to indicate that the vehicle is

RECEIVED by MSC 12/10/2025 3:03:01 PM

transporting marihuana.

(c) No vehicle may be used for the ongoing or continuous storage of marihuana, but it may only be used incidental to, and in furtherance of, the transportation of marihuana.

(16) Additional conditions. The City may impose such reasonable terms and conditions on a marihuana establishment special use as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this article and applicable law.

§ 435-6. Penalties and consequences for violation.

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this article or failure to comply with any of the requirements of this article shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this article. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this article.

§ 435-7. City liability and indemnification.

A. By accepting a municipal license issued pursuant to this article, the municipal license holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of marihuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a municipal license issued pursuant to this article, all municipal license holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a municipally licensed property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the municipal license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), or any other alleged violation of the law.

C. By accepting a municipal license issued pursuant to this article, a municipal license holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law, including the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Chapter 7 of the Michigan Public Health Code, MCLA 333.7101 et seq., as may be amended.

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-8. Municipal license as revocable privilege.

A. A municipal license granted by this article is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each municipal license is exclusive to the municipal license holder, and a municipal license holder or any other person must apply for and receive the City's approval before a municipal license is transferred, sold, or purchased. A municipal license holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a municipal license without prior state and local approval is grounds for suspension or revocation of the municipal license or for other sanction considered appropriate by the City.

B. Nonrenewal, suspension or revocation of municipal license. The City may, after notice and hearing as provided in § 434-4D(10) of this article, suspend, revoke, or refuse to renew a municipal license for any of the following reasons:

   (1) The applicant or municipal license holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this section or with any applicable state or local law or regulation.

   (2) The applicant or municipal license holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its municipal license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the municipal license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the municipal license.

   (3) The marihuana establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

§ 435-9. Authorization to inspect, search and examine.

A marihuana establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department, and the application for a marihuana establishment constitutes consent by the applicant, and all owners, managers, and employees of the marihuana establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the marihuana establishment to ensure compliance with this article or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a municipal license without a search warrant.

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 2

RECEIVED by MSC 12/10/2025 3:03:01 PM

AFFIDAVIT OF PAUL BRAKE

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

PAUL BRAKE, being first duly sworn, deposes and says that:

1. I have personal knowledge of the facts stated in this Affidavit and if called to testify, I am able to do so.

2. I hold a master's degree in public administration. I completed the Harvard Kennedy School for Senior Executives in State and Local Government, and the University of Virginia, Weldon Cooper School of Public Policy Senior Executive Institute.

3. I hold a certification as a Business Solutions Professional from Michigan State University and am a Certified Economic Developer (CEcD), certified by the International Economic Development Council.

4. I am employed by the City of Royal Oak as City Manager, a position I have held since May 2020.

5. I have previously held municipal management positions in Meridian Township and Grand Blanc, Michigan, and Morgantown, West Virginia, totaling more than 20 years in municipal administration before joining Royal Oak.

6. In my position as city manager, I frequently consult with department heads and other city administrative staff in various areas of concern that may affect decisions that I must make from day to day as the city's chief administrative officer.

7. Under the Royal Oak recreational marijuana licensing ordinance, I am responsible to evaluate applications for marijuana licenses and to assign municipal marijuana "license slots" to applicants judged to be best suited to operate in Royal Oak and in compliance with the state

RECEIVED by MSC 12/10/2025 3:03:01 PM

recreational marijuana law, which allows those applicants to proceed further through the process to possible licensure.

8. In the window of time during which applicants could submit applications for recreational marijuana licenses in 2020-2021, Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications.

9. In evaluating the applications, I consulted various department heads of the City administrative staff for advice relevant to certain aspects of the applications within their specialties, just as I commonly consult with them about other municipal matters and operations.

10. I consulted with my assistant, Susan Barkman; Timothy Twing, Director of Community Development; Joseph Murphy, City Planner; Holly Donoghue, City Engineer; Todd Fenton, Deputy City Manager and Director of Economic Development; Corey O'Donohue, Chief of Police; Jaynmarie Hubanks, City Treasurer; and City Attorney Aaron Leal.

11. The input I received from each department head varied from person to person. Each of them had different opinions about various aspects of the applications. Some gave me their opinions about how the applicants should be ranked. No other person's opinion was dispositive, and there was no consensus or "vote" taken. I alone decided the final rankings of marijuana applications required under the state law and city ordinance.

12. Upon completing my evaluations, I assigned license slots as follows: one applicant for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment.

RECEIVED by MSC 12/10/2025 3:03:01 PM

13. My decisions assigning license slots do not end the process. After public hearing and recommendation by the Planning Commission of its site plan review of successful applicants, the City Commission makes the final decision as to site plan review under the city's zoning ordinance.

14. If any holder of a license slot does not timely pay its fees or adhere to the other time limits established by the city's Recreational Marihuana ordinance, or does not complete or satisfactorily pass any step required by the ordinance, up to and including final approval, it will lose its license slot status.

15. Any applicant who is not initially assigned a license slot and whose application is not denied is put on a standby list. If another license slot becomes available, the next highest ranked application will be assigned an available license slot and permitted to proceed through the remainder of the process upon timely payment of the required fees. This way, the applicant does not need to reapply, pay additional fees, and begin the process again.

16. Once all applicants assigned a license slot successfully complete the remaining process through full licensure and the license slots are exhausted, then I will send a letter to each unsuccessful applicant advising that their application has been denied. If an applicant is denied, then it may not reapply until another license slot becomes available or a new window for receiving applications is opened.

Further, Affiant sayeth not.

PAUL J. BRAKE

Subscribed and sworn to before me
this 2 day of March, 2022

Notary Public
Oakland County, Michigan

RONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

My Commission Expires: Nov 22, 2023

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 3

Royal Oak

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

Quality Roots Inc.
123 South Main Street, Suite 200
Royal Oak, MI 48067

Quality Roots Inc.,

Thank you for applying for a Royal Oak marihuana retailer license (RME 4 and RME 5). Based on the applications as they were received, it was clear that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this time.

There were more retailer license applications than licenses allowed under the ordinance. At this time neither of your applications was selected to move forward in the licensing process. There are several applications that were well positioned to moved forward if one of the applicants selected for a retail license does not successfully complete the licensing process.

This letter is not a denial of your application. If the other business is successfully licensed, you will receive a denial letter at that time.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 4

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

COURT OF APPEALS

COEUS, LLC,

Plaintiff/Counterdefendant-Appellant,

v

CITY OF WALLED LAKE, LINDA S. ACKLEY, L. DENNIS WHITT, CHELSEA PESTA, and JENNIFER A. STUART,

Defendants-Appellees,

and

JOHN AND JANE DOES 1 THROUGH 20, FRANK MARRA, and MATTHEW CECCHETTI,

Defendants,

and

CUSTOM BUILT PROPERTIES, LLC, doing business as GREEN HOUSE OF WALLED LAKE, and JERRY MILLEN,

Defendants/Counterplaintiffs.

UNPUBLISHED
January 20, 2022

No. 353844
Oakland Circuit Court
LC No. 2018-170030-CZ

Before: GADOLA, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff, COEUS, LLC, appeals as of right the trial court's stipulated order of dismissal.[1] On appeal, plaintiff challenges the trial court's earlier opinion and order granting summary disposition in favor of defendants city of Walled Lake, Mayor Linda S. Ackley, City Manager L. Dennis Whitt, City Development Manager Chelsea Pesta, and City Clerk Jennifer A. Stuart (collectively, "the city defendants"). On appeal, plaintiff argues that the city defendants are not entitled to governmental immunity and that its claims alleging a violation of due process and promissory estoppel were legally sufficient. We affirm.

This case arises from the city of Walled Lake's implementation, under the authority of the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq*., of its medical marijuana facilities licensing ordinance and plaintiff's subsequent application for a license to operate a provisioning center. The ordinance specifies that there are to be three licenses for provisioning centers, with two located in the C-2 zoning district and one located in the C-3 zoning district. Walled Lake Ordinance C-334-17, § 6b, enacting § 21.49(b) of the Zoning Ordinance. Subsequently, the city passed Resolution 2018-10, which established administrative rules for processing MMFLA permit applications.

After submitting applications to the city, plaintiff attempted numerous times to obtain status updates. In response to plaintiff's repeated phone calls, the city informed plaintiff that no action had been taken on any of the applications, no permits had been issued, and no meetings had been held addressing any of the applications. Plaintiff alleged that contrary to the city's claims that no MMFLA licenses had been issued, it was evident that the city had issued a license to defendant Green House of Walled Lake. Ultimately, plaintiff was advised that its request for the C-3 license was denied.

In its second amended complaint, plaintiff alleged the following counts against the city defendants: fraudulent misrepresentation (Count II); silent fraud (Count III); negligent misrepresentation (Count IV); unjust enrichment (against the city of Walled Lake only) (Count V); breach of an implied contract (Count VI); promissory estoppel (Count VII); violation of due process and equal protection (Count VIII); civil conspiracy (Count IX); injunctive relief (Count X); and gross negligence (Count XI).

The city defendants thereafter moved for summary disposition under MCR 2.116(C)(7), arguing that they were entitled to governmental immunity with respect to the alleged torts, and under MCR 2.116(C)(8) on plaintiff's due-process and promissory-estoppel claims. In a thorough opinion and order, the trial court granted the motion and dismissed all claims against the city defendants.

I. GOVERNMENTAL IMMUNITY

This Court reviews de novo a trial court's decision on a motion for summary disposition, *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008), as well as issues involving

[1] That order dismissed with prejudice plaintiff's claims against defendants Custom Built Properties, LLC, Jerry Millen, Frank Marra, and Matthew Cecchetti. The order also dismissed the counterclaims brought by Custom Built and Millen against plaintiff.

RECEIVED by MSC 12/10/2025 3:03:01 PM

questions of law, such as the construction and interpretation of a city charter or ordinance. *Oakland Co Bd of Co Rd Comm'rs v Mich Prop & Cas Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Ferguson v City of Lincoln Park*, 264 Mich App 93, 95; 694 NW2d 61 (2004).

A party is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are "barred because of immunity granted by law." When considering a motion brought under this subrule, the court considers all the affidavits, depositions, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). "The contents of the complaint are accepted as true unless contradicted by the evidence provided." *Odom*, 482 Mich at 466 (quotation marks and citation omitted).

A. CITY OF WALLED LAKE

The governmental tort liability act (GTLA), MCL 691.1401 *et seq*., provides that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."[2] MCL 691.1407(1); see also *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 326-327; 869 NW2d 635 (2015). While there are six statutory exceptions to this broad grant of immunity, plaintiff did not allege that any applied.[3] Thus, as the trial court noted, the only question is whether the city was engaged in a governmental function.

The GTLA defines "governmental function" as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). Conversely, when "a governmental agency engages in an activity which is not expressly or impliedly mandated or authorized by constitution, statute, or other law (*i.e.*, an *ultra vires* activity), it is not engaging in the exercise or discharge of a governmental function" and "is therefore liable for any injuries or damages incurred as a result of its tortious conduct." *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984). However, when determining whether an act is a "governmental function" or merely an ultra vires act, courts are to " 'look to the general activity involved rather than the specific conduct engaged in when the alleged injury occurred.' " *Genesee Co Drain Comm'r*, 309 Mich App at 327, quoting *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 84; 782 NW2d 514 (2010).

Although plaintiff alleges that the city engaged in fraudulent and corrupt acts, its focus is too narrow. In this instance, the general activity in which the city had been engaged was the implementation and adoption of its medical marijuana facilities licensing ordinance and the

---

[2] There is no dispute that the city of Walled Lake is a "governmental agency" as defined by the GTLA. See MCL 691.1401(a), (d), and (e).

[3] "The six statutory exceptions are: the highway exception, MCL 619.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3)." *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84 n 10; 746 NW2d 847 (2008).

RECEIVED by MSC 12/10/2025 3:03:01 PM

processing of applications for a license. The implementation of the ordinance was expressly authorized by the MMFLA, and the processing of applications for licenses was authorized by the city's ordinance. Therefore, the city was engaged in a governmental function, and accordingly, it is immune from tort liability. Thus, the trial court did not err by granting summary disposition to the city on this ground.[4]

B. CITY DEVELOPMENT MANAGER PESTA AND CITY CLERK STUART

Plaintiff next argues that the trial court erred by granting summary disposition in favor of City Development Manager Pesta and City Clerk Stuart.

The GTLA also grants immunity to officers and governmental agency employees for negligent and intentional conduct if other conditions are met.

Regarding negligent torts, MCL 691.1407(2) provides, in pertinent part:

> [E]ach officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

In response to the city defendants' motion for summary disposition, plaintiff only contested the gross-negligence component by stating, "[T]he sole issue before this Court is whether Plaintiff has properly alleged the elements of gross negligence." Thus, our review is whether the conduct of Pesta and Stuart amounts to gross negligence.

---

[4] To the extent that plaintiff argues that the city could be liable under a theory of gross negligence, the gross-negligence exception to governmental immunity contained in MCL 691.1407(2) only applies to *individuals*; it does not apply to the *governmental agency* itself. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), abrogated on other grounds in *American Transmissions, Inc v Attorney General*, 454 Mich 135; 560 NW2d 50 (1997); see also *Tarlea v Crabtree*, 263 Mich App 80, 89; 687 NW2d 333 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). The alleged failure of Pesta and Stuart to follow the procedures in the city's ordinance and resolution do not amount to gross negligence. Notably, on appeal and without providing any citations to the lower court record, plaintiff merely asserts that it had "specifically plead[ed] that the actions of those individuals [Pesta and Stuart] constituted gross negligence, citing specific examples and drawing upon the deposition of Pesta." This type of cursory argument constitutes an abandonment of the issue on appeal. See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Even considering the cursory argument, however, it appears that plaintiff is referring to its response to the city defendants' motion for summary disposition because it is in that filing that plaintiff cites and provides the deposition of Pesta. But plaintiff's allegations are limited to Pesta failing to advise plaintiff of the results of the preliminary review, which plaintiff asserts was required under the city's Resolution 2018-10. Pesta testified that she thought the resolution only required her to notify applicants if the preliminary review revealed that their application was somehow incomplete.[5] Assuming Pesta had an obligation under the resolution to conduct a preliminary review and to communicate the results to plaintiff, yet failed to do so because she was mistaken, such conduct is not "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). At best, such conduct amounts to ordinary negligence. Therefore, the trial court properly granted summary disposition in favor of Pesta and Stuart on all of plaintiff's negligence claims.

While MCL 691.1407(2) governs negligence claims, intentional-tort claims are governed by MCL 691.1407(3), which simply provides that the law regarding intentional torts is as it existed

---

[5] The pertinent section of Resolution 2018-10 states:

> Upon receipt of an Application for site plan and/or operational approval of a Marijuana Facility and payment of all required fees, the City Clerk shall conduct a preliminary review of the Application for purposes of determining completeness and preliminary eligibility of the proposed or existing facility at the proposed or existing location. The City Clerk shall notify the applicant of the results of the preliminary review, including deficiencies rendering the application incomplete, and afford the applicant an opportunity to withdraw the application and receive a refund of the application fee and consultant review fee if the preliminary review reveals the proposed facility is not eligible for further review. If an application is incomplete, the applicant may withdraw the application and receive a refund of refundable fees, or cure any deficiencies rendering the application incomplete. Preliminary administrative review fees are non-refundable. Unless the Applicant withdraws the application, the Clerk shall forward a complete application for an eligible facility and all supporting materials for final review, recommendation and/or action by City staff, administration and/or consultants as may be required by applicable City Code or ordinance. Unless otherwise provided by these rules or applicable code or ordinances, complete applications for an eligible facility will be processed in the order received as determined by the date the application is completed. [Walled Lake Resolution 2018-10, § 4.]

RECEIVED by MSC 12/10/2025 3:03:01 PM

before July 7, 1986. *Odom*, 482 Mich at 470-471. Thus, with respect to intentional torts, a governmental employee is immune from liability if (1) she was acting within the course of her employment and was acting, or reasonably believed that she was acting, within the scope of her authority; (2) the acts were not undertaken with malice; and (3) the acts were discretionary, as opposed to being ministerial. *Id*. at 480.

It is important to recognize which intentional torts are at issue here. The only intentional torts alleged against the city defendants (and, hence, Pesta and Stuart) are plaintiff's claims of fraudulent representation and silent fraud. We agree with the trial court that plaintiff did not allege in its second amended complaint any facts that would lead to the conclusion that either Pesta or Stuart had acted outside the scope of their authority. Indeed, processing permit applications and communicating with the applicants is within both of their job responsibilities, and given the need to review applications for completeness and sufficiency, the trial court was correct in concluding the process was not ministerial in nature.

That leaves open the question whether the trial court erred when it stated that plaintiff did not plead any facts supporting the conclusion that either Pesta or Stuart acted with malice. A lack of good faith has been described as "malicious intent, capricious action or corrupt conduct" or "willful and corrupt misconduct." *Id*. at 474 (quotation marks and citations omitted). For the reasons articulated in section I.B of this opinion, we again conclude that plaintiff has not adequately presented the argument as to what allegations exist as to Pesta and Stuart on the existence of malice. We have canvassed both plaintiff's principal and reply briefs, and have found no specific citation to the record—or citation to any specific factual allegations—that are meant to show that either defendant acted with malice. Both briefs do contain assertions that these defendants "acted fraudulently and corruptly," and that they (and others) engaged "in corrupt and illegal practices," but those were in reference to the argument that they (and the city) were not engaged in a governmental function, because they were acting ultra vires. But even if those allegations were directed toward whether there was malice as to these two defendants under *Odom*, these allegations are conclusory and come nowhere close to what is required for a properly developed argument. Hence, we conclude that plaintiff has effectively abandoned the argument that there are sufficient factual allegations of malice against defendants Pesta and Stuart to withstand summary disposition. *Peterson Novelties, Inc*, 259 Mich App at 14.[6]

C. CITY MANAGER WHITT

[6] In fact, there is not a single citation to any paragraphs from the second amended complaint (nor the original or first amended complaints) in either brief, and the exhibits cited in the briefs that are written by defendants Petra or Stuart are letters responding on behalf of the city to freedom of information act requests submitted by plaintiff's counsel (by defendant Petra) and a letter to the state licensing agency regarding the status of a certificate of occupancy and pre-approval of a license for Custom Built Properties (by defendant Stuart). Even if the Petra letters reflect a denial of information that existed, without more expansive argument, it is difficult to discern how this reflects malice on the part of Petra. And, confirmation of certain facts to an agency by Stuart could go towards allegations against the city or other decision-maker, but says nothing about decisions made by Stuart.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff also argues that the trial court erred by ruling that City Manager Whitt was absolutely immune from liability. We note that a panel of this Court recently rejected this same argument as to Whitt in a case involving these same parties. See *Jones v Walled Lake*, unpublished opinion per curiam of the Court of Appeals, dated June 17, 2021 (Dkt No. 350997). We agree with the rationale and conclusions reached in that opinion, but set forth our reasoning for the sake of completeness and further appellate review.

The GTLA provides certain high-ranking governmental officials with absolute immunity from tort liability. MCL 691.1407(5) states:

> A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Thus, "[t]o qualify for absolute immunity from tort liability[,] an individual governmental employee must prove his or her entitlement to immunity by establishing, consistently with the statute's plain language, (1) that he or she is a judge, legislator, or the elective or highest appointive executive official of a level of government and (2) that he or she acted within the scope of his or her judicial, legislative, or executive authority." *Petipren v Jaskowski*, 494 Mich 190, 204; 833 NW2d 247 (2013). Because there is no dispute that Whitt was not a judge or legislator, the first question that must be answered is whether he was "the elective or highest appointive executive official" for the city of Walled Lake.

Plaintiff asserts that Whitt is an administrator who lacks any executive function and has no legal role.[7] The duties of the city manager are described by ordinance as follows:

> (1) Be responsible to the council for the efficient administration of all administrative departments of the city government.
>
> (2) *See that all laws and ordinances are enforced*.
>
> (3) Appoint, with the consent of the council, the heads of the several city departments whose appointments are not otherwise specified in the city Charter or ordinance, and to discharge the department heads without the consent of the council, and to direct and supervise the department heads.

[7] Plaintiff raises this argument for the first time on appeal. Plaintiff takes exception to the trial court noting that plaintiff had not "dispute[d]" that Whitt was the highest appointive executive official in the city, but this characterization is accurate because plaintiff never provided any contrary argument in its response to the city defendants' motion for summary disposition. Plaintiff mischaracterizes the trial court's opinion as saying that plaintiff had *conceded* this point, when the court merely said that plaintiff did not *dispute* it.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(4) Give to the proper department or officials ample notice of the expiration or termination of any franchises, contracts or agreements.

(5) See that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed.

(6) Recommend an annual budget to the council and to administer the budget as finally adopted under policies formulated by the council, and to keep the council fully advised at all times as to the financial condition and needs of the city.

(7) Recommend to the council for adoption such measures as may be deemed necessary or expedient, and to attend council meetings with the right to take part in discussions but not to vote.

(8) Exercise and perform all administrative functions of the city that are not imposed by the city Charter or ordinance upon some other official.

(9) Perform such other duties as may be prescribed by the city Charter or as may be required by ordinance or by direction of the council. [Walled Lake Ordinances, § 2-43 (emphasis added).]

The fact that this ordinance omits the use of the term "executive" and uses the term "administrative" is not dispositive. Indeed, the type of administration Whitt performs clearly is "executive administration." See *Black's Law Dictionary* (11th ed) (defining "executive administration" as "[c]ollectively, high public officials who administer chief departments of the government"). Further, "executive branch" is defined as "[t]he division of government charged with *administering* and *carrying out the law*." *Id*. (emphasis added). While Whitt is the chief administrative officer of the city, his duties also include "[s]ee[ing] that all laws and ordinances are enforced." Walled Lake Ordinances, § 2-43(2). Also, "[a]n executive should have broad-based jurisdiction or extensive authority similar to that of a judge or a legislator." *Chivas v Koehler*, 182 Mich App 467, 471; 453 NW2d 264 (1990). Whitt's authority as city manager is very extensive, as evidenced by the lengthy duties delineated in the ordinance. See Walled Lake Ordinances, § 2-43. Thus, it is evident that Whitt possesses executive authority, as that term is commonly understood.[8] See also *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997) (recognizing a city manager as an "executive").

Plaintiff's argument that the Mayor Pro-Tem is the highest appointive person in the city government is not supported by the plain reading of the relevant portions of the city charter, which provide:

[8] The Michigan Supreme Court also has recognized that a city manager is an "executive," stating, "Under the city manager form of government, popular among smaller cities, the executive, the city manager, serves at the will of the legislature, the city commission." *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> At each municipal election, the new Councilman from among those incumbents who ran for re-election at the most recent election, *who has received the highest number of votes* in that election, and who shall have served a tenure of two (2) years shall be Mayor Pro-tem, unless such Councilman shall in writing notify the clerk of their declination to so serve before such *appointment* becomes effective, in which event, the Councilman who has received the second highest number of votes in that election shall become Mayor Pro-tem, provided that person has served as a Councilman for at least two (2) years. [Walled Lake Charter, § 4.4.]

Although the charter uses the word "appointment" once in describing the position, there is nothing about the position that is appointive. Who becomes mayor pro-tem is not decided by any governmental official or body. Instead, the mayor pro-tem is determined by which incumbent council member received the *highest number of votes from the general election*. There is nothing appointive about such a scheme. As such, regardless of how the charter may view this as an "appointive" position, it is not one as contemplated by the GTLA.

Therefore, as the highest appointive executive official in the city, Whitt is absolutely immune from tort liability under the GTLA with respect to actions performed "within the scope of his . . . executive authority," MCL 691.1407(5), and the trial court did not err by coming to the same conclusion.

II. FAILURE TO STATE A CAUSE OF ACTION

Plaintiff also argues that the trial court erred by granting summary disposition in favor of the city defendants on plaintiff's claims of violation of the constitutional right to due process of law and on its tort claim of promissory estoppel.

"A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

A. DUE-PROCESS CLAIM

"The United States and Michigan constitutions preclude the government from depriving a person of life, liberty, or property without due process of law." *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004), citing US Const, Am XIV; Const 1963, art 1, § 17. " 'A procedural[9] due process analysis requires a dual inquiry:

---

[9] In its second amended complaint, plaintiff labeled its due-process claim a "substantive" due-process claim. However, courts are not bound by the labels parties use in their pleadings, *Buhalis v Trinity Continuing Care Servs*, 292 Mich App 685, 691-692; 822 NW2d 254 (2012), and the substance of plaintiff's count demonstrates that it was making a procedural due-process claim. Moreover, plaintiff never disputed that it needed to have a property interest for its due-process claim to be viable.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.' " *Hinky Dinky*, 261 Mich App at 606 (citation omitted). Due process is only implicated "if there is a liberty or property interest at stake." *Galien Twp Sch Dist v Dep't of Ed* (*On Remand*), 310 Mich App 238, 241; 871 NW2d 382 (2015).

The city defendants argued, and the trial court agreed, that plaintiff's claim failed for the simple reason that plaintiff had no viable property interest. On appeal, plaintiff argues that a license under the MMFLA confers on the recipient a property right. While this principle likely is applicable to MMFLA licenses, see *Bundo v City of Walled Lake*, 395 Mich 679, 695; 238 NW2d 154 (1976) (stating that a liquor license holder has a property interest in the license), it is not dispositive because plaintiff ignores the fact that *it never possessed a license*. It is well established that the law treats those who possess a license and are attempting to renew it differently from those who do not possess a license and are first-time applicants. See *Wong v City of Riverview*, 126 Mich App 589, 593; 337 NW2d 589 (1983) ("In fact, a first-time applicant is not even entitled to minimal due process."); *Shamie v City of Pontiac*, 620 F2d 118, 120 (CA 6, 1980) (stating that first-time license applicants do not enjoy procedural due-process rights under Michigan law), citing *Morse v Liquor Control Comm*, 319 Mich 52, 66; 29 NW2d 316 (1967), and *Bisco's, Inc v Liquor Control Comm*, 395 Mich 706, 716; 238 NW2d 166 (1976). Therefore, it is clear that plaintiff did not have a recognized property interest because it never had a license to begin with. Furthermore, because it was undisputed that the city had more applicants than licenses available, there necessarily was discretion involved in selecting who would receive the licenses. "A party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *RSWW, Inc v City of Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005) (quotation marks, citation, and brackets omitted).

The trial court properly dismissed plaintiff's violation of due process of law claim.[10]

B. PROMISSORY-ESTOPPEL CLAIM

In *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999), this Court observed:

> The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on part of the promisee, and (3) that in fact produced reliance or

[10] Plaintiff also asserts that its due-process claim should have survived summary disposition because it was seeking injunctive relief. But plaintiff's Count VIII, alleging a violation of due process, contains no allegations or requests for injunctive relief. Moreover, even if plaintiff's request for injunctive relief survived the city defendants' motion for summary disposition, count X ultimately was dismissed via the stipulated order to dismiss. Because plaintiff agreed to dismiss the "claim" for injunctive relief, it cannot now assert on appeal that the dismissal was erroneous. See *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003); *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided.

In its second amended complaint, plaintiff alleged that the "promise" that forms the basis for its claim of promissory estoppel is found in the city's ordinance and administrative rules, providing that the "orderly, efficient, fair and coordinated" processing of applications would occur. At the outset, it should be clear that the only city defendant that possibly could be subject to this claim would be the city of Walled Lake. The alleged promise is contained in enactments of the city; it is not alleged that any individual city defendant made these promises. Thus, we can affirm the dismissal of this claim against the other city defendants for this reason alone. See *Washburn v Michailoff*, 240 Mich App 669, 678 n 6; 613 NW2d 405 (2000) (stating that this Court can affirm a trial court's decision when it reaches the right result albeit for different reasons).

The city defendants argued in the trial court that the promissory-estoppel count should be dismissed because statutes and ordinances do not create contractual rights. While this is a recognized principle of law, see *Studier v Mich Pub Sch Employees' Retirement Bd*, 472 Mich 642, 661; 698 NW2d 350 (2005), it is not necessarily controlling because promissory estoppel does not require contractual rights. Indeed, "promissory estoppel is an exception to general contract principles in that it permits enforcement of a promise that may have no consideration." *State Bank of Standish v Curry*, 442 Mich 76, 96; 500 NW2d 104 (1993) (RILEY, J., dissenting). Because of this exception, the promise must be definite and clear. *Id.*, citing *McMath v Ford Motor Co*, 77 Mich App 721, 726; 259 NW2d 140 (1977); see also *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993) ("The sine qua non of promissory estoppel is a promise that is definite and clear.").

The specific "promise" plaintiff has identified is located in the preamble section of the city's Resolution 2018-10, which provides:

> WHEREAS, in order to facilitate orderly, efficient, fair and coordinated processing of the various state and local applications and approvals in a manner consistent with the requirements of the Act, the Rules and the City's codes and ordinances, City Council has determined that it is necessary and expedient to adopt the following administrative rules concerning processing of City applications for local approval of Marijuana Facilities. [Walled Lake Resolution 2018-10, p 2.]

The identified "promise" above is not definite and clear. It promises nothing. Instead, this portion of the preamble merely states that its accompanying rules were enacted to facilitate the orderly, efficient, fair, and coordinated processing of applications. That is not the same as a definite and clear promise to actually have orderly, efficient, and fair processes. While those concepts are part of the aspirational goals of the resolution, it is not a promise. Indeed, the passage simply refers the reader to the remainder of the resolution to determine what the specific administrative rules are "concerning [the] processing of City applications for local approval of Marijuana Facilities." Moreover, preambles are not authoritative. *King v Ford Motor Co*, 257 Mich App 303, 311-312; 668 NW2d 357 (2003); see also *Yazoo & MVR Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889) (stating that a "preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous"); *Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008).

Consequently, because the promise on which plaintiff relies for its claim of promissory estoppel is not clear and definite, the claim fails as a matter of law. We affirm the trial court's grant of summary disposition in favor of the city defendants because the trial court reached the correct result, albeit for different reasons. See *Washburn*, 240 Mich App at 678 n 6.

Affirmed.

/s/ Michael F. Gadola
/s/ Jane E. Markey
/s/ Christopher M. Murray

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 5

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 770. Zoning

Article V. Special Provisions

§ 770-52.1. Marihuana establishments.

[Added 7-27-2020 by Ord. No. 2020-07]

A. Purpose and intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCLA 333.26421 et seq.), as amended.

B. General standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § **770-11**, Special land uses; permit procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § **770-12**, Site plan review, along with documentation that:

(a) The petitioner has prequalification status for an applicable license with the State of Michigan; and

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter **435**, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter **435**, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter **607**, Signs, with a maximum area not to exceed 50 square feet or 5% of the building facade area, whichever is less. All other signs, including, but not limited to, freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting, shall be prohibited as permanent architectural details or enhancements on any building facade or the exterior of any structure, including, but not limited to, windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § **770-30**, General building design and project compatibility, shall be prohibited.

(10) Security devices, such as security curtains, steel bars, metal gates, and similar apparatus, shall be prohibited on the exterior of a building. Security devices may be permitted inside a building, provided that the device is:

(a) Retractable so it is not visible from the sidewalk or public right-of-way during regular business hours; and

(b) Equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater runoff and/or the need for stormwater detention, such as, but not limited to, rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards as it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 4/14/2022 4:13 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

JSG

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

ATTITUDE WELLNESS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

Case No. 2022-192288-CZ

HON. RAE LEE CHABOT

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AS TO EXCLUSIVE CAPITAL PARTNERS

CONSOLIDATED WITH:

QUALITY ROOTS, INC., a Michigan
corporation,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

Case No. 2022-192383-CZ
HON. RAE LEE CHABOT

BDE WARREN, LLC,
a Michigan Limited Liability Company,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
Municipal Corporation,

Defendant.

Case No. 2022-192830-CZ
HON. RAE LEE CHABOT

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

CITY OF ROYAL OAK,
a Michigan municipal corporation,

Defendant.

Case No. 2022-193015-CZ
HON. RAE LEE CHABOT

HONIGMAN, LLP
KEVIN M. BLAIR (P76927)
KEITH D. UNDERKOFFLER (P84854)
Attorney for Plaintiff ***Attitude Wellness***
222 N. Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0716
kblair@honigman.com
kunderkoffler@honigman.com

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DISESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com; wcd@wwrplaw.com

SENAWI LAW, PLLC
DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
550 W. Merrill Street, Ste. 100
Birmingham, MI 48009
(248) 712-1051
david@senawilaw.com; meredith@senawilaw.com

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
26100 American Drive, Suite 500
Southfield, MI 48034
(248) 227-2278
ab@consultingpllc.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C.
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com; apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings***
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

NOTICE OF HEARING

RECEIVED by MSC 12/10/2025 3:03:01 PM

PLEASE TAKE NOTICE that the Defendant CITY OF ROYAL OAK's *Motion for Summary Disposition* will be brought on for hearing before the Honorable Rae Lee Chabot of the Oakland County Circuit Court on a **date and time to be set by the court**.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH
& AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin
ANNE McCLOREY McLAUGHLIN (P40455)
Attorney for Defendant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

DATED: April 13, 2022

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

ATTITUDE WELLNESS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

Case No. 2022-192288-CZ
HON. RAE LEE CHABOT

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AS TO EXCLUSIVE CAPITAL PARTNERS

CONSOLIDATED WITH:

QUALITY ROOTS, INC., a Michigan
corporation,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

Case No. 2022-192383-CZ
HON. RAE LEE CHABOT

BDE WARREN, LLC,
a Michigan Limited Liability Company,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
Municipal Corporation,

Defendant.

Case No. 2022-192830-CZ
HON. RAE LEE CHABOT

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

CITY OF ROYAL OAK,
a Michigan municipal corporation,

Defendant.

Case No. 2022-193015-CZ
HON. RAE LEE CHABOT

HONIGMAN, LLP
KEVIN M. BLAIR (P76927)
KEITH D. UNDERKOFFLER (P84854)
Attorney for Plaintiff ***Attitude Wellness***
222 N. Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0716
kblair@honigman.com
kunderkoffler@honigman.com

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DISESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com; wcd@wwrplaw.com

SENAWI LAW, PLLC
DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
550 W. Merrill Street, Ste. 100
Birmingham, MI 48009
(248) 712-1051
david@senawilaw.com; meredith@senawilaw.com

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
26100 American Drive, Suite 500
Southfield, MI 48034
(248) 227-2278
ab@consultingpllc.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C.
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com; apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings***
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT AS TO PLAINTIFF, EXCLUSIVE CAPITAL PARTNERS, LLC

RECEIVED by MSC 12/10/2025 3:03:01 PM

Defendant, CITY OF ROYAL OAK, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., moves this Honorable Court for summary disposition pursuant to MCR 2.116(C)(8) for Plaintiff's failure to state a claim upon which relief can be granted and MCR 2.116(C)(10), as there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

FACTUAL BACKGROUND

In 2018, the electorate of the State of Michigan voted to adopt Initiated Law 1 of 2018, the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951, *et seq*., by a margin of 55-45%. Wojcik, *Royal Oak Extending Recreational Marijuana Opt-Out Period*, Royal Oak Review, Dec 23, 2019, https://www.candgnews.com/news/royal-oak-extending-recreational-marijuana-optout-period-116316, last accessed March 7, 2022. In the City of Royal Oak, approval was even greater, with 70% of Royal Oak voters approving of the new measure to legalize recreational marijuana. *Id*.

After a period of opting out of the marijuana licensing process, *id*., the Royal Oak City Commission adopted a recreational marijuana establishment licensing ordinance (RME ordinance) in July 2020 under the authority granted by MRTMA, MCL 333.27956(2) and (3). See RME ordinance, **Ex 1**, Chapter 435, "Marihuana." The ordinance authorized licenses for growers (one each for classes A, B and C), one processor, a total of two (2) retail establishments and two (2) microbusinesses, as defined in the MRTMA. RME Ord, § 435-2(A) and (B). Because there are limitations of the number for each type of license, the Ordinance further provides for the City Manager to open a "window" for receipt of applications for the various types of RME licenses, RME Ord, § 435-4(C)(1), to evaluate the applications and assign a "license slot" to successful applicants for each type of license. RME Ord, § 435-4(A)(2). If there are more applications received than available licenses, the ordinance directs the City Manager to conduct a "competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City." RME Ord, § 435-4(C)(2). The City Manager is to conduct this process by considering various criteria established by the Ordinance. RME Ord, § 435-4(C)(4)(a)-(j).

RECEIVED by MSC 12/10/2025 3:03:01 PM

In accordance with the ordinance, Royal Oak City Manager Paul Brake opened a window from December 7, 2020- February 1, 2021, for receipt of RME license applications. Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications. **Ex 2**, Affidavit of Paul Brake, ¶ 8. Plaintiff, Exclusive Capital Partners, applied for one (1) RME retailer license (Complaint, ¶ 42). Mr. Brake conducted his evaluation and assigned license slots to one applicant for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment. *Id*., ¶ 12.

The City Manager notified Plaintiff that its application was not initially chosen as a result of the competitive process for the retailer license slot in the zoning district where it applied. Plaintiff was one of several applicants placed on "standby", so that if an applicant assigned a license slot failed to complete or pass the remainder of the process, the available license slot(s) could be filled by the next highest ranked applicant. **Ex 2**, ¶ 15. Manager Brake did not deny Plaintiff's application but allowed Plaintiff to remain in consideration if one or both of the other license slots was unable to be filled. *Id*.; Complaint, ¶¶ 145-146. This way, the evaluation process remains open and Plaintiff will not have to reapply and pay further fees and incur additional costs if another license slot becomes available. If the other recipients of a license slot complete the process and are eventually licensed, then the City Manager will issue a letter denying Plaintiff's application. **Ex 2**, ¶ 16; The City Commission has not yet scheduled site plan approval for any license slot recipient, one of the further necessary steps for completion prior to issuance of an RME license. **Ex 2**, ¶ 13.

Plaintiff's Complaint claims facial and as-applied challenges to the City's ordinance allegedly in violation of the MRTMA, purported violations of the dormant Commerce Clause of the U.S. Constitution and void-for-vagueness doctrine, violation of equal protection and due process rights under the Michigan Constitution, and declaratory and injunctive relief.

LEGAL ARGUMENT

RECEIVED by MSC 12/10/2025 3:03:01 PM

I. PLAINTIFF'S CLAIMS ARE NOT RIPE.

The doctrine of ripeness is closely related to the standing doctrine in that it focuses on the timing of the action. *Van Buren Chrtr Twp v Visteon Corp*, 319 Mich App 538, 553-554; 904 NW2d 192 (2017), *Mich. Chiropractic Council v Comm'r of Office of Fin. & Ins. Servs.*, 475 Mich. 363, 379; 716 NW2d 561 (2006) (opinion by Young J.) (emphasis omitted), overruled on other grounds by *Lansing Sch. Ed. Ass'n v Lansing Bd. of Ed.*, 487 Mich. 349; 792 NW2d 686 (2010). The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. *Id*. A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Id*.; *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (2008). A motion for summary disposition based upon ripeness is properly brought under MCR 2.116(C)(10) for lack of a genuine issue of material fact entitling the moving party to judgment as a matter of law. *Van Buren Twp v Visteon, supra*, 319 Mich App at 543-544.

'"A challenge to the validity of [an] ordinance 'as applied' ... is subject to the rule of finality.'" *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 764; 630 NW2d 646 (2001), quoting *Paragon Properties Co v Novi,* 452 Mich 568, 576; 550 NW2d 772 (1996). "The legislatively established authorities for enacting zoning ordinances, and for granting variances, must render a final decision on a zoning request before the issue is ripe for judicial review." *Vestevich, supra*, citing *Paragon, supra*, at 573–583. This precept applies to a challenge of the Royal Oak RME licensing ordinance as applied allegedly in violation of the MRTMA as well.

In the present case, Exclusive Capital Partners has not been denied a license. If one of the other applicants who has been granted a license slot fails to complete the process, Plaintiff might still obtain a license slot. However, this is entirely speculative at this point. If the City Manager ultimately denies Plaintiff's application, then it has a right to appeal that determination. **Ex 1**, § 435-4(D)(10). In either case, there has not been a final decision to deny Plaintiff's application. Plaintiff's filing here is therefore premature as not ripe, and if its application is ultimately denied, it must exhaust administrative remedies available to it under the

RECEIVED by MSC 12/10/2025 3:03:01 PM

ordinance before resorting to litigation. See *Judges of the 74th Judicial Dist v Bay County*, 385 Mich 710, 727-728; 190 NW2d 219 (1971); *School Dist of the City of Benton Harbor v State Tenure Comm*, 372 Mich 270; 126 NW2d 102 (1964). There is no genuine issue of material fact that Plaintiff's claims here are not final and are therefore not ripe and entirely speculative at this juncture. Defendant is therefore entitled to summary disposition. MCR 2.116(C)(10).

II. THE CITY HAS COMPLIED WITH ORDINANCE 435-4(C)(4).

Plaintiff's first claim is that the City has failed to comply with § 435-4(C)(4) of the RME ordinance. That subsection reads, "The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City *as determined by the City Manager or his or her designee*." (Emphasis added.) Plaintiff's theory is that the city manager convened a "Ranking Committee" made up of other city officials, and the so-called "Ranking Committee" ranked the applicants and their applications. See Complaint, ¶ 52.

First, "Ranking Committee" is a title fabricated by this and other plaintiffs (and perhaps other applicants who were not initially selected for a license slot but who have not filed suit against the City of Royal Oak at this time) to describe the group of city officials and employees whom the city manager consulted about various aspects of the applications.

The RME Ordinance, § 435-4(C)(4) requires that the city manager conduct the rankings. ("The Applicants and their Applications will be ranked … as determined by the City Manager or his or her designee.") In fact, that is exactly what occurred – the City Manager determined the rankings and he alone decided which applicants to whom to award license slots. Attached as **Ex 2** is the Affidavit of City Manager Paul Brake. In it, Mr. Brake attests that although he consulted other department heads and city staff members for advice regarding various aspects of the applications, he alone determined the rankings of the applications and assigned the license slots for the RME licenses permitted under the ordinance. **Ex 2**, ¶¶ 11-12.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff alleges that the Mayor made a comment regarding the so-called "Committee" at a Planning Commission meeting on February 8, 2022. However, the Mayor was not one of the persons that the City Manager consulted, **Ex 2**, ¶ 10, and Plaintiff's bare allegation does not suffice to impute personal knowledge to the mayor regarding the convening of a committee, or that a "committee" determined the rankings and awarded the license slots. This speculation does not create a genuine issue of material fact to warrant denial of summary disposition. MCR 2.116(C)(10).

III. THE VOID-FOR-VAGUENESS DOCTRINE DOES NOT APPLY HERE.

Plaintiff has further invoked the "void-for-vagueness" doctrine from law enforcement and First Amendment jurisprudence. A statute or ordinance may be void for vagueness if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in determining whether the statute has been violated. *Township of Yankee Springs v Fox*, 264 Mich App 604, 606; 692 NW2d 728 (2004); *In Re England*, 314 Mich App 245, 256-257; 887 NW2d 10 (2016). As the U.S. Supreme Court explained in *Grayned v City of Rockford*, 408 US 104, 108-109; 92 SCt 2294; 33 L.Ed.2d 222 (1972):

> It is a basic principle of due process that an enactment is void for vagueness *if its prohibitions are not clearly defined*. Vague laws offend several important values. First, because we assume that man is free to steer between *lawful and unlawful conduct*, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut(s) upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of (those) freedoms.' Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked.' (Footnotes omitted)(Emphasis added).

As a first-time applicant for a license, Plaintiff does not possess any due process rights. *Wong v Riverview*, 126 Mich App 589, 593; 337 NW2d 589 (1983). Even so, while quoting some of the foregoing

RECEIVED by MSC 12/10/2025 3:03:01 PM

language from *Grayned* to support its claim that the Royal Oak ordinance is void for vagueness, Plaintiff fails to recognize that the "void for vagueness" doctrine applies to conduct prohibited by statute or ordinance and enforcement action for a violation (hence the reference to "policemen, judges and juries" by the *Grayned* court). It is geared toward assuring that statutory or ordinance language is sufficiently clear so that a person knows with reasonable certainty whether *their conduct* violates the law. The vagueness doctrine seeks to avoid persons from being prosecuted for conduct that violates a statute or ordinance where the parameters of the prohibited conduct are unclear or would violate the First Amendment.

The vagueness doctrine does not apply to a case like this in which Plaintiff merely objects to the stated criteria for evaluating licensing applications under the Royal Oak RME ordinance. Plaintiff's conduct is not at issue here – it is not being prosecuted or even accused of violating the law. The City has not sought to impose any type of penalty or sanction on Plaintiff. The licensing provisions of the ordinance do not implicate Plaintiff's or anyone's due process rights[1]. Even Plaintiff's allegations of so-called subjective standards in the RME ordinance are unavailing. First, the MRTMA requires a "competitive" process but does not direct what shape or form that process must take. "Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed." *Guertin v State*, 912 F3d 907, 938 (CA 6 2019). Specifically, MRTMA does not prohibit a "subjective" or discretionary process. "Subjective," as Plaintiff terms it, does not mean vague. Second, and more significantly, the criteria in the RME ordinance, especially those contained in RME Ord, § 435-4.C(4)(a)-(j), are *objective* criteria. See **Ex 1**. Whether, for example, an applicant is currently in arrears in taxes to the City, or has a history of criminal convictions, is not subjective in the least. The fact that the RME ordinance confers discretion to the city manager as to the application of those criteria and the awarding of license slots does not render the ordinance constitutionally infirm. There is no "conduct" regulated in this process, making

[1] See Argument IV.B. *ante*.

RECEIVED by MSC 12/10/2025 3:03:01 PM

the void-for-vagueness doctrine inapplicable. This claim fails to state a claim upon which relief can be granted. MCR 2.116(C)(8).

IV. PLAINTIFF'S OTHER CONSTITUTIONAL CLAIMS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A. Plaintiff lacks standing to claim a dormant Commerce Clause challenge.

Count III of the Complaint alleges violation of the dormant Commerce Clause, US Const, art I, § 8, because the RME Ordinance contains a provision that one of the criteria for the city manager's review of RME license applications is, "Whether the applicant is/was a business operating in the City of Royal Oak within the past two years[.]" **Ex 1**, RME Ordinance at § 435-4(C)(4)(c). Plaintiff lacks standing to challenge the ordinance on this basis, however, and/or has failed to

In Michigan, "[T]he purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.'" *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010), quoting *Detroit Fire Fighters Ass'n v Detroit,* 449 Mich 629, 633; 537 NW2d 436 (1995). The standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue. *Lansing Schools, supra.* To determine whether a litigant has standing, the court should review whether the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large. *Id*., 487 Mich at 359.

In this case, Plaintiff has claimed that the City's RME ordinance discriminates on the basis of "residency" allegedly in violation of the Commerce Clause. But in order to have suffered a special injury or have a substantial interest that will be detrimentally affected in a manner different from the citizenry at large, as required by the standing doctrine set forth in *Lansing Schools*, Plaintiff must at least allege that the so-called "residency requirement" inured to Plaintiff's detriment because it is an out-of-state concern or its principals are non-residents, and the city manager's ranking on the basis of the "residency" of the plaintiff or its principals caused Plaintiff to lose a license slot.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Even accepting as true the well-pleaded factual allegations in the Complaint here, as the Court must on a motion brought under MCR 2.116(C)(8),[2] Plaintiff's Commerce Clause claim fails. There is no allegation in the Complaint that Plaintiff-LLC is an out-of-state concern. Indeed, the Complaint alleges the contrary in the first paragraph: "Plaintiff, Exclusive Capital Partners, LLC, is a *Michigan limited liability company* that conducts business in Oakland County, Michigan, and has and has a property interest in Royal Oak, MI." Complaint, ¶ 1 (emphasis added). Furthermore, there is no allegation in the Complaint that any principal of the Plaintiff is an out-of-state resident, or that the residency of the corporate Plaintiff or any of its owners affected the evaluation of Exclusive's application.

Additionally, Plaintiff expressly alleges that its application was placed on standby status. If the City Manager had disqualified Plaintiff based on the business ownership factor due to its failing to meet that status, Plaintiff would have been denied outright instead of being placed on standby status and remaining eligible to receive a license slot should one become available.

Therefore, Plaintiff has not suffered a special injury or right, or substantial interest, that has been or will be detrimentally affected in a manner different from the citizenry at large. Plaintiff therefore lacks standing to assert its dormant Commerce Clause challenge. *Lansing Schools, supra*. Plaintiff likewise has failed to state a claim upon which relief can be granted for this purported constitutional infirmity. Defendant is entitled to summary disposition of this claim. MCR 2.116(C)(8).

B. Plaintiff lacks a liberty or property interest protected by the Constitution, and therefore cannot state a claim for a due process violation.

In Count VII, Plaintiff argues that the RME ordinance impinges on the right to travel, and therefore, the ordinance violates Plaintiff's equal protection and due process rights under Const 1963, art I, §§ 2[3] and 17[4]. These provisions of the Michigan Constitution are construed coextensively with their federal counterparts

[2] *Maiden v Rozwood,* 461 Mich 109, 119-120; 597 NW2d 817 (1999).
[3] "No person shall be denied equal protection of the laws."
[4] "No person shall be … deprived of life, liberty or property, without due process of law."

RECEIVED by MSC 12/10/2025 3:03:01 PM

found in the US Const, Am XIV, § 1. *Cummins v Robinson Twp*, 283 Mich App 677, 700–701; 770 NW2d 421 (2009); *Shepherd Montessori Center Milan v Ann Arbor Charter Twp*, 486 Mich 311, 319-320; 783 NW2d 695 (2010). Therefore, Michigan and federal law interpreting the US Constitution guarantees of due process and equal protection apply. "[L]egislation challenged on equal protection grounds is presumed constitutional and the challenger has the burden to rebut that presumption." *Barrow v City of Detroit Election Comm'n,* 301 Mich App 404, 419; 836 NW2d 498 (2013).

In order to assert *any* of the constitutional claims, Plaintiff must establish a liberty or property interest protected by the rights asserted. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 740; 605 NW2d 18 (1999). In the Complaint, Plaintiff claims that the RME ordinance discriminates on the basis of residency and violates the rights of interstate travel, intrastate travel, and right to be free from arbitrary discrimination. Complaint, ¶¶ 145-146.

A state law implicates the right to travel when it actually deters travel, when impeding travel is its primary objective or when it uses a classification that serves to penalize the exercise of the right to travel. 5 Mich Civ Jur Constitutional Law § 243, citing *Barrow, supra*. Mere burdens on a person's ability to travel from state to state are not necessarily a violation of their right to travel; there must be unreasonable burdens. *Id*.

Plaintiff cites for this proposition *Lowe v City of Detroit,* 544 F Supp 3d 804 (ED Mich 2021), where the district court struck the subject ordinance. However, *Lowe* is substantively and significantly different from the one before this Court. The marijuana ordinance held unconstitutional by the federal district court in *Lowe* required that 50% of the licenses awarded go to residents of the City of Detroit for at least 10 years and allowed those residents to apply for licenses before any nonresidents could apply.

Conversely, the Royal Oak ordinance contains no requirement or criterion for residency for eligibility to apply for (as in *Lowe*) or even to be awarded an RME license. Close examination of the

RECEIVED by MSC 12/10/2025 3:03:01 PM

language of the RME Ordinance reveals that, in fact, there is no residency requirement whatsoever. § 435-4.C(4)(c) of the RME Ordinance sets as one of 10 criteria to be "consider[ed]" in evaluating an application, "Whether the applicant is/was a business operating in the City of Royal Oak within the past two years[.]" That criterion does not require an applicant to be a City resident presently or at any time. It does not even *require* that an applicant have ever operated a business in Royal Oak. It only allows the City Manager to consider as one of several factors whether the applicant has been a local business owner in the past two years.

Even if an applicant had operated a business in Royal Oak in the past two years, that factor would not invariably weigh positively in an applicant's favor. The City is able to judge an applicant based on the City's experience, both positive and negative, with that local business, considering matters such as compliance with zoning, land use, health and safety, and other City ordinances; the frequency of calls for service to the police department regarding the business; and whether the business has been a good corporate citizen by participating in civic, artistic, charitable, and cultural activities in the City, to name a few.

Plaintiff's own allegations belie an unconstitutional residency requirement (even if Plaintiff had adequately pleaded that it was detrimentally affected, per the standing argument above). Plaintiff even alleges that its application was placed on a "waitlist" and that the City has not denied its application. Complaint, ¶¶ 48-49. If the City Manager had disqualified Plaintiff based on the business ownership factor due to its failing to meet that status, Plaintiff would have been denied outright instead of being placed on standby status and remaining eligible to receive a license slot should one become available. This is hardly an infringement of Plaintiff's right to inter- or intrastate travel. Thus, this claim is subject to summary disposition under both MCR 2.116(C)(8) and (10).

To the extent that Plaintiff claims a due process right based on a property interest in a license or its application for a license slot, it has no such property interest, either. "Constitutionally protected property interests are not created by the Constitution itself but rather by 'existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that

RECEIVED by MSC 12/10/2025 3:03:01 PM

support claims of entitlement to those benefits.' " *RSWW Inc v Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005). To establish a property interest, a person must have more than an abstract desire for it or unilateral expectation of it; rather, it must have a "legitimate claim of entitlement to it"- in this case, a clear right or entitlement to a recreational marijuana establishment license slot. *Id.,* citing *Board of Regents v Roth*, 408 US 564, 577 (1972); *Braun v Ann Arbor Charter Twp*, 519 F3d 564, 573 (CA 6, 2008); *Youkhanna v Sterling Heights*, 332 FSupp3d 1058, 1068 (ED Mich, 2018).

"[A] party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *RSWW, supra*, quoting *Med Corp, Inc v City of Lima*, 296 F3d 404, 409 (CA 6, 2002). In this case, Plaintiff applied for a license to operate a recreational marijuana establishment (retailer). Whether to award or to deny the license is wholly within the City Manager's discretion. RME Ord, § 435-2(E); 435-4(C)(4)(a)-(j). Therefore, Plaintiff's interest in its application and in a license is, at best, merely a unilateral expectation, and does not create a property right. Nor may Plaintiff claim a property right in government procedures themselves. *Janosek v City of Cleveland*, 718 F3d 578, 582 (CA 6, 2013), citing *Richardson v Twp of Brady,* 218 F3d 508, 517 (CA 6, 2000). Therefore, Plaintiff does not have a property right protected by the Constitution.

The U.S. Sixth Circuit Court of Appeals denied a claim of deprivation of property without due process of law in a case involving a first-time applicant for a license permitted by state law and local ordinance. In *Wojcik v City of Romulus*, 257 F3d 600 (CA 6 2001), the court affirmed that Michigan law confers a property interest to a liquor license only upon *a current holder* of the license. The court relied on its opinion in *Shamie v City of Pontiac*, 620 F2d 118 (CA 6 1980), stating that "a first-time liquor license applicant was not entitled to procedural due process rights under Michigan law." *Wojcik, supra*. The Court continued:

> [U]nder Michigan law an applicant for a liquor license, as distinguished from a license holder facing renewal or revocation proceedings, does not have a protected interest. The holder of a liquor license may well have a legitimate claim of entitlement to its renewal. One applying for a liquor license has no such claim of entitlement. In the former case there is a 'property' interest; in the latter there is none. *Shamie v City of Pontiac*, 443 F Supp 679, 683 (ED Mich

RECEIVED by MSC 12/10/2025 3:03:01 PM

1977), aff'd in part, 620 F.2d 118. Similarly, first-time applicants for an entertainment permit are likewise not entitled to due process. *Bradfield v Blesma*, 675 F Supp. 382 (WD Mich 1987). *Wojcik*, 257 F3d at 610.

The *Wojcik* Court relied upon *Morse v Liquor Control Comm'n*, 319 Mich 52, 66 (1947), where a liquor licensee of a class 'A' license was denied upon application a class 'B' license. Affirming the denial, the Supreme Court held, "A liquor license is not a contract in the sense that the licensee has thereby acquired any vested or property rights but is in the nature of a permit subject to the control of the State in the exercise of its police power." (Citation omitted.)

Our Court of Appeals adopted the foregoing rationale and upheld summary disposition on these very grounds in *Coeus, LLC v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued Jan 20, 2022 (Docket No. 353844), 2022 WL 188742. **Ex 3**. There, the plaintiff sued the city for, *inter alia*, a violation of due process for the city's grant of a medical marijuana license to another applicant and denial of plaintiff's application. Holding that no protected property interest existed, the Court stated, "Due process does not require that (the city) have guidelines to govern whether or not to issue a license to first-time applications like plaintiffs." *Id*., 2022 WL 188742 at *7. In support of this holding, the Court cited *Wong v Riverview, supra*: "In fact, a first-time applicant is not even entitled to minimal due process." *Id*.

This conclusion does not change because of Plaintiff's allegations of arbitrary "discrimination". "To succeed on a substantive due process claim based on this theory (of arbitrariness), a plaintiff is required to show that '(1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action.'" *Paterek v Village of Armada*, 801 F3d 630, 648 (CA 6 2015), quoting *Braun, supra*. There being no protected property interest, there can be no violation of due process. The same is true of Plaintiff's claim of an equal protection violation. *Rudolph Steiner School of Ann Arbor, supra.* Thus, Plaintiff's constitutional claims fail to state a claim upon which relief can be granted. MCR 2.116(C)(8).

V. ROYAL OAK'S ORDINANCE DOES NOT VIOLATE MRTMA.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MRTMA provides municipalities with discretion to adopt an ordinance that limit the number of licenses and to create a competitive process, which Royal Oak here did. The Royal Oak City Commission adopted its RME ordinance in accordance with §§ 6 and 9(4) of MRTMA[5].

The provisions of the RME ordinance and qualifications imposed by the ordinance to obtain a license that Plaintiff claims violate MRTMA in fact do not conflict with MRTMA or the "rules promulgated by the department". MCL 333.27956(2) and (3). MCL 333.27959(4) allows municipalities to use local criteria when deciding among competing applications by a competitive process for licenses:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act . . . *the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality*." (Emphasis added.)

Plaintiff recognizes that the statute requires that the City select applicants who are best suited to operate in compliance with MRTMA "within the municipality". "[W]ords in a statute must be read harmoniously to give effect to the statute as a whole, and 'every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.'" *People v Jones,* 301 Mich App 566, 578 (2013), quoting *People v Peltola,* 489 Mich 174, 181 (2011). In reading § 9(4) in whole, where the number of applications exceeds the available licenses, a municipality

---

[5] Sec. 6. 1. [A] municipality *may* completely prohibit or limit the number of marihuana establishments within its boundaries. …

2. A municipality *may* adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that:

(a) establish reasonable restrictions on public signs related to marihuana establishments;

(b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;

***

3. A municipality *may* adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.

4. A municipality *may* charge an annual fee of not more than $5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality. MCL 333.27956(1)-(4) (emphasis added).

RECEIVED by MSC 12/10/2025 3:03:01 PM

must create a competitive process that is *intended* to select applicants that are best suited to operate in compliance with MRTMA, as well as best suited to operate in the particular municipality. This language in no way guarantees that any application or applicant will be granted a license slot or a license.

Read in full and in its proper context, § 9(4) of MRTMA gives municipalities a level of local discretion in selecting criteria that comply with MRTMA and that satisfy the municipality's own goals and particularized concerns of each community. It makes sense that MRTMA would confer municipalities discretion in deciding what applicants are best for their own communities, because the Act gives broad local discretion in choosing whether even to allow marijuana businesses in the first place. MCL 333.27956(1). It would be illogical to place strict requirements on municipalities in one section of MRTMA, while at the same time giving broad discretion to municipalities in another. Additionally, the statute clearly (and correctly) contemplates high interest in adult use marijuana businesses where they are authorized by ordinance, and that municipalities would receive more applications than licenses available where the number is limited by ordinance. Thus, local ordinances must supplement the Act's requirements to establish the process intended to select the best applicants to operate in each municipality. Otherwise, the MRTMA could have prohibited *any* additional requirements other than those expressed in the statute. It did not. Instead, the only limitations it placed on local ordinances is that they must "not [be] unreasonably impracticable and do not conflict with this act." MCL 333.27956(2). Therefore, in foreseeing this problem, the statutory language grants communities the ability to distinguish among many equally qualified applicants, as the City did. Furthermore, the phrase "intended to select applicants" is also crucial here. The language in MCL 333.27959(4) focuses on the intent of the municipalities, not any other entity, in directing them to choose an applicant through a process best suited to operate within their communities.

Plaintiff's interpretation of § 9(4) of MRMTA is flawed and inaccurate since the City adopted criteria in the ordinance that allows it to select the applicants best suited to operate in Royal Oak while also complying with MRTMA. If the City could not add to the statute's selection criteria in MRTMA, there would be no reason

RECEIVED by MSC 12/10/2025 3:03:01 PM

for the statute to allow municipalities to restrict the number of licenses. Here, a prerequisite to applying for a license in the City was prequalification from the Marijuana Regulatory Agency (MRA). RME Ord, § 435-4(A)(3)(a). Once prequalified by the MRA, the applicants are already in compliance with MRTMA and there would be no reason (or ability) for the City to turn down any of the 31 license applications it received. That was clearly not the legislative intent of MRTMA, as it unambiguously provides, "a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries". MCL 333.27956(1).

The competitive process MRTMA requires is meant to select applicants from a pool of otherwise qualified applicants who have already demonstrated their ability to comply with MRTMA. But an applicant may be "best suited" relative to other applicants who have demonstrated an ability to comply with MRTMA because it can operate in a manner which brings additional benefits to the community, or better achieves the community's other objectives, or simply provides a better fit for the community. To have a competitive process among applicants who all have demonstrated their ability to operate in compliance with MRTMA, it follows that the City should have – and that MRMTA contemplates the City will have – the ability to consider and weigh the full range of what an applicant brings to the table.

The MRA requires a two-step process for state marijuana licensing. The State will not allow the applicant's State step two application for a State adult use marijuana license to proceed without an attestation signed by the municipality where the applicant wishes to operate and leaves it to each municipality to select the best suited to operate. The State does not interfere with the selection process.

The City adopted a process that was intended to select the applicants best suited to operate a marijuana business in the City and in compliance with MRTMA. There is no doubt the process was competitive for retailer establishment licenses since the City received 31 applications. The ordinance expands upon but does not directly conflict with MRTMA. A "direct conflict" exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. *Ter Beek v City of Wyoming,* 495 Mich 1, 20; 846 NW2d 531 (2014); *People v Llewellyn,* 401 Mich. 314, 322, n 4; 257 NW2d 902 (1977).

RECEIVED by MSC 12/10/2025 3:03:01 PM

In *Miller v Fabius Twp Bd, St Joseph Cty,* 366 Mich 250 (1962), the Supreme Court held that a statute and ordinance can coexist when the only difference between them is that the ordinance goes further in its prohibition, not countering the statute's prohibition. *Id.* at 256-257. The Court in *Miller* also held that, "…an ordinance [that] enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict" and "[u]nless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail". *Id.* at 256-257. More recently, in 2020, the Court held that, "Generally, local governments may control and regulate matters of local concern when such power is conferred by the state." *DeRuiter v Byron Twp,* 505 Mich 130, 139; 949 NW2d 91 (2020), citing *City of Taylor v Detroit Edison Co*, 475 Mich 109, 117-118; 715 NW2d 28 (2006). Further, a local ordinance is not preempted by statute if the ordinance is not in direct conflict with the statute. *Id.*. In *DeRuiter,* the Court ruled that the subject local zoning ordinance only added to the statute, the Michigan Medical Marihuana Act, MCL 333.26421, *et seq*, and did not contradict the requirements of the statute. *Id.* at 147.

Here, the MRTMA expressly confers the authority to control and regulate matters of local concern to municipalities that opt-in to the recreational marijuana licensing process. MCL 333.27956. In the absence of a direct conflict between the City's licensing standards and evaluation criteria, there is no conflict. The City ordinance cannot be found to violate MRTMA by adding selection criteria and considerations to establish a competitive process to determine which applicants among all of the qualified applicants "are best suited to operate in compliance with [MRTMA] within the municipality." MCL 333.27959(4).

Plaintiff also complains of the award of a license slot to an applicant allegedly located less than 1,000 feet from a purported "school," as provided by MCL 333.29758. However, the City has the authority to reduce the statutory distancing requirement. MRTMA provides certain standards in MCL 333.27958 for state licensure of a marijuana establishment. One of these criteria is that "the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of

RECEIVED by MSC 12/10/2025 3:03:01 PM

grades 1 through 12, *unless a municipality adopts an ordinance that reduces this distance requirement*[.]" MCL 333.27958(3)(c) (emphasis added). To this end, in conjunction with its RME licensing ordinance, Royal Oak also adopted amendments to its zoning ordinance per its zoning authority under the Michigan Zoning Enabling Act, MCL 125.3101, *et seq*., allowing marijuana uses in certain zoning districts as a special land use. Zoning Ordinance (ZO), § 770-52.1(B), **Ex 4**. The special land use process requires site plan review and recommendation by the Planning Commission before a final decision by the City Commission. *Id*.

The Royal Oak ordinance contains the 1,000-foot distancing requirement. ZO, § 770-52.1(B)(3). However, under the City's zoning authority, it also grants the City Commission discretionary authority to deviate from the strict requirements of the ordinance: "Deviations from applicable *setback, parking, and other requirements* may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section." ZO, § 770-52.1(B)(14) (emphasis added). Thus, the City Commission will have to decide whether the purported school falls within the definition of a school to which the buffer requirement applies, and if so, whether it will authorize a deviation from the distancing standard in conjunction with an application for site plan approval.

Thus, the City Ordinance, on its face and as applied here, does not violate the MRTMA. Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). There is further no genuine issue of material fact, and Royal Oak is entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

VI. ROYAL OAK HAS NOT VIOLATED THE OPEN MEETINGS ACT.

Plaintiff claims that the process implemented by the Royal Oak city manager by consulting with other department heads to seek their advice in making his determination of which applicants to award license slots violated the Open Meetings Act (OMA), MCL 15.261, *et seq*.

The OMA provides that all decisions and deliberations of a "public body" must be held at a meeting open to the public and held in a place available to the general public. MCL 15.263(1)-(3). The OMA expressly

RECEIVED by MSC 12/10/2025 3:03:01 PM

defines "public body":

> "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

"Public body" connotes a collective entity. *Herald Co v City of Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). In *Herald*, the Supreme Court concluded that, "[A]n individual executive acting in his executive capacity is not a public body for the purposes of the OMA." *Id*., at 130.

In *Herald*, the Bay City manager made a hiring recommendation, per the city charter, to fill the position of fire chief. The city manager created a committee to advise him in that task. The manager took the advice and developed a hiring recommendation to the city council. A local newspaper challenged this process under the OMA, claiming that the committee was a public body to which the OMA applied, and that the committee's meetings had been in violation of the OMA.

The Supreme Court ultimately disagreed with the plaintiff's argument. It also distinguished the plaintiff's citation to other cases[6] where the Court had held that committees created by statute or by other public bodies themselves exercised governmental authority were public bodies and subject to the OMA. *Id*., at 133-135.

The Royal Oak RME ordinance, § 435-2(E), provides that, "The City Manager is granted the power *to fully and effectively* implement and administer the municipal license application process." (Emphasis added.) § 435-4(C) of the ordinance confers the following decision-making authority for the selection process to determine recipients of City licenses:

> 1. If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The

[6] *Menominee Co Taxpayers Alliance, Inc v Menominee Co Clerk,* 139 Mich App 814; 362 NW2d 871 (1984); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211; 507 NW2d 422 (1993).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.
>
> 2. At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.
>
> ***
>
> 3. The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City *as determined by the City Manager or his or her designee*. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. (Emphasis added.)

Under the ordinance, then, the City Manager is the decision-making authority for awarding license slots, and City Manager Brake made those decisions for certain types of licenses available in this instance. **Ex 2**, ¶¶ 11-12. As an individual executive official and the chief administrative officer exercising his executive administrative authority[7], the city manager is not a "public body" to which the OMA applies. *Herald, supra.*

Nor does City Manager Brake's seeking advice from other City officials or even meeting with them violate the OMA. Manager Brake attests that he consulted with other City officials, whom Plaintiff has termed the "Ranking Committee," in an attempt to make that so-called "committee" a public body and subject to the OMA. However, the Supreme Court rejected this very argument in *Herald*:

> Nor do we agree with the contention that the committee that was formed by the city manager was subject to the requirements of the OMA under the rationale in *Booth*. The city manager may have delegated some of his authority to the committee he created and, were the city manager himself subject to the OMA, the committee he created might also have been subject to the OMA pursuant to *Booth*. *Here, however, because the city manager was not subject to the OMA, Booth has no application*. Because the city manager's committee in this case was not "empowered by state constitution, statute, charter, ordinance, resolution, or rule," it was not a public body for purposes of the OMA, and the committee's actions did not violate that statute. *Id*., at 135-136 (emphasis added).

This circumstance is on all-fours with the case before this Court. Importantly, there is no provision in

[7] See discussion of executive authority in *Coeus v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued January 20, 2022 (Docket No. 353844) – **Ex 3**.

RECEIVED by MSC 12/10/2025 3:03:01 PM

the Royal Oak RME ordinance for decision-making by committee. **Ex 1**, Chapter 435. Rather, the ordinance confers upon the City Manager the authority "to fully" implement the scheme created in the ordinance. The so-called "ranking committee" here has no legal status as a public body,

but is simply a collection of administrative staff providing opinions and advice to the City Manager to help *him* carry out *his* functions and duties under the ordinance. There is nothing in the MRTMA or the City ordinance that prevents the city manager from doing this.

The city manager sought input from the various administrative staff, but he alone made the decisions under his authority conferred by the ordinance. **Ex 2**, ¶ 11. He did not even delegate his authority in any respect to the other administrative officials, but simply sought their advice as to the specific areas of expertise relevant to the applications. *Id*. No other person's opinion was dispositive and there was no consensus or vote taken to reach the final decision to award license slots. *Id*.

The City Manager's status as an individual executive official exercising his own authority conferred by the ordinance is not a public body to which the OMA applies. *Herald, supra*. Thus, the holding in *Herald* directly applies to this case and there has been no violation of the OMA here. Plaintiff has failed to state a claim upon which relief can be granted, and there is no genuine issue of material fact that would make the City Manager a "public body" subject to the OMA.[8]

Therefore, Plaintiff's Complaint is subject to summary disposition under MCR 2.116(C)(8) and (10). Defendant respectfully requests that the Court so order.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak

[8] The OMA also authorizes a cause of action for its violation against "a public body [that] is not complying with [the OMA]." MCL 15.271(1). If, as Plaintiff posits, the city manager or the so-called ranking committee is not complying with the OMA, then that public body, and not the City of Royal Oak, is the proper party to sue for violation of the OMA. See MCR 2.201(C)(5).

RECEIVED by MSC 12/10/2025 3:03:01 PM

PROOF OF SERVICE

I hereby certify that on April 13, 2022, I electronically filed the foregoing paper with the Clerk of the Court using the MIFile/TrueFiling system which will send notification of such filing to all counsel of record.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 1

RECEIVED by MSC 12/10/2025 3:03:01 PM

City of Royal Oak, MI
Saturday, March 5, 2022

Chapter 435. Marihuana

[HISTORY: Adopted by the City Commission of the City of Royal Oak as indicated in article histories. Amendments noted where applicable.]

Article I. Recreational Marihuana Establishments

[Adopted 7-27-2020 by Ord. No. 2020-06]

§ 435-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed as follows:

APPLICANT

Unless specifically stated to mean a state license, means an individual, organization, partnership, company, corporation, enterprise, or other entity that applies for a municipal license as well as the person or persons associated with the applicant.

A. For purposes of this definition, an applicant includes a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

(1) For an individual or sole proprietorship: the proprietor and spouse.

(2) For a partnership and limited liability partnership: all partners and their spouses.

(3) For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

(4) For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

(5) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(6) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(7) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(8) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

B. For purposes of this definition, an applicant does not include:

(1) A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

(2) A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana-infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms "franchise," "franchisor," and "franchisee" shall have the meanings set forth in Section 2 of the Franchise Investment Law, 1974 PA 269, MCLA 445.1502, as may be amended.

(3) A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

(4) A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property, including, but not limited to, brands and recipes.

APPLICATION

An application for a municipal license under this article and includes all supplemental documentation attached or required to be attached thereto; the person filing the application shall be known as the "applicant."

APPLICATION DOCUMENTS

The items required as part of an application submitted to the City prior to them being accepted as complete as provided in § **435-4**.

BOARD

The Marihuana Licensing Board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

CLERK

The City of Royal Oak Clerk or his/her designee.

CO-LOCATED FACILITY or CO-LOCATION

Marihuana businesses holding two or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

CULTIVATE or CULTIVATION

To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

DEPARTMENT

The Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan license for a marihuana establishment.

DESIGNATED CONSUMPTION ESTABLISHMENT

A commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

EXCESS MARIHUANA GROWER

RECEIVED by MSC 12/10/2025 3:03:01 PM

A license issued to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

GROWER

A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

LICENSE

A current and valid license for a marihuana establishment issued by the State of Michigan.

LICENSEE

A person holding a current and valid Michigan license for a marihuana establishment.

MARIHUANA

That term as defined in Section 3 of the MRTMA, MCLA 333.27953, as may be amended.

MARIHUANA ACCESSORIES

Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

MARIHUANA CONCENTRATE

The resin extracted from any part of the plant of the genus cannabis.

MARIHUANA ESTABLISHMENT

A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the Department pursuant to MCLA 333.27951, as may be amended.

MARIHUANA EVENT ORGANIZER

A person licensed to apply for a temporary marihuana event license under these rules.

MARIHUANA MICROBUSINESS

A person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

MARIHUANA PROCESSOR

A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA RETAILER

A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

MARIHUANA-INFUSED PRODUCT

A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MICHIGAN MARIHUANA FACILITIES LICENSING ACT or MMFLA

Public Act 281 of 2016, MCLA 333.27101 et seq., as may be amended.

MICHIGAN MARIHUANA TRACKING ACT

RECEIVED by MSC 12/10/2025 3:03:01 PM

Public Act 282 of 2016, MCLA 333.27901 et seq., as may be amended.

MICHIGAN MEDICAL MARIHUANA ACT or MMMA
2008 IL 1, MCLA 333.26421 et seq., as may be amended.

MUNICIPAL LICENSE
A current and valid license for a marihuana establishment issued under this article, which shall be granted to a municipal license holder only for and limited to a specific municipally licensed premises and a specific municipally licensed property. Said municipal license shall be in addition to the special use permit and site plan approval required to be obtained pursuant to the City Zoning Ordinance.

MUNICIPAL LICENSE HOLDER
An individual, organization, partnership, company, corporation, enterprise, or other entity that holds a current and valid municipal license issued under this article as well as the person or persons associated with the municipal license holder as applicant(s) for that municipal license.

MUNICIPAL LICENSE SLOT
An unissued permit available to be issued to an applicant.

MUNICIPALLY LICENSED PREMISES
The particular building, buildings, or tenant space within which the municipal license holder will be authorized to conduct the facility's activities pursuant to the municipal license.

MUNICIPALLY LICENSED PROPERTY
The real property comprised of a lot, parcel, or other designated unit of real property upon which the municipally licensed premises is situated.

PERSON
A natural person, company, partnership, profit or nonprofit corporation, limited liability company, or any joint venture for a common purpose.

PREMISES
The particular building, buildings, section of land, or tenant space within which a particular use is conducted.

PUBLIC PLACE
Any area in which the public is invited or generally permitted in the usual course of business.

RULES
Rules promulgated by the Department in consultation with the Board to implement the Act, including the LARA Rules, as may be amended.

SAFETY COMPLIANCE ESTABLISHMENT
A person licensed to test marihuana, including certification for potency and the presence of contaminants.

SCHOOL
A preexisting public or private school with a curriculum equivalent to kindergarten through 12th grade.

SECURE TRANSPORTER
A person licensed to obtain marihuana form marihuana establishments in order to transport marihuana to marihuana establishments.

STACKED LICENSE
More than one state license issued to a single licensee to operate as a Class C marihuana

RECEIVED by MSC 12/10/2025 3:03:01 PM

grower as specified in each state license at a marihuana establishment.

STATE OPERATING LICENSE or, unless the context requires a different meaning, LICENSE
A license issued by the Department that allows a person to operate a marihuana establishment.

TEMPORARY MARIHUANA EVENT LICENSE
A state license held by a marihuana event organizer for an event where the on-site sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

WINDOW
The time period set by the City Manager to receive applications for evaluation by the competitive process as specified in this article.

§ 435-2. Municipal license required; eligibility; general provisions.

A. The City hereby authorizes the operation of the following types of marihuana establishments:

(1) Growers, Class A.

(2) Growers, Class B.

(3) Growers, Class C.

(4) Processors.

(5) Retailer.

(6) Safety compliance facilities.

(7) Secure transporters.

(8) Marihuana microbusiness.

(9) Co-located facilities as defined in this article.

B. The following number of municipal licenses can be issued for each authorized marihuana establishment type:

(1) Growers, Class A: one.

(2) Growers, Class B: one.

(3) Growers, Class C: one.

(4) Processors: one.

(5) Retailers: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

(6) Safety compliance facilities: one.

(7) Secure transporters: one.

(8) Marihuana microbusiness: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General

RECEIVED by MSC 12/10/2025 3:03:01 PM

Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

C. No person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article. No marihuana establishments are allowed nor shall a municipal license be considered or granted for those activities and facilities defined as a "special license," being a state license described under Section 8 of the MRTMA and issued by the state pursuant to Section 9 of the MRTMA, MCLA 333.2795 and 333.27959, as may be amended, including, but not limited to, designated consumption establishment, excess marihuana grower, marihuana event organizer, temporary marihuana event, and any special license types hereafter recognized by the state.

D. Marihuana establishments shall operate only as allowed under this article.

E. The City Manager is granted the power to fully and effectively implement and administer the municipal license application process.

F. The requirements set forth in this article shall be in addition to, and not in lieu of, any other licensing or municipal licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this article, each applicant shall pay nonrefundable review fees, application fees, annual fees, renewal fees and inspection fees for municipal licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding marihuana establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The municipal license fee requirement 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.

H. The City has no obligation to process or approve any incomplete application.

I. A municipal license shall remain valid for one year following removal of all stipulations on an issued municipal license.

J. It is the sole and exclusive responsibility of each municipal license holder or applicant at all times during the application period and during its operation to immediately provide the City with all material changes in any information submitted on an application and any other changes that may materially affect any state license or its City municipal license.

K. No municipal license issued under this article may be assigned or transferred to another person or entity except as specified in this article. No municipal license issued under this article is transferrable to any other location except for the municipally licensed premises on the municipally licensed property.

L. The original municipal license issued under this article shall be prominently displayed at the municipally licensed premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

M. A municipal license holder may not engage in any other marihuana establishment in the municipally licensed premises or on the municipally licensed property, or in its name at any other location within the City, without first obtaining a separate municipal license.

N. No municipal license shall be granted or renewed for a marihuana establishment in a residence.

O. Co-located facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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

RECEIVED by MSC 12/10/2025 3:03:01 PM

is consistent with zoning and other provisions of the City Code of Ordinances. If these conditions are met, more than one business may be located on one parcel.

§ 435-3. Other laws and ordinances.

In addition to the terms of this article, any marihuana establishment shall comply with all City ordinances, including, without limitation, the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan.
[Amended 10-12-2020 by Ord. No. 2020-12]

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

[1] A description of the type of marihuana establishment proposed and the

RECEIVED by MSC 12/10/2025 3:03:01 PM

anticipated or actual number of employees.

[2] A security plan meeting the requirements of § **435-5** of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § **740-7**.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § **770-12**, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect, or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § **435-5A(5)** of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § **435-4** of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any

RECEIVED by MSC 12/10/2025 3:03:01 PM

public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment;
[Amended 10-12-2020 by Ord. No. 2020-12]

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant.

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state

RECEIVED by MSC 12/10/2025 3:03:01 PM

or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request an extension up to six months to this time frame, which may be granted by the City Clerk.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § **435-4C**, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following:

(a) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § **435-5A(5)** of this article.

(b) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

(d) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

RECEIVED by MSC 12/10/2025 3:03:01 PM

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § **435-4D(7)(a)** will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

§ 435-5. Operational requirements for marihuana establishments.

A. A marihuana establishment issued a municipal license under this article and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

(1) Scope of operation. Marihuana establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The marihuana establishment must hold a valid local municipal license and state marihuana establishment license for the type of marihuana establishment intended to be carried out on the municipally licensed property. The marihuana establishment operator, owner or licensee must have documentation available that local and state sales tax requirements, including holding any licenses, if applicable, are satisfied.

(2) Required documentation. Each marihuana establishment shall be operated from the

RECEIVED by MSC 12/10/2025 3:03:01 PM

municipally licensed premises on the municipally licensed property. No marihuana establishment shall be municipally licensed to operate from a movable, mobile or transitory location, except for a municipally licensed or licensed secure transporter when engaged in the lawful transport of marihuana. No person under the age of 18 shall be allowed to enter into the municipally licensed premises without a parent or legal guardian.

(3) Security. Municipal license holders shall at all times maintain a security system that meets state law requirements and, in addition, shall also include the following:

(a) Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, seven days a week, and which will contact local law enforcement if triggered;

(b) A locking safe permanently affixed to the municipally licensed premises that shall store all marihuana and cash remaining in the marihuana establishment overnight;

(c) All marihuana in whatever form stored at the municipally licensed premises shall be kept in a secure manner and shall not be visible from outside the municipally licensed premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the municipally licensed premises; and

(d) All security recordings and documentations shall be preserved for at least 30 days by the municipal license holder and made available to any law enforcement upon request for inspection.

(4) Operating hours. No retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.

(5) Required spacing.

(a) The following spacing requirements for marihuana establishments are required:

[1] No marihuana establishment shall be permitted within a 1,000-foot radius of any school.

[2] No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

[3] Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(b) Spacing requirements become effective upon issuance of a municipal license, whether conditional or not.

(6) Amount of marihuana. The amount of marihuana on the municipally licensed property and under the control of the municipal license holder, owner or operator of the marihuana facility shall not exceed that amount permitted by the state license or the City's municipal license.

(7) Sale of marihuana. The marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The marihuana establishment is prohibited from selling, soliciting, or receiving orders for marihuana or marihuana products over the internet.

(8) Sign restrictions. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any municipally licensed premises nor be visible outside of the municipally licensed premises on the municipally licensed property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(9) Use of marihuana. The sale, consumption or use of alcohol or tobacco products on the municipally licensed premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the municipally licensed premises is prohibited.

(10) Indoor operation. All activities of marihuana establishment, including, without limitation, distribution, growth, cultivation, or the sale of marihuana, and all other related activity municipally licensed under the municipal license holder's license or municipal license must occur indoors. The marihuana establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the municipally licensed premises. No consumption of marihuana shall take place on the premises of a marihuana establishment.

(11) Distribution. No person operating a marihuana establishment shall provide or otherwise make available marihuana to any person who is not legally authorized to receive marihuana under state law.

(12) Permits. All necessary building, electrical, plumbing and mechanical municipal licenses must be obtained for any part of the municipally licensed premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of marihuana are located.

(13) Waste disposal. The municipal license holder, owner and operator of the marihuana establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the license or municipal license. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

(14) Proof of insurance. A municipal license holder shall at all times maintain in full force and effect for the duration of the license workers' compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A municipal license holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this subsection. 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.

(15) Transportation.

(a) Marihuana may be transported by a secure transporter within the City under this article, and to effectuate its purpose, only:

[1] By persons who are otherwise authorized by state law to possess marihuana;

[2] In a manner consistent with all applicable state laws and rules, as may be amended; and

[3] In a secure manner designed to prevent the loss of marihuana.

(b) No vehicle used for the transportation or delivery of marihuana under this article shall have for markings the words "marihuana," "marijuana" or "cannabis" or any similar words; pictures or other renderings of the marihuana plant; advertisements for marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture; or any other word, phrase or symbol indicating or tending to indicate that the vehicle is

RECEIVED by MSC 12/10/2025 3:03:01 PM

transporting marihuana.

(c) No vehicle may be used for the ongoing or continuous storage of marihuana, but it may only be used incidental to, and in furtherance of, the transportation of marihuana.

(16) Additional conditions. The City may impose such reasonable terms and conditions on a marihuana establishment special use as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this article and applicable law.

§ 435-6. Penalties and consequences for violation.

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this article or failure to comply with any of the requirements of this article shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this article. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this article.

§ 435-7. City liability and indemnification.

A. By accepting a municipal license issued pursuant to this article, the municipal license holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of marihuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a municipal license issued pursuant to this article, all municipal license holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a municipally licensed property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the municipal license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), or any other alleged violation of the law.

C. By accepting a municipal license issued pursuant to this article, a municipal license holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law, including the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Chapter 7 of the Michigan Public Health Code, MCLA 333.7101 et seq., as may be amended.

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-8. Municipal license as revocable privilege.

A. A municipal license granted by this article is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each municipal license is exclusive to the municipal license holder, and a municipal license holder or any other person must apply for and receive the City's approval before a municipal license is transferred, sold, or purchased. A municipal license holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a municipal license without prior state and local approval is grounds for suspension or revocation of the municipal license or for other sanction considered appropriate by the City.

B. Nonrenewal, suspension or revocation of municipal license. The City may, after notice and hearing as provided in § 434-4D(10) of this article, suspend, revoke, or refuse to renew a municipal license for any of the following reasons:

   (1) The applicant or municipal license holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this section or with any applicable state or local law or regulation.

   (2) The applicant or municipal license holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its municipal license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the municipal license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the municipal license.

   (3) The marihuana establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

§ 435-9. Authorization to inspect, search and examine.

A marihuana establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department, and the application for a marihuana establishment constitutes consent by the applicant, and all owners, managers, and employees of the marihuana establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the marihuana establishment to ensure compliance with this article or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a municipal license without a search warrant.

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 2

RECEIVED by MSC 12/10/2025 3:03:01 PM

AFFIDAVIT OF PAUL BRAKE

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

PAUL BRAKE, being first duly sworn, deposes and says that:

1. I have personal knowledge of the facts stated in this Affidavit and if called to testify, I am able to do so.

2. I hold a master's degree in public administration. I completed the Harvard Kennedy School for Senior Executives in State and Local Government, and the University of Virginia, Weldon Cooper School of Public Policy Senior Executive Institute.

3. I hold a certification as a Business Solutions Professional from Michigan State University and am a Certified Economic Developer (CEcD), certified by the International Economic Development Council.

4. I am employed by the City of Royal Oak as City Manager, a position I have held since May 2020.

5. I have previously held municipal management positions in Meridian Township and Grand Blanc, Michigan, and Morgantown, West Virginia, totaling more than 20 years in municipal administration before joining Royal Oak.

6. In my position as city manager, I frequently consult with department heads and other city administrative staff in various areas of concern that may affect decisions that I must make from day to day as the city's chief administrative officer.

7. Under the Royal Oak recreational marijuana licensing ordinance, I am responsible to evaluate applications for marijuana licenses and to assign municipal marijuana "license slots" to applicants judged to be best suited to operate in Royal Oak and in compliance with the state

RECEIVED by MSC 12/10/2025 3:03:01 PM

recreational marijuana law, which allows those applicants to proceed further through the process to possible licensure.

8. In the window of time during which applicants could submit applications for recreational marijuana licenses in 2020-2021, Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications.

9. In evaluating the applications, I consulted various department heads of the City administrative staff for advice relevant to certain aspects of the applications within their specialties, just as I commonly consult with them about other municipal matters and operations.

10. I consulted with my assistant, Susan Barkman; Timothy Twing, Director of Community Development; Joseph Murphy, City Planner; Holly Donoghue, City Engineer; Todd Fenton, Deputy City Manager and Director of Economic Development; Corey O'Donohue, Chief of Police; Jaynmarie Hubanks, City Treasurer; and City Attorney Aaron Leal.

11. The input I received from each department head varied from person to person. Each of them had different opinions about various aspects of the applications. Some gave me their opinions about how the applicants should be ranked. No other person's opinion was dispositive, and there was no consensus or "vote" taken. I alone decided the final rankings of marijuana applications required under the state law and city ordinance.

12. Upon completing my evaluations, I assigned license slots as follows: one applicant for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment.

RECEIVED by MSC 12/10/2025 3:03:01 PM

13. My decisions assigning license slots do not end the process. After public hearing and recommendation by the Planning Commission of its site plan review of successful applicants, the City Commission makes the final decision as to site plan review under the city's zoning ordinance.

14. If any holder of a license slot does not timely pay its fees or adhere to the other time limits established by the city's Recreational Marihuana ordinance, or does not complete or satisfactorily pass any step required by the ordinance, up to and including final approval, it will lose its license slot status.

15. Any applicant who is not initially assigned a license slot and whose application is not denied is put on a standby list. If another license slot becomes available, the next highest ranked application will be assigned an available license slot and permitted to proceed through the remainder of the process upon timely payment of the required fees. This way, the applicant does not need to reapply, pay additional fees, and begin the process again.

16. Once all applicants assigned a license slot successfully complete the remaining process through full licensure and the license slots are exhausted, then I will send a letter to each unsuccessful applicant advising that their application has been denied. If an applicant is denied, then it may not reapply until another license slot becomes available or a new window for receiving applications is opened.

Further, Affiant sayeth not.

PAUL J. BRAKE

Subscribed and sworn to before me
this 2 day of March, 2022

Notary Public
Oakland County, Michigan

RONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

My Commission Expires: Nov 22, 2023

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 3

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

COURT OF APPEALS

COEUS, LLC,

Plaintiff/Counterdefendant-Appellant,

v

CITY OF WALLED LAKE, LINDA S. ACKLEY, L. DENNIS WHITT, CHELSEA PESTA, and JENNIFER A. STUART,

Defendants-Appellees,

and

JOHN AND JANE DOES 1 THROUGH 20, FRANK MARRA, and MATTHEW CECCHETTI,

Defendants,

and

CUSTOM BUILT PROPERTIES, LLC, doing business as GREEN HOUSE OF WALLED LAKE, and JERRY MILLEN,

Defendants/Counterplaintiffs.

UNPUBLISHED
January 20, 2022

No. 353844
Oakland Circuit Court
LC No. 2018-170030-CZ

Before: GADOLA, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff, COEUS, LLC, appeals as of right the trial court's stipulated order of dismissal.[1] On appeal, plaintiff challenges the trial court's earlier opinion and order granting summary disposition in favor of defendants city of Walled Lake, Mayor Linda S. Ackley, City Manager L. Dennis Whitt, City Development Manager Chelsea Pesta, and City Clerk Jennifer A. Stuart (collectively, "the city defendants"). On appeal, plaintiff argues that the city defendants are not entitled to governmental immunity and that its claims alleging a violation of due process and promissory estoppel were legally sufficient. We affirm.

This case arises from the city of Walled Lake's implementation, under the authority of the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq*., of its medical marijuana facilities licensing ordinance and plaintiff's subsequent application for a license to operate a provisioning center. The ordinance specifies that there are to be three licenses for provisioning centers, with two located in the C-2 zoning district and one located in the C-3 zoning district. Walled Lake Ordinance C-334-17, § 6b, enacting § 21.49(b) of the Zoning Ordinance. Subsequently, the city passed Resolution 2018-10, which established administrative rules for processing MMFLA permit applications.

After submitting applications to the city, plaintiff attempted numerous times to obtain status updates. In response to plaintiff's repeated phone calls, the city informed plaintiff that no action had been taken on any of the applications, no permits had been issued, and no meetings had been held addressing any of the applications. Plaintiff alleged that contrary to the city's claims that no MMFLA licenses had been issued, it was evident that the city had issued a license to defendant Green House of Walled Lake. Ultimately, plaintiff was advised that its request for the C-3 license was denied.

In its second amended complaint, plaintiff alleged the following counts against the city defendants: fraudulent misrepresentation (Count II); silent fraud (Count III); negligent misrepresentation (Count IV); unjust enrichment (against the city of Walled Lake only) (Count V); breach of an implied contract (Count VI); promissory estoppel (Count VII); violation of due process and equal protection (Count VIII); civil conspiracy (Count IX); injunctive relief (Count X); and gross negligence (Count XI).

The city defendants thereafter moved for summary disposition under MCR 2.116(C)(7), arguing that they were entitled to governmental immunity with respect to the alleged torts, and under MCR 2.116(C)(8) on plaintiff's due-process and promissory-estoppel claims. In a thorough opinion and order, the trial court granted the motion and dismissed all claims against the city defendants.

I. GOVERNMENTAL IMMUNITY

This Court reviews de novo a trial court's decision on a motion for summary disposition, *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008), as well as issues involving

[1] That order dismissed with prejudice plaintiff's claims against defendants Custom Built Properties, LLC, Jerry Millen, Frank Marra, and Matthew Cecchetti. The order also dismissed the counterclaims brought by Custom Built and Millen against plaintiff.

RECEIVED by MSC 12/10/2025 3:03:01 PM

questions of law, such as the construction and interpretation of a city charter or ordinance. *Oakland Co Bd of Co Rd Comm'rs v Mich Prop & Cas Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Ferguson v City of Lincoln Park*, 264 Mich App 93, 95; 694 NW2d 61 (2004).

A party is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are "barred because of immunity granted by law." When considering a motion brought under this subrule, the court considers all the affidavits, depositions, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). "The contents of the complaint are accepted as true unless contradicted by the evidence provided." *Odom*, 482 Mich at 466 (quotation marks and citation omitted).

A. CITY OF WALLED LAKE

The governmental tort liability act (GTLA), MCL 691.1401 *et seq*., provides that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."[2] MCL 691.1407(1); see also *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 326-327; 869 NW2d 635 (2015). While there are six statutory exceptions to this broad grant of immunity, plaintiff did not allege that any applied.[3] Thus, as the trial court noted, the only question is whether the city was engaged in a governmental function.

The GTLA defines "governmental function" as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). Conversely, when "a governmental agency engages in an activity which is not expressly or impliedly mandated or authorized by constitution, statute, or other law (*i.e.*, an *ultra vires* activity), it is not engaging in the exercise or discharge of a governmental function" and "is therefore liable for any injuries or damages incurred as a result of its tortious conduct." *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984). However, when determining whether an act is a "governmental function" or merely an ultra vires act, courts are to " 'look to the general activity involved rather than the specific conduct engaged in when the alleged injury occurred.' " *Genesee Co Drain Comm'r*, 309 Mich App at 327, quoting *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 84; 782 NW2d 514 (2010).

Although plaintiff alleges that the city engaged in fraudulent and corrupt acts, its focus is too narrow. In this instance, the general activity in which the city had been engaged was the implementation and adoption of its medical marijuana facilities licensing ordinance and the

---

[2] There is no dispute that the city of Walled Lake is a "governmental agency" as defined by the GTLA. See MCL 691.1401(a), (d), and (e).

[3] "The six statutory exceptions are: the highway exception, MCL 619.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3)." *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84 n 10; 746 NW2d 847 (2008).

RECEIVED by MSC 12/10/2025 3:03:01 PM

processing of applications for a license. The implementation of the ordinance was expressly authorized by the MMFLA, and the processing of applications for licenses was authorized by the city's ordinance. Therefore, the city was engaged in a governmental function, and accordingly, it is immune from tort liability. Thus, the trial court did not err by granting summary disposition to the city on this ground.[4]

B. CITY DEVELOPMENT MANAGER PESTA AND CITY CLERK STUART

Plaintiff next argues that the trial court erred by granting summary disposition in favor of City Development Manager Pesta and City Clerk Stuart.

The GTLA also grants immunity to officers and governmental agency employees for negligent and intentional conduct if other conditions are met.

Regarding negligent torts, MCL 691.1407(2) provides, in pertinent part:

> [E]ach officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

In response to the city defendants' motion for summary disposition, plaintiff only contested the gross-negligence component by stating, "[T]he sole issue before this Court is whether Plaintiff has properly alleged the elements of gross negligence." Thus, our review is whether the conduct of Pesta and Stuart amounts to gross negligence.

---

[4] To the extent that plaintiff argues that the city could be liable under a theory of gross negligence, the gross-negligence exception to governmental immunity contained in MCL 691.1407(2) only applies to *individuals*; it does not apply to the *governmental agency* itself. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), abrogated on other grounds in *American Transmissions, Inc v Attorney General*, 454 Mich 135; 560 NW2d 50 (1997); see also *Tarlea v Crabtree*, 263 Mich App 80, 89; 687 NW2d 333 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). The alleged failure of Pesta and Stuart to follow the procedures in the city's ordinance and resolution do not amount to gross negligence. Notably, on appeal and without providing any citations to the lower court record, plaintiff merely asserts that it had "specifically plead[ed] that the actions of those individuals [Pesta and Stuart] constituted gross negligence, citing specific examples and drawing upon the deposition of Pesta." This type of cursory argument constitutes an abandonment of the issue on appeal. See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Even considering the cursory argument, however, it appears that plaintiff is referring to its response to the city defendants' motion for summary disposition because it is in that filing that plaintiff cites and provides the deposition of Pesta. But plaintiff's allegations are limited to Pesta failing to advise plaintiff of the results of the preliminary review, which plaintiff asserts was required under the city's Resolution 2018-10. Pesta testified that she thought the resolution only required her to notify applicants if the preliminary review revealed that their application was somehow incomplete.[5] Assuming Pesta had an obligation under the resolution to conduct a preliminary review and to communicate the results to plaintiff, yet failed to do so because she was mistaken, such conduct is not "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). At best, such conduct amounts to ordinary negligence. Therefore, the trial court properly granted summary disposition in favor of Pesta and Stuart on all of plaintiff's negligence claims.

While MCL 691.1407(2) governs negligence claims, intentional-tort claims are governed by MCL 691.1407(3), which simply provides that the law regarding intentional torts is as it existed

---

[5] The pertinent section of Resolution 2018-10 states:

> Upon receipt of an Application for site plan and/or operational approval of a Marijuana Facility and payment of all required fees, the City Clerk shall conduct a preliminary review of the Application for purposes of determining completeness and preliminary eligibility of the proposed or existing facility at the proposed or existing location. The City Clerk shall notify the applicant of the results of the preliminary review, including deficiencies rendering the application incomplete, and afford the applicant an opportunity to withdraw the application and receive a refund of the application fee and consultant review fee if the preliminary review reveals the proposed facility is not eligible for further review. If an application is incomplete, the applicant may withdraw the application and receive a refund of refundable fees, or cure any deficiencies rendering the application incomplete. Preliminary administrative review fees are non-refundable. Unless the Applicant withdraws the application, the Clerk shall forward a complete application for an eligible facility and all supporting materials for final review, recommendation and/or action by City staff, administration and/or consultants as may be required by applicable City Code or ordinance. Unless otherwise provided by these rules or applicable code or ordinances, complete applications for an eligible facility will be processed in the order received as determined by the date the application is completed. [Walled Lake Resolution 2018-10, § 4.]

RECEIVED by MSC 12/10/2025 3:03:01 PM

before July 7, 1986. *Odom*, 482 Mich at 470-471. Thus, with respect to intentional torts, a governmental employee is immune from liability if (1) she was acting within the course of her employment and was acting, or reasonably believed that she was acting, within the scope of her authority; (2) the acts were not undertaken with malice; and (3) the acts were discretionary, as opposed to being ministerial. *Id*. at 480.

It is important to recognize which intentional torts are at issue here. The only intentional torts alleged against the city defendants (and, hence, Pesta and Stuart) are plaintiff's claims of fraudulent representation and silent fraud. We agree with the trial court that plaintiff did not allege in its second amended complaint any facts that would lead to the conclusion that either Pesta or Stuart had acted outside the scope of their authority. Indeed, processing permit applications and communicating with the applicants is within both of their job responsibilities, and given the need to review applications for completeness and sufficiency, the trial court was correct in concluding the process was not ministerial in nature.

That leaves open the question whether the trial court erred when it stated that plaintiff did not plead any facts supporting the conclusion that either Pesta or Stuart acted with malice. A lack of good faith has been described as "malicious intent, capricious action or corrupt conduct" or "willful and corrupt misconduct." *Id*. at 474 (quotation marks and citations omitted). For the reasons articulated in section I.B of this opinion, we again conclude that plaintiff has not adequately presented the argument as to what allegations exist as to Pesta and Stuart on the existence of malice. We have canvassed both plaintiff's principal and reply briefs, and have found no specific citation to the record—or citation to any specific factual allegations—that are meant to show that either defendant acted with malice. Both briefs do contain assertions that these defendants "acted fraudulently and corruptly," and that they (and others) engaged "in corrupt and illegal practices," but those were in reference to the argument that they (and the city) were not engaged in a governmental function, because they were acting ultra vires. But even if those allegations were directed toward whether there was malice as to these two defendants under *Odom*, these allegations are conclusory and come nowhere close to what is required for a properly developed argument. Hence, we conclude that plaintiff has effectively abandoned the argument that there are sufficient factual allegations of malice against defendants Pesta and Stuart to withstand summary disposition. *Peterson Novelties, Inc*, 259 Mich App at 14.[6]

C. CITY MANAGER WHITT

[6] In fact, there is not a single citation to any paragraphs from the second amended complaint (nor the original or first amended complaints) in either brief, and the exhibits cited in the briefs that are written by defendants Petra or Stuart are letters responding on behalf of the city to freedom of information act requests submitted by plaintiff's counsel (by defendant Petra) and a letter to the state licensing agency regarding the status of a certificate of occupancy and pre-approval of a license for Custom Built Properties (by defendant Stuart). Even if the Petra letters reflect a denial of information that existed, without more expansive argument, it is difficult to discern how this reflects malice on the part of Petra. And, confirmation of certain facts to an agency by Stuart could go towards allegations against the city or other decision-maker, but says nothing about decisions made by Stuart.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff also argues that the trial court erred by ruling that City Manager Whitt was absolutely immune from liability. We note that a panel of this Court recently rejected this same argument as to Whitt in a case involving these same parties. See *Jones v Walled Lake*, unpublished opinion per curiam of the Court of Appeals, dated June 17, 2021 (Dkt No. 350997). We agree with the rationale and conclusions reached in that opinion, but set forth our reasoning for the sake of completeness and further appellate review.

The GTLA provides certain high-ranking governmental officials with absolute immunity from tort liability. MCL 691.1407(5) states:

> A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Thus, "[t]o qualify for absolute immunity from tort liability[,] an individual governmental employee must prove his or her entitlement to immunity by establishing, consistently with the statute's plain language, (1) that he or she is a judge, legislator, or the elective or highest appointive executive official of a level of government and (2) that he or she acted within the scope of his or her judicial, legislative, or executive authority." *Petipren v Jaskowski*, 494 Mich 190, 204; 833 NW2d 247 (2013). Because there is no dispute that Whitt was not a judge or legislator, the first question that must be answered is whether he was "the elective or highest appointive executive official" for the city of Walled Lake.

Plaintiff asserts that Whitt is an administrator who lacks any executive function and has no legal role.[7] The duties of the city manager are described by ordinance as follows:

> (1) Be responsible to the council for the efficient administration of all administrative departments of the city government.
>
> (2) *See that all laws and ordinances are enforced*.
>
> (3) Appoint, with the consent of the council, the heads of the several city departments whose appointments are not otherwise specified in the city Charter or ordinance, and to discharge the department heads without the consent of the council, and to direct and supervise the department heads.

[7] Plaintiff raises this argument for the first time on appeal. Plaintiff takes exception to the trial court noting that plaintiff had not "dispute[d]" that Whitt was the highest appointive executive official in the city, but this characterization is accurate because plaintiff never provided any contrary argument in its response to the city defendants' motion for summary disposition. Plaintiff mischaracterizes the trial court's opinion as saying that plaintiff had *conceded* this point, when the court merely said that plaintiff did not *dispute* it.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(4) Give to the proper department or officials ample notice of the expiration or termination of any franchises, contracts or agreements.

(5) See that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed.

(6) Recommend an annual budget to the council and to administer the budget as finally adopted under policies formulated by the council, and to keep the council fully advised at all times as to the financial condition and needs of the city.

(7) Recommend to the council for adoption such measures as may be deemed necessary or expedient, and to attend council meetings with the right to take part in discussions but not to vote.

(8) Exercise and perform all administrative functions of the city that are not imposed by the city Charter or ordinance upon some other official.

(9) Perform such other duties as may be prescribed by the city Charter or as may be required by ordinance or by direction of the council. [Walled Lake Ordinances, § 2-43 (emphasis added).]

The fact that this ordinance omits the use of the term "executive" and uses the term "administrative" is not dispositive. Indeed, the type of administration Whitt performs clearly is "executive administration." See *Black's Law Dictionary* (11th ed) (defining "executive administration" as "[c]ollectively, high public officials who administer chief departments of the government"). Further, "executive branch" is defined as "[t]he division of government charged with *administering* and *carrying out the law*." *Id*. (emphasis added). While Whitt is the chief administrative officer of the city, his duties also include "[s]ee[ing] that all laws and ordinances are enforced." Walled Lake Ordinances, § 2-43(2). Also, "[a]n executive should have broad-based jurisdiction or extensive authority similar to that of a judge or a legislator." *Chivas v Koehler*, 182 Mich App 467, 471; 453 NW2d 264 (1990). Whitt's authority as city manager is very extensive, as evidenced by the lengthy duties delineated in the ordinance. See Walled Lake Ordinances, § 2-43. Thus, it is evident that Whitt possesses executive authority, as that term is commonly understood.[8] See also *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997) (recognizing a city manager as an "executive").

Plaintiff's argument that the Mayor Pro-Tem is the highest appointive person in the city government is not supported by the plain reading of the relevant portions of the city charter, which provide:

[8] The Michigan Supreme Court also has recognized that a city manager is an "executive," stating, "Under the city manager form of government, popular among smaller cities, the executive, the city manager, serves at the will of the legislature, the city commission." *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> At each municipal election, the new Councilman from among those incumbents who ran for re-election at the most recent election, *who has received the highest number of votes* in that election, and who shall have served a tenure of two (2) years shall be Mayor Pro-tem, unless such Councilman shall in writing notify the clerk of their declination to so serve before such *appointment* becomes effective, in which event, the Councilman who has received the second highest number of votes in that election shall become Mayor Pro-tem, provided that person has served as a Councilman for at least two (2) years. [Walled Lake Charter, § 4.4.]

Although the charter uses the word "appointment" once in describing the position, there is nothing about the position that is appointive. Who becomes mayor pro-tem is not decided by any governmental official or body. Instead, the mayor pro-tem is determined by which incumbent council member received the *highest number of votes from the general election*. There is nothing appointive about such a scheme. As such, regardless of how the charter may view this as an "appointive" position, it is not one as contemplated by the GTLA.

Therefore, as the highest appointive executive official in the city, Whitt is absolutely immune from tort liability under the GTLA with respect to actions performed "within the scope of his . . . executive authority," MCL 691.1407(5), and the trial court did not err by coming to the same conclusion.

II. FAILURE TO STATE A CAUSE OF ACTION

Plaintiff also argues that the trial court erred by granting summary disposition in favor of the city defendants on plaintiff's claims of violation of the constitutional right to due process of law and on its tort claim of promissory estoppel.

"A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

A. DUE-PROCESS CLAIM

"The United States and Michigan constitutions preclude the government from depriving a person of life, liberty, or property without due process of law." *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004), citing US Const, Am XIV; Const 1963, art 1, § 17. " 'A procedural[9] due process analysis requires a dual inquiry:

---

[9] In its second amended complaint, plaintiff labeled its due-process claim a "substantive" due-process claim. However, courts are not bound by the labels parties use in their pleadings, *Buhalis v Trinity Continuing Care Servs*, 292 Mich App 685, 691-692; 822 NW2d 254 (2012), and the substance of plaintiff's count demonstrates that it was making a procedural due-process claim. Moreover, plaintiff never disputed that it needed to have a property interest for its due-process claim to be viable.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.' " *Hinky Dinky*, 261 Mich App at 606 (citation omitted). Due process is only implicated "if there is a liberty or property interest at stake." *Galien Twp Sch Dist v Dep't of Ed* (*On Remand*), 310 Mich App 238, 241; 871 NW2d 382 (2015).

The city defendants argued, and the trial court agreed, that plaintiff's claim failed for the simple reason that plaintiff had no viable property interest. On appeal, plaintiff argues that a license under the MMFLA confers on the recipient a property right. While this principle likely is applicable to MMFLA licenses, see *Bundo v City of Walled Lake*, 395 Mich 679, 695; 238 NW2d 154 (1976) (stating that a liquor license holder has a property interest in the license), it is not dispositive because plaintiff ignores the fact that *it never possessed a license*. It is well established that the law treats those who possess a license and are attempting to renew it differently from those who do not possess a license and are first-time applicants. See *Wong v City of Riverview*, 126 Mich App 589, 593; 337 NW2d 589 (1983) ("In fact, a first-time applicant is not even entitled to minimal due process."); *Shamie v City of Pontiac*, 620 F2d 118, 120 (CA 6, 1980) (stating that first-time license applicants do not enjoy procedural due-process rights under Michigan law), citing *Morse v Liquor Control Comm*, 319 Mich 52, 66; 29 NW2d 316 (1967), and *Bisco's, Inc v Liquor Control Comm*, 395 Mich 706, 716; 238 NW2d 166 (1976). Therefore, it is clear that plaintiff did not have a recognized property interest because it never had a license to begin with. Furthermore, because it was undisputed that the city had more applicants than licenses available, there necessarily was discretion involved in selecting who would receive the licenses. "A party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *RSWW, Inc v City of Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005) (quotation marks, citation, and brackets omitted).

The trial court properly dismissed plaintiff's violation of due process of law claim.[10]

B. PROMISSORY-ESTOPPEL CLAIM

In *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999), this Court observed:

> The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on part of the promisee, and (3) that in fact produced reliance or

[10] Plaintiff also asserts that its due-process claim should have survived summary disposition because it was seeking injunctive relief. But plaintiff's Count VIII, alleging a violation of due process, contains no allegations or requests for injunctive relief. Moreover, even if plaintiff's request for injunctive relief survived the city defendants' motion for summary disposition, count X ultimately was dismissed via the stipulated order to dismiss. Because plaintiff agreed to dismiss the "claim" for injunctive relief, it cannot now assert on appeal that the dismissal was erroneous. See *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003); *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided.

In its second amended complaint, plaintiff alleged that the "promise" that forms the basis for its claim of promissory estoppel is found in the city's ordinance and administrative rules, providing that the "orderly, efficient, fair and coordinated" processing of applications would occur. At the outset, it should be clear that the only city defendant that possibly could be subject to this claim would be the city of Walled Lake. The alleged promise is contained in enactments of the city; it is not alleged that any individual city defendant made these promises. Thus, we can affirm the dismissal of this claim against the other city defendants for this reason alone. See *Washburn v Michailoff*, 240 Mich App 669, 678 n 6; 613 NW2d 405 (2000) (stating that this Court can affirm a trial court's decision when it reaches the right result albeit for different reasons).

The city defendants argued in the trial court that the promissory-estoppel count should be dismissed because statutes and ordinances do not create contractual rights. While this is a recognized principle of law, see *Studier v Mich Pub Sch Employees' Retirement Bd*, 472 Mich 642, 661; 698 NW2d 350 (2005), it is not necessarily controlling because promissory estoppel does not require contractual rights. Indeed, "promissory estoppel is an exception to general contract principles in that it permits enforcement of a promise that may have no consideration." *State Bank of Standish v Curry*, 442 Mich 76, 96; 500 NW2d 104 (1993) (RILEY, J., dissenting). Because of this exception, the promise must be definite and clear. *Id.*, citing *McMath v Ford Motor Co*, 77 Mich App 721, 726; 259 NW2d 140 (1977); see also *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993) ("The sine qua non of promissory estoppel is a promise that is definite and clear.").

The specific "promise" plaintiff has identified is located in the preamble section of the city's Resolution 2018-10, which provides:

> WHEREAS, in order to facilitate orderly, efficient, fair and coordinated processing of the various state and local applications and approvals in a manner consistent with the requirements of the Act, the Rules and the City's codes and ordinances, City Council has determined that it is necessary and expedient to adopt the following administrative rules concerning processing of City applications for local approval of Marijuana Facilities. [Walled Lake Resolution 2018-10, p 2.]

The identified "promise" above is not definite and clear. It promises nothing. Instead, this portion of the preamble merely states that its accompanying rules were enacted to facilitate the orderly, efficient, fair, and coordinated processing of applications. That is not the same as a definite and clear promise to actually have orderly, efficient, and fair processes. While those concepts are part of the aspirational goals of the resolution, it is not a promise. Indeed, the passage simply refers the reader to the remainder of the resolution to determine what the specific administrative rules are "concerning [the] processing of City applications for local approval of Marijuana Facilities." Moreover, preambles are not authoritative. *King v Ford Motor Co*, 257 Mich App 303, 311-312; 668 NW2d 357 (2003); see also *Yazoo & MVR Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889) (stating that a "preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous"); *Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008).

Consequently, because the promise on which plaintiff relies for its claim of promissory estoppel is not clear and definite, the claim fails as a matter of law. We affirm the trial court's grant of summary disposition in favor of the city defendants because the trial court reached the correct result, albeit for different reasons. See *Washburn*, 240 Mich App at 678 n 6.

Affirmed.

/s/ Michael F. Gadola
/s/ Jane E. Markey
/s/ Christopher M. Murray

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 4

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 770. Zoning

Article V. Special Provisions

§ 770-52.1. Marihuana establishments.

[Added 7-27-2020 by Ord. No. 2020-07]

A. Purpose and intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCLA 333.26421 et seq.), as amended.

B. General standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § **770-11**, Special land uses; permit procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § **770-12**, Site plan review, along with documentation that:

(a) The petitioner has prequalification status for an applicable license with the State of Michigan; and

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter **435**, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter **435**, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter **607**, Signs, with a maximum area not to exceed 50 square feet or 5% of the building facade area, whichever is less. All other signs, including, but not limited to, freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting, shall be prohibited as permanent architectural details or enhancements on any building facade or the exterior of any structure, including, but not limited to, windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § **770-30**, General building design and project compatibility, shall be prohibited.

(10) Security devices, such as security curtains, steel bars, metal gates, and similar apparatus, shall be prohibited on the exterior of a building. Security devices may be permitted inside a building, provided that the device is:

(a) Retractable so it is not visible from the sidewalk or public right-of-way during regular business hours; and

(b) Equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater runoff and/or the need for stormwater detention, such as, but not limited to, rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards as it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

A special meeting of the Royal Oak City Commission was held on Monday, April 25, 2022 in room 122 of city hall, 203 S Troy, Royal Oak. The meeting was called to order by Mayor Fournier at 6:30 p.m. Present were Mayor Fournier, Mayor Pro Tem Macey, Commissioner Douglas, Commissioner DuBuc, Commissioner Hunt, Commissioner Kolo and Commissioner Paruch. Also, present were City Manager Brake, City Attorney Leal and City Clerk Halas.

Adjourned to Closed Session

Moved by Commissioner Macey
Seconded by Commissioner Douglas

Be it resolved, that the city commission hereby adjourns to closed session for the purpose of pending litigation Quality Roots, Inc v. City of Royal Oak, Oakland County 6th Circuit Court Case 2022-192383-CZ, Attitude Wellness, LLC v. City of Royal Oak, Oakland County 6th Circuit Court Case 2022-192288-CZ, BDE Warren, LLC v. City of Royal Oak, Oakland County 6th Circuit Court Case 2022-192830-CZ and Exclusive Capital Partners, LLC v. City of Royal Oak, Oakland County 6th Circuit Court Case 2022-193015-CZ.

ROLL CALL VOTE

Ayes: Mayor Pro Tem Macey, Commissioner Douglas, Commissioner Hunt, Commissioner Paruch, Commissioner DuBuc, Commissioner Kolo and Mayor Fournier

Nays: None

Adopted unanimously

A regular meeting of the Royal Oak City Commission was held on Monday, April 25, 2022 in the city hall, 203 S Troy, Royal Oak. The meeting was called to order by Mayor Fournier at 7:37 p.m.

Mayor Fournier gave the Invocation. Everyone present gave the pledge of allegiance.

ROLL CALL	PRESENT	ABSENT
Mayor	Fournier	
Mayor Pro Tem	Macey	
Commissioners	Douglas	
	DuBuc	
	Hunt	
	Kolo	
	Paruch	

* * * * *

APPROVAL OF AGENDA

Moved by Mayor Pro Tem Macey
Seconded by Commissioner Paruch

Be it resolved that the city commission hereby approves the agenda for the April 25, 2022 meeting.

Adopted unanimously

RECEIVED by MSC 12/10/2025 3:03:01 PM

* * * * *

PUBLIC COMMENT

Commissioner Paruch announced that she wasn't feeling well and would be watching public in the conference room. She left the table at 7:41 p.m.

Lori London, 407 S Washington, is a member of DDA. She felt that the back in angle parking and the meters need to be fixed and listed reasons why.

David Robinson, 1037 Irving, is a member of the Lawson Park Homeowners Association. He wanted the commission to deny the Special Land Use Permit for 408-424 E Harrison and listed reasons why.

Robert Wolfson, 590 E Harrison, wanted the commission to deny the Special Land Use Permit for 408-535 E Harrison and listed reasons why.

Mike Thompson, 1210 Irving, is a member of the Lawson Park Homeowners Association. He wanted the commission to deny the Special Land Use Permit for 408-424 E Harrison and listed reasons why.

Sue Gilbert, 1219 Irving, was concerned with additional traffic through her neighborhood and wanted a proactive approach to traffic mitigation.

Nancy Poprafsky, Batavia, is a member of the Lawson Park Homeowners Association. She wanted the commission to deny the Special Land Use Permit for 408-424 E Harrison and listed reasons why.

Ron Arnold, 1102 Irving, is a member of the Lawson Park Homeowners Association. He listed safety concerns regarding the proposed facility on E Harrison.

Mike Drabek, Irving, is a member of the Lawson Park Homeowners Association. He spoke about traffic concerns in his neighborhood and felt this was all about money.

Alan Ashley, President of Royal Oak Manor, spoke about the renovations at the Manor. Balconies will be fully enclosed, heat pumps are being installed and there will be an open house once everything has been completed. Cars aren't stopping in the pedestrian walk between city hall and the new park.

Bill Harrison, 2729 Trafford, compared Royal Oak voters with Clawson voters regarding marihuana.

Brad Margolis, 1200 Knowles, represented Holbrook Auto Parts. Since they moved their business in the city, it has been a disaster and he listed ongoing problems. He asked if the city would assist with installing an electronic gate, a street sign and putting a sign up that says do not enter or dead end. This would help eliminate unwanted traffic.

Marleigh Arnold, 1102 Irving, didn't want a dispensary in her backyard. Everyone opposing this dispensary lives in her neighborhood.

Mayor Fournier called a recess at 8:19 pm and returned to the table at 8:25 pm

Robert Goodman, 504 Parkdale, was in support of the Gatsby project and listed reasons why.

Barton Morris, 520 N Main Street, is a cannabis attorney and former resident. He was in support of cannabis businesses in Royal Oak and listed his reasons why.

Rick Karlowski, 419 Virginia, didn't feel the process was transparent enough as he didn't know who the other applicants were. He also wanted to know why the city is paying for EMS support for Winterblast?

Alex Shnaider, Knowles, spoke about the marihuana facilities. Marihuana is legal in the state but is not legal federally. The decision to allow marihuana facilities near the neighborhood or school is the wrong decision.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Stephanie Somerville, 4249 Samoset, didn't buy her house to live by cannabis dispensary. She was concerned about increased traffic, potential crime and that it would destroy the retail value of her home. She asked that they deny the proposal.

Richard Gage, Kayser, asked that the commission to save the Main Art Theatre.

Dan Godek, 1121 East 3rd Street, thanked the commission for serving. When controversial issues come from the Traffic Committee he asked that the commission ask tougher questions so that they can both do a better job. April is National Distracted Driver Awareness Month and he asked people to not text and drive.

Joshua Boggs, 735 Gardenia, gave history on the Main Art Theatre and asked that they save it.

Brad Foucher, 430 Linden, supported the special land use proposals on the agenda. He also spoke about his concerns with the exotic animal ordinance.

Will DiSessa, 3160 Greenfield, spoke on the special land use for 5130 Meijer Drive. The proposed retail store is only 88 feet from the Oakland Schools Technical Center and this is in violation of the MRTMA. Parents will file suit if it is approved. Despite objections and the Planning Commission vote to deny the site plan, it looks as though they are ramming the license through.

Mayor Fournier called a recess at 8:50 pm and returned to the table at 8:58 pm

Patsy Reggio, 1403 Smith, gave a history of the Constitution and discussed the 14th Amendment. She was opposed to marihuana in Royal Oak.

Bob Muller, 625 S Altadena, was in favor of the Gatsby facility and listed reasons why.

Tony Mollica, 1040 Mohawk, spoke against the facility at East Harrison and urged the commission to vote no.

Phil Bachcheck lives in the condos adjacent to the East Harrison facility and is opposed to having the facility in the neighborhood.

Sebastian Eleftheriou, 432 S Washington, rents two units by the proposed facility on East Harrison. They do want dispensaries but asked that the commission look at better locations.

Leroy Asher represented Oakland Schools. The location is 88 feet from the proposed Gatsby location. The local ordinances require a 1000 foot buffer. It is a school and the students should be treated the same as a traditional school. The MRTMA also requires a 1000 ft buffer. He asked that they follow the recommendation of the planning and deny the request.

Dustin Kram, 1523 Etowah, felt an industrial area would be best for the Gatsby location.

Daniel, 2121 Dallas, felt the Gatsby location was good for traffic as opposed to being in a residential area.

George Elkind, resident of Hamtramck, was in favor of saving the Main Art Theatre and listed reasons why.

Brendan Kredell, 210 E Cambourne, Ferndale, was in favor of saving the Main Art Theatre and listed reasons why.

Jason Krzysiak, 55 Wellesley, Pleasant Ridge, was in favor of saving the Main Art Theatre and listed reasons why.

Daniel Sharon, 4840 Briarwood, was in favor of the proposed Gatsby cannabis facility and listed reasons why.

Jason Betley, 801 Forestdale, did not think a marihuana location should be close to the downtown.

Steven Kamberov, 432 S Washington, did not think a marihuana location should be close to the downtown.

Carol Hennessey, President of the Royal Oak Memorial Society, spoke about cleaning veteran's graves on May 7th and May 14th at Oakview Cemetery. They start at 10 a.m. and they gather at the pond. They will also be placing

RECEIVED by MSC 12/10/2025 3:03:01 PM

over 2,000 flags on May 28th at 10 a.m. She asked that people bring shovels, rakes, rags and water to wipe off the headstones. She hoped they listened to the citizens and don't put the dispensaries near the neighborhoods or the schools. She almost got hit by a car outside of Pronto's. The back in parking is a terrible idea.

Commissioner Kolo left the table at 9:27 p.m. He returned to the table at 9:30 PM.

John Geletka, Royal Avenue, felt the proposed Gatsby location was a bad location and listed his reasons why.

Luigi Cutraro, 415 S Washington, was in favor of the dispensaries.

Jill Leipold, 702 S Gainsborough, was in favor of saving the Main Art Theater. She also spoke about the needs of the deaf community in Royal Oak.

Janice Wagman has advocated for the addition handicapped parking in areas of the downtown. She emailed the mayor and commission on the issue and hasn't heard anything except from Commissioner Macey. She urged them to change their stance from can't to how. The intent of the city's ordinance was to locate the facilities at least 1000 feet from the schools. She urged them to vote no on the Gatsby location.

Anonymous felt it was absurd that they are looking to put a marihuana facility 88 feet from a school.

Commissioner Paruch returned to the table at 9:44 p.m.

* * * * *

CONSENT AGENDA

Moved by Commissioner Kolo
Seconded by Commissioner Douglas

Be it resolved that the city commission hereby approves the consent agenda as follows:

a. Be it resolved, the city commission meeting minutes of April 11, 2022 are hereby approved.

b. Be it resolved, the claims of April 19 and April 22, 2022 are hereby approved.

c. Be it resolved, the city commission approves the following requisition/purchase orders for fiscal year 2021-2022:

Requisition #	R006680 change order
Vendor:	MOSS
Requesting approval for:	$2,260 additional for a total of $162,280
Price Source:	quote
Budgeted:	$162,280
Department / Fund:	auto parking / auto parking
Description:	installing cabling for new parking pay stations

Requisition #	R006641 change order
Vendor:	Rauhorn Electric
Requesting approval for:	$3,200 additional for a total of $128,200
Price Source:	estimation
Budgeted:	$128,200
Department / Fund:	streets signal services / major streets
Description:	emergency signal repairs

Requisition #	R006627 change order
Vendor:	Canfield Equipment Service, Inc.
Requesting approval for:	$30,000 additional for a total of $110,000

RECEIVED by MSC 12/10/2025 3:03:01 PM

Price Source:	bid by another entity
Budgeted:	$110,000
Department / Fund:	motor pool / motor pool
Description:	police patrol equipment & installation for new vehicles, lift gate parts, vehicle repair & maintenance services as needed
Requisition #	R006566 change order
Vendor:	ABR Alpine Design
Requesting approval for:	$4,200 additional for a total of $102,120
Price Source:	bid by Royal Oak
Budgeted:	$102,120
Department / Fund:	housing assistance program / community develop block grant
Description:	housing rehab
Requisition #	R006428 change order
Vendor:	NYE Uniform
Requesting approval for:	$20,000 additional for a total of $80,000
Price Source:	estimation
Budgeted:	$80,000
Department / Fund:	police & fire / public safety
Description:	uniforms for police & fire
Requisition #	R006284 change order
Vendor:	Ingram Library Services
Requesting approval for:	$10,000 additional for a total of $60,000
Price Source:	estimation
Budgeted:	$60,000
Department / Fund:	library / library
Description:	purchase books
Requisition #	R006618
Vendor:	Kiesler's Police Supply, Inc.
Requesting approval for:	$44,550
Price Source:	quote
Budgeted:	$44,550
Department / Fund:	police / public safety
Description:	handguns & ammunition
Requisition #	R006282
Vendor:	Costello Law Office
Requesting approval for:	$30,000
Price Source:	estimation / bid by Royal Oak
Budgeted:	$30,000
Department / Fund:	indigent defense
Description:	contracted legal / advisory counsel
Requisition #	R006682
Vendor:	Shi International Corp.
Requesting approval for:	$27,100
Price Source:	sole source (using Watchguard)
Budgeted:	$27,100
Department / Fund:	information systems / information systems
Description:	annual renewal for firewall services
Requisition #	R006273
Vendor:	Susan Chrzanowski Cole

RECEIVED by MSC 12/10/2025 3:03:01 PM

Requesting approval for:	$25,000
Price Source:	estimation / bid by Royal Oak
Budgeted:	$25,000
Department / Fund:	district court / indigent defense & general
Description:	contracted legal / advisory counsel & sobriety court

Requisition #	R006344
Vendor:	Patrick Gagniuk
Requesting approval for:	$25,000
Price Source:	estimation / bid by Royal Oak
Budgeted:	$25,000
Department / Fund:	indigent defense
Description:	contracted legal / advisory counsel

Requisition #	R006310
Vendor:	Michael Steinberg
Requesting approval for:	$20,000
Price Source:	estimation / bid by Royal Oak
Budgeted:	$20,000
Department / Fund:	indigent defense
Description:	contracted legal / advisory counsel

Requisition #	R006785
Vendor:	Raftelis
Requesting approval for:	$17,500
Price Source:	quote
Budgeted:	$17,500
Department / Fund:	mayor/commission / general
Description:	city commission strategic planning goal setting meeting

d. Whereas, mental health is important for our individual well-being and vitality, as well as that of our families, communities and businesses; and

Whereas, the COVID-19 pandemic has been a reminder of the importance of integrating mental health into preparedness and public health response plans; and

Whereas, younger adults, racial/ethnic minorities, essential workers, and adult caregivers reported having disproportionately worse mental health outcomes, increased substance use, and elevated suicidal ideation associated with COVID-19; and

Whereas, according to the World Health Organization as many as one in six United States children aged six to 17 has a treatable mental health disorder such as depression, anxiety problems or attention deficit/hyperactivity disorder; and

Whereas, according to the Center for Disease Control and Prevention, between 2016 and 2019 approximately 5.8 million children ages three to 17 years were diagnosed with anxiety and 2.7 million were diagnosed with depression; and

Whereas, National Children's Mental Health Awareness Day will be May 5, 2022 and the week of May 1 to 7, 2022 is designated as Children's Mental Health Awareness Week; and

Whereas, Oakland Community Health Network is committed to being a Zero Suicide organization and cultivate a network of providers who are engaged in the Zero Suicide philosophy; and

Whereas, mental illness is a biologically based brain disorder that cannot be overcome through "w power" and is not related to a defect in a person's "character" or intelligence; and

RECEIVED by MSC 12/10/2025 3:03:01 PM

Whereas, mental health recovery not only benefits individuals with mental health disorders by focusing on their abilities to live, work, learn and fully participate and contribute to our society, but also enriches the culture of our community life; and

Whereas, improved systems of care for children and families, enhanced and expanded access to non-emergent and crisis services, advanced integrated physical and behavioral health care, collaborative provider relations, and a strengthened workforce are identified priorities for OCHN; and

Whereas, The Oakland Community Health Network, and its service provider agencies are committed to inspiring hope, empowering people, and strengthening communities.

Now, therefore, be it resolved, I, Mayor Fournier and the members of the Royal Oak City Commission hereby recognize May 2022 as Mental Health Awareness Month and calls upon our citizens, public and private institutions, businesses, and schools to recommit our city to increasing awareness and understanding of mental illness, and the need for appropriate and accessible services for all people with mental illnesses to promote recovery.

e. Be it resolved, the city commission approves the recommendations as presented for downtown business window mural installation by artist Lisa Littell; and

Be it further resolved, the window murals are considered public art as approved and recommended the commission for the arts; and

Be it finally resolved, the artist may commence the installation of the window murals as agreed upon by the downtown development authority and remove said artwork in early August of 2022.

f. Be it resolved, ordinance 2022-03, titled an ordinance to amend ordinance 2021-12, to extend for an additional 91 days the moratorium which prohibits the keeping of non-domestic animals in residential areas in the city of Royal Oak, is hereby adopted.

g. Whereas, the City of Royal Oak acquired permission to use the property within and around the northbound S. Center Street along the east side of the Grand Trunk Western Railroad right-of- way on May 26, 1969, hereinafter described, from the Grand Trunk Wester Railroad Company,

Now, Therefore, Be it Resolved by the Commissioner of the City of Royal Oak that the following described property, to-wit:

> Part of N/E 1/4 of Section 21, Town 2 North, Range 11 East, City of Royal Oak, Oakland County, Michigan, more particularly described as follows:
>
> Commencing at the NW corner of Lot 9, Block 22, "Assessor's Plat No. 20, of Sherman Stevens Plat", as recorded in Iber 53 of Plats, Pages 33-33A, Oakland County Records; thence N 89°33'57" W 34.65 feet to a point on the centerline of S Center Street, also being the Point of Beginning; thence along said centerline the following two courses: S 01°06'20" W 165.99 feet and S 28°38'45" E 127.04 feet to the Point of Ending.
>
> be and the same is hereby dedicated for public street purposes for the use and benefit of the citizens of the City of Royal Oak;

and

Whereas, the City of Royal Oak acquired permission to use the property within and around S. Centre Street along the west side of the Grand Trunk Western Railroad right-of-way on October 28, 1963, hereinafter described, from the Grand Trunk Western Railroad Company,

Now, Therefore, Be It Resolved by the Commission of the City of Royal Oak that the following described property, to-wit:

RECEIVED by MSC 12/10/2025 3:03:01 PM

Part of N/E 1/4 of Section 21, Town 2 North, Range 11 East, City of Royal Oak, Oakland County, Michigan, more particularly described as follows:

Commencing at the NW corner of Lot 10, Block 21, "Assessor's Plat No. 20, of Sherman Stevens Plat", as recorded in Liber 53 of Plats, Pages 33-33A, Oakland County Records; thence S 88°39'30" E 121.21 feet along the North line of said Lot 10 and the South right of way line of W 4th Street to a point on the centerline of S Center Street, also being the Point of Beginning; thence along said centerline S 28°38'45" E 243.64 feet to the Point of Ending.

be and the same is hereby dedicated for public street purposes for the use and benefit of the citizens of the City of Royal Oak

h. Receive and File Non-action Items
   i. First Quarter Fiscal Year 2022 Training Evaluation Forms

Adopted unanimously

* * * * *

REQUEST TO SET DATES FOR SPECIAL CITY COMMISSION MEETINGS BUDGET WORK SESSIONS AND PUBLIC HEARING

Moved by Commissioner Macey
Seconded by Commissioner DuBuc

Be it resolved the Royal Oak City Commission hereby schedules a special meeting to review the fiscal year 2022-23 city managers recommended budgets at 6:00 pm on May 16.

Ayes: Commissioner DuBuc, Commissioner Kolo, Commissioner Paruch and Mayor Pro Tem Macey

Nays: Commissioner Douglas, Commissioner Hunt and Mayor Fournier

Motion adopted

* * *

Moved by Commissioner Douglas
Seconded by Commissioner Hunt

Be it further resolved, the city commission will conduct a public hearing on the adoption of the fiscal year 2022-23 budgets and general appropriation act on Monday, June 13, 2022 at 7:30 pm.

Adopted unanimously

* * * * *

PLANNING COMMISSION RECOMMENDATION SPECIAL LAND USE PERMIT AND SITE PLAN MARIHUANA RETAILER, PROCESSOR, AND CLASS C GROWER AT 5130 MEIJER DRIVE (D/B/A GATSBY CANNABIS COMPANY)

Commissioner Hunt announced that she must recuse herself from discussion and vote per section 66.5a(2).

Commissioner DuBuc left the table at 10:08 pm. He returned to the table at 10:09 pm

Attorney Dennis Cowan, representing PGSH Holdings, asked that all submittals for site plans and special land use and the letter to the commission be part of the public record.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Moved by Commissioner Paruch
Seconded by Commissioner Kolo

Whereas the Royal Oak Planning Commission held a public hearing on February 8, 2022, and recommended denial of a special land use permit and associated site plan (SP 22-02-01) to establish a marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within existing building at 5130 Meijer Drive (parcel no. 20-32-301-016); and

Whereas the Royal Oak City Commission has received the record of public comments taken at the public hearing held at the planning commission meeting of February 8, 2022, and determined that the proposed marihuana retailer, processor, and class "C" grower: (a) is consistent with the goals and objectives of the Royal Oak Master Plan; (b) is designed and constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area; and (c) will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

Therefore, be it resolved, that city commission hereby approves a special land use permit to establish a marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within existing building at 5130 Meijer Drive (parcel no. 20-32-301-016).

Ayes: Commissioner DuBuc, Commissioner Douglas, Commissioner Kolo, Commissioner Paruch and Mayor Fournier

Nays: Commissioner Macey

Abstained: Commissioner Hunt

Motion adopted

* * *

During discussion Commissioner Kolo asked if the Gatsby Cannabis Company would be willing to remove the word "cannabis" from their sign in a show of good will to the neighborhood. The petitioners stated they would. They may instead use the terms "provisioning center" or "retailer" and they could remove the cannabis from their signage package on the building.

Moved by Commissioner Paruch
Seconded by Commissioner Douglas

Be it resolved that the city commission approves SP 22-02-01, a site plan to establish a marihuana retailer, processor, and class "C" grower (Gatsby Cannabis Co.) within existing building at 5130 Meijer Drive (parcel no. 20-32-301-016), with the following contingencies:

1. The petitioner shall submit a revised site plan for review and approval by the planning division to include the following:

    a. The gate on the north side lot line shall be removed from all applicable plan sheets.

    b. Details on how the main entrance door on the west side façade elevation opens and closes should be added to either the floor plan (A.100) or the façade elevations (A.200).

    c. The description of odor control measures included in the letter from Krieger-Klatt Architects dated January 7, 2022, shall be added to either the roof plan (A.100) or green features sheet (A.300).

2. Setbacks, off-street parking, landscaping, screening, and all other zoning ordinance standards shall be as depicted on the plan sheets.

RECEIVED by MSC 12/10/2025 3:03:01 PM

3. Low-impact development techniques or green infrastructure shall be as depicted on the plan sheets.

4. Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

5. All paving, utilities, and work within public rights-of-way shall be in accordance with the specifications and standards of the city engineer.

6. Exterior lighting shall be as depicted on the plan sheets. Any additional exterior lighting fixtures shall comply with § 770-96 B of the zoning ordinance and all other city codes and ordinances.

7. All signage shall comply with § 770-52.1 B (7) of the zoning ordinance.

8. A performance bond shall be posted in an amount to be determined by the building official.

9. The site plan shall meet all other code and ordinance requirements, as determined by the building official, fire marshal, and city engineer, including, but not limited to, the state building code, the city's fire prevention ordinance (Chapter 340), the city's recreational marihuana licensing ordinance (Chapter 435), and the city's stormwater detention ordinance (Chapter 644), prior to issuance of any building or right-of-way permits.

Ayes: Commissioner DuBuc, Commissioner Douglas, Commissioner Kolo, Commissioner Paruch and Mayor Fournier

Nays: Commissioner Macey

Abstained: Commissioner Hunt

Motion adopted

* * * * *

PLANNING COMMISSION RECOMMENDATION SPECIAL LAND USE PERMIT AND SITE PLAN MARIJUANA RETAILER AT 408-424 EAST HARRISON AVENUE (D/B/A ROYAL TREATMENT)

Moved by Commissioner DuBuc
Seconded by Commissioner Paruch

Whereas the Royal Oak Planning Commission held a public hearing on February 8, 2022, and recommended approval of a special land use permit and associated site plan (SP 22-02-02) to establish a marihuana retailer (Royal Treatment) within existing building at 408 to 424 East Harrison Avenue (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, and 25-22-377-032); and

Whereas the Royal Oak City Commission has received the record of public comments taken at the public hearing held at the planning commission meeting of February 8, 2022, and determined that the proposed marihuana retailer: (a) is consistent with the goals and objectives of the Royal Oak Master Plan; (b) is designed and constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area; and (c) will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

Therefore, be it resolved, that city commission hereby approves a special land use permit to establish a marihuana retailer (Royal Treatment) within existing building at 408 to 424 East Harrison Avenue (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, and 25-22-377-032).

Adopted unanimously

* * *

RECEIVED by MSC 12/10/2025 3:03:01 PM

Moved by Commissioner Douglas
Seconded by Commissioner Paruch

Be it resolved that the city commission approves SP 22-02-02, a site plan to establish a marihuana retailer (Royal Treatment) within existing building at 408 to 424 East Harrison Avenue (parcel nos. 25-22-377-004, 25-22-377-005, 25-22-377-006, and 25-22-377-032), with the following contingencies:

1. Setbacks, off-street parking, landscaping, screening, and all other zoning ordinance standards shall be as depicted on the plan sheets.

2. Low-impact development techniques or green infrastructure shall be as depicted on the plan sheets.

3. All four properties shall be combined into a single parcel.

4. Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

5. All paving, utilities, and work within public rights-of-way shall be in accordance with the specifications and standards of the city engineer.

6. Exterior lighting shall be as depicted on the plan sheets. Any additional exterior lighting fixtures shall comply with § 770-96 B of the zoning ordinance and all other city codes and ordinances.

7. All signage shall comply with § 770-52.1 B (7) of the zoning ordinance.

8. A performance bond shall be posted in an amount to be determined by the building official.

9. The site plan shall meet all other code and ordinance requirements, as determined by the building official, fire marshal, and city engineer, including, but not limited to, the state building code, the city's fire prevention ordinance (Chapter 340), the city's recreational marihuana licensing ordinance (Chapter 435), and the city's stormwater detention ordinance (Chapter 644), and all four properties shall be combined into a single parcel, prior to issuance of any building or right-of-way permits.

10. A no right turn sign is to be added to the driveway of the site.

Adopted unanimously

Commissioner Kolo left the table at 12:11 a.m. He returned to the table at 12:14 a.m.

Commissioner DuBuc left the table at 12:12 a.m. He returned to the table at 12:13 a.m.

* * * * *

PLANNING COMMISSION RECOMMENDATION SPECIAL LAND USE PERMIT AND SITE PLAN MARIHUANA MICROBUSINESS AT 32767 WOODWARD AVENUE (D/B/A BEST LYFE)

Commissioner Paruch left the table at 12:18 a.m. She returned to the table at 12:19 a.m.

Mayor Pro Tem Macey left the table at 12:22 a.m. She returned to the table at 12:26 a.m.

Moved by Commissioner DuBuc
Seconded by Commissioner Paruch

Whereas the Royal Oak Planning Commission held a public hearing on March 8, 2022, and recommended approval of a special land use permit and associated site plan (SP 22-03-03) to establish a marihuana microbusiness (Best Lyfe) within an existing building at 32767 Woodward Avenue (parcel no. 25-06-103-035); and

RECEIVED by MSC 12/10/2025 3:03:01 PM

Whereas the Royal Oak City Commission has received the record of public comments taken at the public hearing held at the planning commission meeting of March 8, 2022, and determined that the proposed marihuana microbusiness: (a) is consistent with the goals and objectives of the Royal Oak Master Plan; (b) is designed and constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area; and (c) will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

Therefore, be it resolved, that city commission hereby approves a special land use permit to establish a marihuana microbusiness (Best Lyfe) within existing building at 32767 Woodward Avenue (parcel no. 25-06-103-035).

Ayes: Commissioner DuBuc, Commissioner Douglas, Commissioner Hunt, Commissioner Kolo, Commissioner Paruch and Mayor Fournier

Nays: Commissioner Kolo

Motion adopted

* * *

Moved by Commissioner Douglas
Seconded by Commissioner Paruch

Be it resolved that the city commission approves SP 22-03-03, a site plan to establish a marihuana microbusiness (Best Lyfe) within existing building at 32767 Woodward Avenue (parcel no. 25-06-103-035), with the following contingencies:

1. Low-impact development techniques or green infrastructure shall be provided as depicted on the site plan.
2. Setbacks, off-street parking, landscaping, screening, and other standards shall be provided as depicted on the site plan.
3. Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.
4. All paving, utilities, and work within public rights-of-way shall be in accordance with the specifications and standards of the city engineer.
5. All exterior lighting fixtures shall comply with § 770-96 B of the zoning ordinance and other city codes and ordinances, including being directed downward and shielded so as not to shine on adjacent property, and within maximum permitted fixture heights and illumination levels.
6. All signage shall comply with § 770-52.1 B (7) of the zoning ordinance.
7. A performance bond shall be posted in an amount to be determined by the building official.
8. The site plan shall meet all other code and ordinance requirements, as determined by the building official, fire marshal, and city engineer, including, but not limited to, the state building code, the city's fire prevention ordinance (Chapter 340), the city's recreational marihuana licensing ordinance (Chapter 435), and the city's stormwater detention ordinance (Chapter 644), prior to issuance of any building or right-of-way permits.
9. With the approval of the Michigan Department of Transportation, the right of way parking area in front of the building be repaved.

AMENDMENT TO THE MOTION

Moved by Commissioner DuBuc

RECEIVED by MSC 12/10/2025 3:03:01 PM

Seconded by Commissioner Paruch

Be it resolved, the city commission removes the requirement of item #10 from the site plan.

Ayes: Commissioner DuBuc, Commissioner Hunt, Commissioner Kolo, Commissioner Paruch, Mayor Pro Tem Macey and Mayor Fournier

Nays: Commissioner Douglas

Motion adopted

* * *

Moved by Commissioner Kolo

Be it resolved, the city commission adds the condition to review the electrical plan pending administrative approval of energy efficiency inside the building

Motion fails for lack of support

ORIGINAL MOTION WITH AMENDMENT

Be it resolved that the city commission approves SP 22-03-03, a site plan to establish a marihuana microbusiness (Best Lyfe) within existing building at 32767 Woodward Avenue (parcel no. 25-06-103-035), with the following contingencies:

1. Low-impact development techniques or green infrastructure shall be provided as depicted on the site plan.

2. Setbacks, off-street parking, landscaping, screening, and other standards shall be provided as depicted on the site plan.

3. Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

4. All paving, utilities, and work within public rights-of-way shall be in accordance with the specifications and standards of the city engineer.

5. All exterior lighting fixtures shall comply with § 770-96 B of the zoning ordinance and other city codes and ordinances, including being directed downward and shielded so as not to shine on adjacent property, and within maximum permitted fixture heights and illumination levels.

6. All signage shall comply with § 770-52.1 B (7) of the zoning ordinance.

7. A performance bond shall be posted in an amount to be determined by the building official.

8. The site plan shall meet all other code and ordinance requirements, as determined by the building official, fire marshal, and city engineer, including, but not limited to, the state building code, the city's fire prevention ordinance (Chapter 340), the city's recreational marihuana licensing ordinance (Chapter 435), and the city's stormwater detention ordinance (Chapter 644), prior to issuance of any building or right-of-way permits.

Ayes: Commissioner Douglas, Commissioner DuBuc, Commissioner Hunt, Commissioner Paruch, Mayor Pro Tem Macey and Mayor Fournier

Nays: Commissioner Kolo

Motion adopted

* * *

RECEIVED by MSC 12/10/2025 3:03:01 PM

Upon motion of Commissioner Douglas, seconded by Mayor Pro Tem Macey, and adopted unanimously, the regular meeting was adjourned at 12:51 AM

Melanie Halas

Melanie Halas, City Clerk

The foregoing minutes of the regular meeting held on April 25, 2022 having been officially approved by the city commission on Monday, May 9, 2022 are hereby signed this ninth day of May 2022.

Michael C. Fournier, Mayor

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT A

ORDINANCE NO. 2022 - 03

AN ORDINANCE TO AMEND ORDINANCE NO. 2021-12, TO EXTEND FOR AN ADDITIONAL 91 DAYS THE MORATORIUM WHICH PROHIBITS THE KEEPING OF NON-DOMESTIC ANIMALS IN RESIDENTIAL AREAS IN THE CITY OF ROYAL OAK.

THE CITY OF ROYAL OAK ORDAINS:

SECTION 1. FINDINGS, INTENT AND PURPOSE.

(a) On November 9, 2021, the City Commission adopted Ordinance No. 2021-12 (Moratorium Ordinance) which imposed a moratorium to prohibit the keeping of non-domestic animals in residential areas in the City of Royal Oak from November 1, 2021 to May 8, 2022.

(b) The Moratorium Ordinance was adopted to address an incident where an African caracal cat escaped from its owner's residential premises into the surrounding neighborhood, which included Oak Ridge Elementary School. The African caracal cat was eventually recovered two days later.

(c) After the incident the city realized that there are no state laws that regulate African caracal cats and other types of non-domestic animals.

(d) As a result, the city desired to establish a comprehensive set of reasonable regulations to regulate the keeping of non-domestic animals within the city, pursuant to its authority as a Michigan Home Rule city and pursuant to its City Charter.

(e) On April 11, 2022, city staff presented to the City Commission a draft set of comprehensive reasonable regulations to regulate the keeping of non-domestic animals within the city. After the presentation, the City Commission directed city staff to revise the draft regulations by either modifying them to mirror, or be incorporated into, the city's existing Dangerous Dog Ordinance.

(f) It is anticipated that such revisions will not be ready before the Moratorium Ordinance expires, and thus additional time beyond May 9, 2022, is necessary to complete the revised draft of comprehensive reasonable regulations and to present them to the City Commission for approval.

(g) The City Commission finds that it is in the best interest of the City of Royal Oak and the public to extend the Moratorium Ordinance so as to allow sufficient time to complete a revised draft of comprehensive reasonable regulations.

SECTION 2. MORATORIUM.

The moratorium established by Ordinance No. 2021-12 is hereby extended by this ordinance amendment until 11:59 p.m., August 8, 2022, unless earlier terminated by ordinance of the City Commission adopting a comprehensive set of reasonable regulations governing the keeping of non-domestic animals in residential areas in the City of Royal Oak. Prior to the expiration of this Moratorium Ordinance extension, the City Commission may, if necessary, extend the period of the Moratorium Ordinance again to allow for sufficient time to complete and adopt a set of comprehensive reasonable regulations. Except as expressly amended by this ordinance amendment, Ordinance No. 2021-12 shall remain valid and continue in effect as originally provided.

SECTION 3. EMERGENCY. The Moratorium Ordinance was adopted as an emergency ordinance on November 8, 2021 pursuant to Chapter 5, Section 3 of the City Charter necessary for the immediate preservation of the public

RECEIVED by MSC 12/10/2025 3:03:01 PM

peace, health and safety. This ordinance amendment continues the emergency purpose of the Moratorium Ordinance until a comprehensive set of reasonable regulations can be adopted.

SECTION 4. EFFECTIVE DATE. This ordinance amendment shall take effect immediately upon its passage.

Date 4/26/2022 LICENSE NO. RETAILER22-0767

City of Royal Oak, Michigan

TO WHOM IT MAY CONCERN:
In consideration of the total sum shown below and paid to the City Clerk, the City of Royal Oak herby grants on the following:

THE FOLLOWING LICENSE(S):
MARIHUANA RETAILER

BUSINESS
GATSBY CANNABIS CO
5130 MEIJER DR
ROYAL OAK MI 48073

A municipal license shall remain valid for one year following the removal of all stipulations on an issued municipal license.

City Ordinance Provides that this license must be displayed in a conspicuous place.

Issued in conformity with the provisions of the municipal code for the City of Royal Oak. Issued without verification that the licensee is subject to or exempted from licensing by the state.

PENALTY $0.00
TOTAL $5,000.00
(surrender of license shall not entitle licensee to any refund)

Melanie Halas
City Clerk

RECEIVED by MSC 12/10/2025 3:03:01 PM

All municipal licenses issued have the following stipulations:

[1]
Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2]
Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3]
For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4]
Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date 4/26/2022 LICENSE NO. GROWERC22-0765

City of Royal Oak, Michigan

TO WHOM IT MAY CONCERN:
In consideration of the total sum shown below and paid to the City Clerk, the City of Royal Oak herby grants on the following:

THE FOLLOWING LICENSE(S):
MARIHUANA GROWER CLASS C

BUSINESS
GATSBY CANNABIS CO
5130 MEIJER DR
ROYAL OAK MI 48073

A municipal license shall remain valid for one year following the removal of all stipulations on an issued municipal license.

City Ordinance Provides that this license must be displayed in a conspicuous place.

Issued in conformity with the provisions of the municipal code for the City of Royal Oak. Issued without verification that the licensee is subject to or exempted from licensing by the state.

PENALTY $0.00
TOTAL $5,000.00
(surrender of license shall not entitle licensee to any refund)

Melanie Halas
City Clerk

RECEIVED by MSC 12/10/2025 3:03:01 PM

All municipal licenses issued have the following stipulations:

[1]
Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2]
Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3]
For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4]
Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date 4/26/2022 LICENSE NO. PROCESSOR22-0766

City of Royal Oak, Michigan

TO WHOM IT MAY CONCERN:
In consideration of the total sum shown below and paid to the City Clerk, the City of Royal Oak herby grants on the following:

THE FOLLOWING LICENSE(S):
MARIHUANA PROCESSOR

BUSINESS
GATSBY CANNABIS CO
5130 MEIJER DR
ROYAL OAK MI 48073

A municipal license shall remain valid for one year following the removal of all stipulations on an issued municipal license.

City Ordinance Provides that this license must be displayed in a conspicuous place.

Issued in conformity with the provisions of the municipal code for the City of Royal Oak. Issued without verification that the licensee is subject to or exempted from licensing by the state.

PENALTY $0.00
TOTAL $5,000.00
(surrender of license shall not entitle licensee to any refund)

Melanie Halas
City Clerk

RECEIVED by MSC 12/10/2025 3:03:01 PM

All municipal licenses issued have the following stipulations:

[1]
Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2]
Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3]
For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4]
Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Quality Roots Inc.
123 South Main Street, Suite 200
Royal Oak, MI 48067

Quality Roots Inc.,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your applications were placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial of application RME 0000004 (3115 W. 13th Street) include:

- Licenses were limited in availability.
- Site plan did not include all parcel and right-of-way boundaries making it hard to understand how adjacent properties might be impacted.
- Insufficient information on security plans.
- Traffic volume information was limited in submittal.
- Letters of support from the community are not from residents or businesses that are adjacent to the site.

For RME 0000005 (28300 Woodward), the application is denied due to:

- Licenses were limited in availability.
- Vehicular access from the alley is proposed.
- Variance would be required for driveway width with proposed design.
- Site plan did not include all parcel and right-of-way boundaries making it hard to understand how adjacent properties might be impacted.
- Insufficient information on security plans.
- Letters of support from the community are not from residents or businesses that are adjacent to the site.
- Traffic volume information was limited in submittal.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

LG Wellness Inc.
2930 E. Jefferson Avenue
Detroit, MI 48207

LG Wellness Inc.:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Insufficient information on the site plan to show the dimensions, floor plan information.
- History of delinquency on payments for tax bills and water bills.
- Insufficient information on traffic volumes.
- Proposed stormwater detention may be insufficient depending on the changes.
- Applicant included sustainable finishes, but no green infrastructure.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Exclusive Capital Partners
38701 Seven Mile Road, Suite 160
Livonia, MI 48152

Exclusive Capital Partners,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses are limited in availability.
- No floor plan was provided, making it difficult to determine if the parking was sufficient for the use.
- Application lacked detail to determine if stormwater detention would be required.
- There was no green infrastructure proposed, although the applicant included information on sustainability practices.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Pincanna
31731 Northwestern Highway, Ste 100E
Farmington Hills, MI 48334

Pincanna,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Parking area is too narrow for angled parking in Woodward right-of-way.
- Additional traffic study information would be needed.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

BDE Warren, LLC
29625 Bristol Lane
Bingham Farms, MI 48025

BDE Warren, LLC,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Vehicular access was from the alley without a defined driveway.
- Limited information available about traffic volumes.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Zenyo LLC
520 North Main Street
Royal Oak, MI 48067

Zenyo LLC,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Primary access appeared to be from alley.
- Some parking spaces would have been problematic for those backing out.
- Limited information on traffic volumes generated by business.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Main Property Holdings, LLC
11530 E. 10 Mile Road
Warren, Michigan 48089

Main Property Holdings, LLC,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- The useable floor area is miscalculated, leading to an insufficient number of parking spaces.
- A waiver for off-street parking would be required.
- Insufficient information regarding potential parking lot reconstruction which would cause a need for stormwater detention to be installed.
- Insufficient information regarding traffic volume.
- Limited sustainable and green infrastructure was provided.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Green Square Holdings
812 S Main Street Ste 200
Royal Oak, MI 48067

Green Square Holdings:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Traffic volume information was not available.
- Limited information was available for how the applicant would address equity, diversity, and inclusion.
- Limited information was available for how the applicant would address sustainable and energy-efficient elements and fixtures.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

RJB Enterprises LLC
230 East Harrison
Royal Oak, MI 48067

RJB Enterprises LLC,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses are limited in availability.
- Off-street parking was miscalculated and waiver for parking requirements would be needed.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Nature's Remedy of Berkley, LLC
3625 Pine Hill Ct.
West Bloomfield, MI 48323

Nature's Remedy of Berkley, LLC,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Off-street parking is incorrectly calculated, which would require a waiver.
- No green infrastructure was proposed.
- Limited information efforts on sustainability features.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

ANSC Enterprises, LLC
1210 Morse Avenue, Apt. 46
Royal Oak, MI 48067

ANSC Enterprises, LLC.:

Thank you for applying for a Royal Oak marihuana microbusiness license. As I previously advised, your application was placed on standby in the event the applicants chosen for microbusiness licenses did not successfully complete the licensing process.

Since my last communication, the microbusiness license for the general business district was awarded. Therefore, your application is denied at this time.

The reasons for denial are:

- Only one microbusiness may be licensed in the general business use zoning.
- The plan included no off-street parking when the use would require 17 spaces.
- Parking at this site is challenging given the configuration.
- Insufficient information about wastewater management and disposal.
- Insufficient information about potential traffic volumes.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Green Theory, LLC
6580 Oakhills Dr.
Bloomfield Hills, MI 48301

Green Theory, LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in their availability.
- Vehicle access from the alleyway is proposed.
- Miscalculation in the usable floor area and off-street parking.
- Limited information on the potential traffic volumes.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Leaforic LLC
642 Meadowlane Rd.
Dearborn, Michigan 48124

Leaforic LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- The usable floor area was difficult to distinguish, which may have required additional parking than that proposed.
- Information on traffic volume estimates was not available.
- Taxes were delinquent at the time of the review.
- Limited information was available for how the applicant planned to address diversity, equity, and inclusion.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

LJA Holdings V, LLC
1100 W Maple Rd.
Troy, MI 48084

LJA Holdings V, LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Off-street parking was incorrectly calculated, and a waiver would have been required.
- Stormwater detention is likely to be required depending on the scope of work. Information about the specific points that would trigger this requirement was not clear and the applicant did not address stormwater.
- There was no green infrastructure proposed, and limited information on sustainability efforts.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Sterling Heights Technology, LLC
3437 Upton Drive
Troy, MI 48084

Sterling Heights Technology, LLC.:

Thank you for applying for a Royal Oak marihuana class c grower license. As you know, there were more license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, another applicant has been selected for grower c license have obtained the necessary approvals and the city has issued grower c license to that business. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses for were limited in availability.
- The floor plan was unclear with regard to the use labeling one area as a sales area and the mezzanine level did not have a floor plan provided. Although a sales area was mentioned no application for a retail license was submitted.
- Parking included five on-street spaces in the count of off-street parking spaces. As a grower C, no waiver would have been required, but if other license types are submitted, then a waiver would be required.
- Limited information on any site improvements was available in the application.
- Limited information on sustainability and green infrastructure improvements.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

WG Products, LLC
1221 E Lincoln Ave.
Royal Oak, MI 48067

WG Products, LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- The parking is incorrectly calculated for the usable floor area, and a waiver would be required for parking when considering this application alone.
- Stormwater was not addressed but may be required based on improvements to the building.
- Information for traffic volume estimates was not available.
- History of delinquent tax payments.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Canterra LLC
660 Woodward Ave.
Suite # 1521
Detroit, Michigan 48226

Canterra LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Floor plan does not show use for the other half of the building, and the second floor of the building which makes it difficult to determine parking requirements. It is possible depending on the use a waiver would be required.
- Limited details on the site plan made it difficult to determine if there would be a requirement for stormwater detention.
- Limited traffic volume information.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Royal Oak
Life Now Playing

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

Attitude Wellness LLC
769 Chicago Road, Floor 2
Troy, MI 48083

Attitude Wellness LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- Limited green infrastructure was included in the plan.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

May 18, 2022

MPM-R West, LLC
11300 17 Mile Road
Marshall, MI 49068

MPM-R West, LLC:

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses were limited in availability.
- The application lists the use as a “co-located facility”, but only lists retail on the floor plan and no application for another license type was submitted.
- The usable floor area was miscalculated, which led to a miscalculation in the number of parking spaces required.
- The parking shown would require a waiver.
- Limited traffic volume information was provided.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

May 18, 2022

Exclusive Capital Partners
38701 Seven Mile Road, Suite 160
Livonia, MI 48152

Exclusive Capital Partners,

Thank you for applying for a Royal Oak marihuana retailer license. As you know, there were more retailer license applications than licenses authorized by the ordinance. As I previously advised, your application was placed on standby in the event the applicants chosen for retailer licenses did not successfully complete the licensing process.

Since my last communication, the two applicants selected for retailer licenses have obtained the necessary approvals and the city has issued retailer licenses to those two businesses. Therefore, your application is denied at this time.

The reasons for denial are:

- Licenses are limited in availability.
- No floor plan was provided, making it difficult to determine if the parking was sufficient for the use.
- Application lacked detail to determine if stormwater detention would be required.
- There was no green infrastructure proposed, although the applicant included information on sustainability practices.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

FILED Received for Filing Oakland County Clerk 8/23/2022 2:05 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC., a Michigan Corporation,

Plaintiff,

v

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

Case No. 2022-192383-CZ
Hon. Rae Lee Chabot

PLAINTIFF QUALITY ROOTS, INC.'S FIRST AMENDED COMPLAINT

CONSOLIDATED WITH:

ATTITUDE WELLNESS, LLC, a Michigan Limited Liability Company,

Plaintiff,

v

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

Case No. 2022-192288-CZ
Hon. Rae Lee Chabot

RECEIVED by MSC 12/10/2025 3:03:01 PM

BDE WARREN, LLC, a Michigan Limited Liability Company,

Plaintiff,

Case No. 2022-192830-CZ
Hon. Rae Lee Chabot

v

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant.

EXCLUSIVE CAPITAL PARTNERS, LLC, a Michigan Limited Liability Company,

Plaintiff,

Case No. 2022-193015-CZ
Hon. Rae Lee Chabot

v

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant.

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC
By: Brian E. Etzel (P54905)
William C. DiSessa (P81906)
Attorneys for Plaintiff Quality Roots, Inc.
380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

HONIGMAN, LLP
By: Kevin M. Blair (P76927)
Keith D. Underkoffler (P84854)
Attorneys for Plaintiff Attitude Wellness, LLC
222 N. Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0716
kblair@honigman.com
kunderkoffler@honigman.com

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, PC
By: Anne McLaughlin (P40455)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100 / Fax: (248) 489-1726
amclaughlin@rsjalaw.com

CARSON FISCHER, PLC
By: Robert M. Carson (P11682)
David E. Schlackman (P58894)
Jeffrey B. Miller (P62993)
Attorneys for Intervening Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

SENAWI LAW, PLLC
By: David S. Senawi (P71000)
Meredith C. Banks (P84647)
Attorneys for Plaintiff BDE Warren, LLC
550 W. Merrill St., Ste. 100
Birmingham, MI 48009
(248) 712-1051
david@senawilaw.com
meredith@senawilaw.com

LEGAL CONSULTING, PLLC
By: Anthony J. Bologna (P72698)
Attorney for Plaintiff
Exclusive Capital Partners, LLC
26100 American Drive, Suite 500
Southfield, MI 48034
(248) 227-2279
ab@consultingpllc.com

PLAINTIFF QUALITY ROOTS, INC.'S FIRST AMENDED COMPLAINT

Plaintiff, Quality Roots, Inc., by its attorneys Williams, Williams, Rattner & Plunkett, P.C., for its First Amended Complaint against Defendant, the City of Royal Oak, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Quality Roots, Inc. ("Quality Roots"), is a Michigan for profit corporation with its principal place of business in the City of Birmingham at 2075 E. 14 Mile Road.

2. Defendant, the City of Royal Oak (the "City"), is a Michigan municipal corporation located in Oakland County, Michigan, organized under the Home Rule City Act, MCL 117.1 *et seq*. and subject to the laws of the United States and the State of Michigan, as well as its charter and ordinances.

3. This Court has jurisdiction over the instant case in that the action arises under the Constitution and laws of the State of Michigan, and the matter in controversy exceeds the sum of $25,000, exclusive of interest and costs.

RECEIVED by MSC 12/10/2025 3:03:01 PM

4. This case is also subject to the jurisdiction of this Court pursuant to MCR 2.605 and MCR 3.310 as the claims include requests for injunctive and other equitable relief, and the events or actions giving rise to Plaintiff's claims occurred in Oakland County.

5. If equitable relief is not granted, the amount in controversy will exceed $25,000.00.

6. Venue is proper in this Court under the Revised Judicature Act of 1961, MCL 600.101 *et seq*.

GENERAL ALLEGATIONS

A. The Michigan Regulation and Taxation of Marihuana Act

7. On December 6, 2018, the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"), MCL 333.27951 *et seq*., became effective in the state of Michigan.

8. Pursuant to Section 6 of MRTMA, MCL 333.27956, municipalities are authorized to completely prohibit or limit the number of adult-use marihuana establishments within their boundaries. MCL 333.27956(1).

9. Likewise, MRTMA authorizes municipalities to adopt ordinances requiring a marihuana establishment with a physical location therein to obtain municipal licenses prior to operation, although municipalities are not authorized to impose qualifications for licensure that conflict with MRTMA or the rules promulgated by the state. MCL 333.27956(3).

10. If a municipality "limits the number of marihuana establishments that may be licensed in the municipality . . . and that limit prevents the [Marijuana Regulatory Agency] from issuing a state license to all applicants who [are otherwise qualified to receive a state license], the municipality ***shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the municipality***." MCL 333.27959(4) (emphasis added).

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. City of Royal Oak's Recreational Marihuana Licensing Ordinance

11. On July 27, 2020, pursuant to its authority under MRTMA, the City of Royal Oak adopted Ordinance No. 2020-06, which incorporated a new Chapter 435 into the Royal Oak Code of Ordinances (the "Licensing Ordinance"). **Exhibit A: City of Royal Oak's Recreational Marihuana Licensing Ordinance**.

12. The Licensing Ordinance authorizes the City to issue up to two municipal licenses for marihuana retailers. Licensing Ordinance, § 435-2(B)(5).

13. The Licensing Ordinance authorizes the issuance of municipal marihuana retailer licenses to applicants owning property in the General Business Zone or the General Industrial Zone, with a maximum of one marihuana retailer in the General Business Zone. *Id*. at § 435-2(B)(5).

14. Under the Licensing Ordinance, § 435-2(C), "[n]o person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article."

15. The Licensing Ordinance authorizes the Royal Oak City Manager to "fully and effectively implement and administer the municipal license application process." *Id*. at § 435-2(E).

16. Completed applications are categorically accepted as proper applications under the Licensing Ordinance, and such applications must be processed and considered "on a competitive basis . . . ." *Id*. at § 435-4(B)(2).

C. The 'Competitive Process' Established by the Licensing Ordinance (to Which the City Did Not Adhere)

17. The Licensing Ordinance's "[c]ompetitive process" is outlined under § 435-4(C).

18. For all marihuana establishment types for which the City limits the number of municipal licenses that may be issued, the City Manager is required to establish a window during

RECEIVED by MSC 12/10/2025 3:03:01 PM

which applications for licenses may be submitted. *Id.* at § 435-4(C)(1). For these same types of marihuana establishments, the City Manager is required to open a new window for applications to be submitted every calendar year. *Id.*

19. At the end of each application window, if the number of applications for a particular type of municipal marihuana establishment license exceeds the number of available municipal licenses, the City "***shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City***." *Id.* at § 435-4(C)(2) (emphasis added).

20. Applications included in the competitive process are those that are (1) date and time stamped as having been submitted prior to the close of the relevant application window and (2) considered complete and accepted. *Id.* at § 435-4(C)(3).

21. Under the Licensing Ordinance, applicants and applications must be "***ranked in the order of which is best suited to operate in compliance with the Act within the City*** as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled." *Id.* at § 435-4(C)(4) (emphasis added).

22. The Licensing Ordinance defines the "Act" as MRTMA. *Id.* at § 2(1).

23. The competitive criteria used in the City's "competitive process" include:

a. Review of the Applicant's completely submitted, detailed Application (including plans which address the provisions of this Section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, record-keeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

b. Whether the Applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been

RECEIVED by MSC 12/10/2025 3:03:01 PM

served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

c. Whether the Applicant is/was a business operating in the City of Royal Oak within the past two years;

d. Whether the Applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

e. Whether the Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

f. Whether the Applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

g. Whether there is planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment;

h. Whether the Applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

i. Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

j. Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures. [*Id*. at § 435-4(C)(4)(a) through (j).]

24. Following implementation of the ranking process as undertaken by the City Manager or his or her designee, an applicant that is awarded a municipal license slot is notified of their award and given five business days to pay a marihuana establishment application fee. *Id*. at

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-4(D)(2). If an applicant does not pay the fee within the time allotted, the next highest ranked application will be issued the municipal license slot. *Id*.

25. Once an applicant pays the marihuana establishment application fee, the City Clerk refers a copy of the pertinent application to the department head or designated staff person for the following departments for their review and approval: (1) the City Police Department; (2) the Fire Department; (3) the Community Development Department (Building Division, Engineering Division, and Planning Division); and (4) "any other applicable departments."

26. If, after review of the application, there are no deficiencies—or if all deficiencies are corrected in a timely fashion—the City Planning Commission shall consider the applicant's special land use permit and site plan. *Id*.

27. If an applicant satisfies the conditions outlined in the Licensing Ordinance pertaining to the licensing process, the City Clerk shall then issue a municipal license to the applicant. *Id*. at § 435-4(D)(7).

28. A municipal license is valid for one year following removal of all stipulations on an issued municipal license. *Id*. at § 435-2(I). If a municipal license is denied, the denial must be in writing and must state the reasons for the denial. *Id*. at § 435-4(D)(8).

29. Pursuant to the Licensing Ordinance, § 435-4(D)(9), "[u]pon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § 435-4C, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process."

D. <u>The City Receives Applications for Marihuana Retail Establishment Licensure</u>

30. Plaintiff Quality Roots is a highly qualified applicant who will be irreparably harmed if the City is allowed to move forward with issuing licenses to less qualified applicants in

RECEIVED by MSC 12/10/2025 3:03:01 PM

violation of the MRTMA, the OMA, the City's own Ordinances, and constitutional due process protections.

31. Quality Roots is an experienced and reputable Cannabis company with successful retail marihuana operations in Corunna, Monroe, Hamtramck, and Battle Creek. Quality Roots has also been awarded conditional marihuana retail licenses in other municipalities where it plans to open retail establishments later this year.

32. The City's window for accepting applications for marihuana establishment licensure opened on December 7, 2020. The window remained open until February 1, 2021.

33. By the close of the application window, the City received 31 applications for marihuana retail licensure therein.

34. On or about January 29, 2021, Quality Roots submitted two timely and complete applications for marihuana retail establishment licenses, which would be operated at 3115 West 13 Mile Road and 28300 Woodward Avenue. Quality Roots' applications easily satisfied the Licensing Ordinance's competitive criteria for operating a recreational marihuana retail establishment in Royal Oak. The applications detailed Quality Roots' qualifications and experience, and amply demonstrated why Quality Roots was not only qualified, but was best suited among all applicants to operate a marihuana retail establishment in compliance with MRTMA.

E. <u>Royal Oak's Disregard of MRTMA, the Open Meetings Act, and Its Own Licensing Ordinance</u>

35. Recall that Section 9(4) of MRTMA states: "If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to Section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the ***municipality shall decide among completing***

RECEIVED by MSC 12/10/2025 3:03:01 PM

applications by a competitive process intended to select applicants who are best suited to operate in compliance of this act within the municipality" (emphasis added).

36. Similarly, Section 435-4(C)(4) of the Licensing Ordinance provides that "applicants and their applications will be ***ranked in the order of which is best suited to operate in compliance with Act within the City*** as determined by the City Manager or his or her designee" (emphasis added).

37. Section 435-4(C)(4) leaves the entire determination as to an applicant's ranking to the City Manager (or a designee). Ostensibly, the City Manager would conduct the entire "ranking" process that ultimately decides which applicants prevail and which are left to try later (or be placed indefinitely on a waiting list).

38. In implementing the City's so-called 'competitive' process, the City Manager and other City officials and employees completely disregarded the mandates of the City's own Ordinances, state law, and the constitutional protections guaranteed to the applicants for marihuana retail establishment licensure.

i. The City Manager Did Not Undertake—or Designate Another to Undertake—the Ranking of Applicants; Rather, He Set Up a De Facto Review Committee, Which Failed to Comply with the Requirements of the Licensing Ordinance and State Law

39. Although the Licensing Ordinance expressly provides that the ranking of the applicants and their applications will be "determined by the City Manager or his or her designee," there was established, instead, a *de facto* marihuana application review committee (the "Review Committee"), comprised of several city officials/employees who regularly—and secretly—met in the summer of 2021 for the purpose of evaluating and ranking the applicants/applications, in plain violation of the directive imposed by Section 435-4(C)(4) of the Licensing Ordinance, as well as the Michigan Open Meetings Act ("OMA"), MCL 15.261 *et seq*..

40. The aforementioned Review Committee consisted of the following City officials:

RECEIVED by MSC 12/10/2025 3:03:01 PM

- Paul Brake, City Manager;
- Aaron Leal, City Attorney;
- Todd Fenton, Economic Development Manager and Deputy City Manager;
- Tim Thwing, Director of Community Development;
- Joseph Murphy, Director of Planning;
- Holly Donoghue, City Engineer;
- Corrigan O'Donohue, Former Police Chief and Assistant City Manager;
- Michael Moore, Current Police Chief;
- Susan Barkman, Assistant to the City Manager;
- Jaynmarie Hubanks, Treasurer; and
- Melanie Halas, City Clerk.

41. City Manager Paul Brake did not appoint any individual designee to rank applicants.

42. Pursuant to a "Marihuana Application Review Schedule," the Review Committee met in secret closed-door sessions every Wednesday in August 2021—August 4, August 11, August 18, and August 25—from 2:00 p.m. to 4:00 p.m. for the purpose of reviewing and evaluating a designated group of applications/applicants.

43. Notably, none of these meetings were open to the public and there was no notice to the public that any of these meetings were taking place (either before or after the meetings).

44. No official notes or minutes were kept for any of these August 2021 meetings.

45. As a result, the general public has no way of knowing how the Review Committee applied the Licensing Ordinance's competitive criteria or to what extent the Committee members

RECEIVED by MSC 12/10/2025 3:03:01 PM

exercised their subjective judgements or based their determinations on other factors beyond the competitive criteria.

46. The only reason the existence of the Review Committee and the August 2021 meetings initially came to light was through records obtained in response to a FOIA request issued to the City in late December 2021.

47. After reviewing applications at the August 2021 meetings, the Review Committee would put their thoughts, comments, and criticisms of the various applicants into documents referred to as "Marihuana Application Review Notes." The materials submitted by each applicant and these Marihuana Application Review Notes were compiled and organized into a private drive, which could only be accessed by certain City officials and employees.

48. On August 20, 2021, prior the final marihuana application review meeting (held on August 25, 2021), Economic Development Manager Todd Fenton sent out an email advising the Review Committee that he would not be in attendance; but he nonetheless provided the committee with his ranking of the "top 5" applications. **Exhibit B: August 20, 2021 Email from Todd Fenton to Review Committee**. In that same email, Fenton stated that he "disqualified" certain applications "on the basis that the applicants were not operating a RO business within the last two years." **Ex. B**.

49. Fenton has since conceded that his "top 5" were not chosen because, in his view, they were best suited to comply with the Licensing Ordinance; rather, they were chosen because they had, in Fenton's estimation, the best plan for economic development in the area.

50. On January 19, 2022, City Attorney Aaron Leal sent an email to Paul Brake, Todd Fenton, and Susan Barkman, asking if an applicant had a strong or weak application. **Exhibit C: January 19, 2022 Email Chain Regarding Weak Application**. Fenton responded, stating that

RECEIVED by MSC 12/10/2025 3:03:01 PM

the application did not account for sufficient parking, and so it was "[w]eak." **Ex. C**. City Attorney Leal accepted this characterization. **Ex. C**.

51. City Manager Brake has stated outright that the Review Committee was "narrowing it down to two" successful applicants. Stated differently, Brake agrees that the Review Committee was meant to "winnow down the number of applicants . . . ."

52. Brake did not undertake the process of selecting successful marihuana retail establishment licensees by himself. Rather, said licensing determinations were "a collective decision" made by him and the Review Committee.

53. Although the Review Committee narrowed down and even eliminated certain applicants from the pool of potential licensees, it did not rank, score, or otherwise assign any designation that would distinguish one application/applicant from another at the August 2021 meetings.

54. For these reasons, the secret, *de facto* Review Committee was not serving in a ministerial, nonpolitical fact-finding role. Instead, it was exercising a critical governmental function by narrowing down the pool of applicants to the two applicants it deemed worthy of the two available Municipal License Slots.

ii. All But One of the Competitive Criteria Were Binary, "Check-the-Box" Considerations for Which Applicants Could Not Be Meaningfully Distinguished from One Another

55. For all but one of the ten 'competitive' criteria set forth in the Licensing Ordinance—criteria (b) through (j)—there is no way to distinguish one applicant from another, as those criteria are binary in nature. For example, an applicant is currently in default or arrears on any taxes or fees due to the City or it is not. Similarly, an applicant has either filed for bankruptcy or it has not. An applicant either has a history of criminal convictions or it does not. For these

RECEIVED by MSC 12/10/2025 3:03:01 PM

'binary' or 'check the box' criteria, there is simply no degree by which to rank the applications at issue.

56. Ultimately, the only criterion whereby it is possible to distinguish between competing applications is criterion (a) ("Review of the Applicant's completely submitted, detailed Application . . . , which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site").

iii. Neither the City Manager Nor the Review Committee Scored or Otherwise Ranked Applicants or Applications for Marihuana Retail Establishment Licenses At All

57. Contrary to MRTMA, the 'competitive' process established under the Licensing Ordinance and implemented by the City was anything but competitive.

58. The City failed to promulgate any type of weight guidelines, scoring rubric, or point system for the 'competitive' criteria, which has resulted in a completely opaque and subjective application evaluation process.

59. There are no guidelines or rules put in place that would give an applicant any indication as to how they may be evaluated in the so-called 'competitive' process.

60. Moreover, the Licensing Ordinance does not include any type of tie-breaking procedure. Therefore, any "ties" between otherwise qualified applicants will be resolved according to the subjective whims of the City Manager.

61. Even internally among City officials and staff, there was never a scoring rubric implemented to determine how to weigh the competitive criteria.

62. Moreover, the unsuccessful applicants for marihuana retail licensure were ***never ranked in any kind of order whatsoever***.

63. Even the applicants that were ultimately selected to receive marihuana retail establishment licenses—PGSH Holdings, LLC ("Gatsby") and Royal Oak Treatment ("Royal

RECEIVED by MSC 12/10/2025 3:03:01 PM

Treatment")—were not ranked in relation to one another. That is, Gatsby and Royal Treatment were not considered the best and second-best applicants to operate in compliance with MRTMA within the City after implementation of the City's "competitive" process. Rather, they were simply both considered "successful."

64. Accordingly, because no ranking of the applicants was ever established, if either Gatsby or Royal Treatment were unable to complete the licensing process, Brake would have had to go back through the submitted applications to determine the applicant next in line to receive a license.

65. The City Manager did not merely consult with the Review Committee in fulfilling his duty to *singularly* rank the applicants and applications in order of which were best suited to operate in compliance with MRTMA within the City. Rather, the Review Committee actively engaged as a collective public body in reviewing and evaluating the applicants and applications considered for prospective licensure as part of the City's so-called 'competitive' process.

iv. The Review Committee Misinterpreted Multiple Competitive Criteria and Disqualified Applicants on Bases Not Contemplated Under the Licensing Ordinance

66. City Manager Paul Brake, whom the Licensing Ordinance charged with ranking applicants "in the order of which is best suited to operate in compliance with [MRTMA] within the City," Licensing Ordinance § 435-4(C)(4), did not review MRTMA prior to evaluating applications. Brake never analyzed MRTMA in any way to assess how the City's competitive criteria were related to the Act.

RECEIVED by MSC 12/10/2025 3:03:01 PM

67. Indeed, Brake has admitted that, in overseeing the 'competitive' process, he was attempting to find the applicants best suited to comply ***with the City's Licensing Ordinance—not MRTMA*** (in complete derogation of the competitive process requirement of MCL 333.27959(4)).

68. Additionally, Brake did not review each page of every application, as it would involve consideration of, in his words, "a voluminous amount of information." Instead, members of the Review Committee would review the applications and advise him on different aspects of said documents.

69. At the August 2021 meetings of the Review Committee, individuals on the Committee would "put on information that was pertinent to their respective departments." However, according to Brake, a particular focus was given to the "land use component on the specific site[,]" by which Brake appears to have meant whether proposed properties would require variances.

70. Properties situated on Woodward Ave. were considered particularly problematic due to their need for alleyway access—even though the need for alley access has nothing to do with the adult-use marihuana industry, the competitive criteria crafted by the City, or MRTMA at all.

71. The applications that were looked at most favorably were those that would not require zoning variances. However, an applicant's need for a zoning variance was not included in the competitive criteria outlined under the Licensing Ordinance, § 435-4(C)(4).

72. Further, some factors were, in fact, weighed more heavily than others—even though the Licensing Ordinance does not guide City officials or staff as to how the competitive criteria should be weighed and no scoring rubric was ever implemented (even internally) to aid in such an endeavor.

RECEIVED by MSC 12/10/2025 3:03:01 PM

73. In particular, criterion (a) was given the most weight. No provision of the Licensing Ordinance states that criterion (a)—or any individual criterion—was meant to be weighted more heavily than other criteria.

74. City Manager Paul Brake considered criteria (b), (c), (d), (e), and (f) to be binary requirements that applicants either satisfied or did not satisfy. However, Brake believed that criteria (a), (g), (h), (i), and (j) allowed for distinction between applicants on the basis of their degree of compliance. Even so, the plain text of the Licensing Ordinance, § 435-4(C)(4)(a) though (j) indicates that all of the competitive criteria—with the exception of criterion (a)—were binary "check-the-box" considerations for which no distinction could be made between satisfying applicants.

75. Brake has openly acknowledged that assessments of the non-binary criteria—according to Brake, criteria (a), (g), (h), (i), and (j)—***were largely left to his own subjective whims***, rather than any objective bases.

76. Economic Development Manager and Deputy City Manager Todd Fenton was designated as the City's primary point of contact for questions related to submitting applications for marihuana establishment licensure during the application process. This responsibility notwithstanding, Fenton never reviewed the City's Licensing Ordinance after it was passed and adopted.

77. In the Review Committee's process of reviewing applications, Todd Fenton was responsible for: (1) checking whether applicants had "satisfied the business requirement of having a business establishment in the City for two years" (criterion (c)); and (2) determining whether applicants had an economic development plan in place that was beneficial to the City (a

RECEIVED by MSC 12/10/2025 3:03:01 PM

determination that Fenton made without reviewing the whole of each application and which is not required by the City's "competitive" process).

78. During the application review process, Fenton also expressed opinions to Paul Brake regarding applicants' proposed level of investment, which is not connected to any criterion considered under the City's Licensing Ordinance.

79. During meetings of the Review Committee, members would explain, in turn, their thoughts on various aspects of the applications under consideration.

80. Review Committee members were not instructed to give varying degrees of weight to any particular factor that they considered. Indeed, members of the Review Committee did not compare applications to one another in any way.

81. In evaluating the criterion outlined under the Licensing Ordinance, § 435-4(C)(4)(b) (whether an applicant was in default or arrears on taxes or fees owed to the City, in violation of ordinances or laws, or had been served with notice of delinquency on payment of taxes), City Manager Paul Brake ***did not merely consider what was required under the plain text of the Licensing Ordinance***. Rather, because applicants were often leasing the space proposed as a marihuana establishment location, Brake also examined whether the owner of the proposed site was current on all fees and taxes owed to the City, state, and federal governments. Only an applicant's compliance with criterion (b) was meant to be considered, however, according to the plain text of the Licensing Ordinance, § 435-4(C)(4)(b).

82. During the application review process, Todd Fenton was responsible for supplying notes related to the criteria listed under Licensing Ordinance, § 435-4(C)(4)(c) and sometimes (g), which respectively relate to: (1) whether an applicant operated a business within the City within the preceding two years and (2) whether there was "performed and planned future outreach" on

RECEIVED by MSC 12/10/2025 3:03:01 PM

behalf of the proposed marihuana establishment, a "written plan evidencing the outcome of such meetings," and any planned or completed "significant physical improvements to the building housing the Marihuana Establishment . . . ."

83. Even so, Fenton conceded that he did not read the entirety of each application for the materials he was responsible for.

84. Fenton has also stated that he did not consider an individual running his or her business out of his or her residence as a "business" for purposes of satisfying criterion (c). Nothing about criterion (c) as written in the Licensing Ordinance suggests that such businesses do not satisfy the criterion.

85. Fenton's interpretation of criterion (g) was that he was required to examine whether each applicant was reaching out to businesses in the area surrounding their proposed marihuana establishments. However, Fenton has not been able to explain ***at what level*** he believed an applicant had put forward sufficient information regarding planned future outreach; he could only say that the Licensing Ordinance required "more than a sentence" on the subject.

86. Fenton also stated that, as far as he was concerned, the "planned future outreach" component of criterion (g) could be satisfied regardless of whether outreach to the community occurred before or after an application was submitted. All that was required was some planned future outreach. However, the Licensing Ordinance, § 435-4(C)(4)(g) plainly requires ***both*** "performed and planned future outreach[,]" and not merely some planned future outreach.

87. Additionally, Fenton was unable to articulate a threshold for determining whether an applicant proposed a "significant physical improvement" sufficient to satisfy criterion (g) in the Licensing Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

88. Fenton's interpretation of criterion (g) notwithstanding, ***he did not consider the proximity between Gatsby's proposed marihuana establishment location and OSTC-SE when determining his personal top five ranking***.

89. Paul Brake did not consider opposition from neighboring entities to be a negative when assessing criterion (g), so long as "good faith" efforts were being made to reach out to neighbors.

90. With regard to the component of criterion (g) related to "significant physical improvements," Brake did not distinguish applicants on the basis of any dollar threshold; rather, he considered whether applicants were going to demolish old structures for new ones or whether existing buildings would be renovated, as well as how such actions would "harmoniously fit in with surrounding properties." But such considerations are not contemplated under the plain text of the Licensing Ordinance, § 435-4(C)(4)(g), at all.

91. And although Paul Brake testified that criterion (g) was not "binary" in terms of applicants' compliance, he also stated that the analysis conducted under criterion (g) was not intended to compare one applicant to another.

92. On the subject of criterion (i), which considers whether an applicant "has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability . . . ," City Manager Paul Brake was asked how he would determine whether an equity component of an application would relate to an applicant's profitability. Brake responded, "[I]t's kind of speculative . . . . I know a better plan when I read it, period."

93. Brake also claimed to be able to determine, on some unexplained basis, whether applicants were sincere about inclusiveness and diversity and whether applicants were merely giving "lip service." Part of this analysis involved a ***subjective*** assessment of the team and

RECEIVED by MSC 12/10/2025 3:03:01 PM

individuals assembled by an applicant that would be put in charge of equity, diversity, and inclusion, "[b]ecause success predicts success . . . ." Thus, Brake went beyond the terms of criterion (i) as articulated under the Licensing Ordinance and attempted to distinguish applicants on the basis of his subjective beliefs as to the "sincerity" of their proposed plans to incorporate equity, diversity, and inclusion in their operations.

94. Multiple 'competitive' criteria listed under the Licensing Ordinance, § 435-4(C)(4), were used to disqualify applicants that did not satisfy them. However, the Licensing Ordinance does not recognize ***any*** of the competitive criteria listed thereunder as dispositive of any application; that is, none are characterized as necessary criteria.

95. Nevertheless, multiple applications were disqualified outright merely on the basis of failure to present "diversity outreach" materials as contemplated under the Licensing Ordinance, § 435-4(C)(4)(g) or (i).

96. Similarly, the criteria related to taxes and fees owed to the City (criterion (b)), an applicant's history of operating a business within the City (criterion (c)), and an applicant's criminal history (criterion (d)) were used as bases for outright rejection of completed applications. Once again, the Licensing Ordinance does not contemplate any of these 'competitive' criteria as bases for outright disqualification of an applicant.

97. Even so, at least three applicants were disqualified because they had not operated a business in Royal Oak within the two years preceding their applications.

98. Additionally, some applicants were disqualified from the competitive process due to considerations that were unrelated to any of the criteria outlined under the Licensing Ordinance, entirely. For example, problems related to parking triggered disqualifications for applicants. The

RECEIVED by MSC 12/10/2025 3:03:01 PM

Licensing Ordinance does not contemplate parking difficulties as a reason for disqualification under the competitive process.

99. Applicants were also disqualified because they did not have "proper vehicle access." The Licensing Ordinance does not contemplate vehicle access as a reason for disqualification under the competitive process.

100. Further still, some applicants were disqualified on the basis of failure to include certain information in their proposed site plans—even though such reasoning was not contemplated under the Licensing Ordinance.

101. The documents required in the City's application process did not precisely reflect the competitive criteria outlined under the Licensing Ordinance. For example, criterion (g) under the Licensing Ordinance required an assessment of "[w]hether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings . . . ." However, in its Required Documents Checklist for Applicants, the City merely requested "[e]vidence regarding whether there is planned future outreach on behalf of the proposed business . . . [,]" without any regard for performed outreach or a written plan evidence the outcome of outreach meetings. **Exhibit D: Part II – Required Documents Checklist for Applicants**.

102. Todd Fenton outright conceded that, as he reviewed applicants for marihuana establishment licensure, he favored applicants who proposed marihuana establishments within the Woodward Corridor (the stretch of Woodward Avenue "between Ten or Eleven Mile to Fourteen")

F. Gatsby and Royal Treatment are Selected to Receive the Municipal License Slots

i. At the End of the Competitive Process, Gatsby and Royal Treatment are Awarded License Slots on Grounds Not Supported by the Licensing Ordinance

RECEIVED by MSC 12/10/2025 3:03:01 PM

103. Once the August 2021 meetings of the Review Committee were completed, City Manager Paul Brake held meetings in November 2021 with Todd Fenton, Tim Thwing, and others to gather additional input on those particular applicants; and from there, in late November 2021 or early December 2021, final determinations were made.

104. Paul Brake has stated that, at the end of the application-consideration process, the Review Committee "reached a consensus on Gatsby and Royal Treatment for the retail licenses."

105. On December 9, 2021, Susan Barkman sent an email to various members of the Review Committee, stating that she had updated letters informing certain applicants of their success and that certain applications had been "***ruled out*** during our earlier review process . . . ." **Exhibit E: December 9, 2021 Email from Susan Barkman to Committee Members (emphasis added)**.

106. On December 10, 2021, City Manager Paul Brake sent out a "City Manager Update" document to the Mayor and the City Commission, which stated:

> The next set of letters will be informing applicants that they are on a "stand-by" tier if the initial awardees are unable to seek/complete land-use approvals or if an applicant withdraws their application. We have determined a group of licenses and locations that would be acceptable to fill any vacated slot(s). ***The selection committee intentionally did a qualitative analysis of the application. There is not a scoring system nor a determination of who is next.***

On the basis of this language, it is plain that neither the City Manager nor his Review Committee actually ranked applicants for marihuana retail licensure.

107. The end-product of the Marihuana Application Review meetings was a final compartmentalizing of the Applicants/Applications into three tiers.

- Tier One consisted of Applicants that were approved to move forward with the process for the available License Slots.
- Tier Two was comprised of Applications that otherwise met all the 'competitive' criteria, but were placed on a waiting list in the event one of the License Slots became available if one of the Tier One Applicants failed to obtain a license.

RECEIVED by MSC 12/10/2025 3:03:01 PM

- Tier Three consisted of Applications or Applicants that failed to meet any of the "competitive criteria" of the Licensing Ordinance.

108. From the time it submitted its applications to Defendant on January 29, 2021, until December 20, 2021, Quality Roots received no communication from Defendant regarding the applications or the application review process in general.

109. On December 20, 2021, Quality Roots received a letter dated December 15, 2021 from the City Manager notifying it that neither of its applications were selected "to move forward in the licensing process." **Exhibit F: December 15, 2021 Letter Placing Quality Roots on Standby**. The City Manager noted that "there are several applications that were well positioned to moved [sic] forward if one of the applicants selected for a retail license does not successfully complete the licensing process." **Ex. F**. Finally, the City Manager clarified that the letter was "not a denial of [Quality Roots'] application." **Ex. F**.

110. Letters were also sent to Gatsby and Royal Treatment on December 15, 2021, informing them that they were selected to move forward in the licensing process.

111. Additional letters were sent to multiple applicants on December 15, 2021, informing them that their applications had been denied outright. These applicants were not eligible for potential licensure even if Gatsby or Royal Treatment failed to complete the steps necessary to be awarded with municipal marihuana retail establishment licenses.

112. Those applicants whose applications were denied outright in December 2021 were given the opportunity to appeal that decision to the City Manager.

113. On February 8, 2022, the City Planning Commission conducted a public meeting at which it considered the site plans and special land use permit requests submitted by Gatsby and Royal Treatment. At the meeting, many members of the public spoke and expressed concerns over Gatsby's proposed marihuana establishment location within 1,000 feet of a school (indeed,

RECEIVED by MSC 12/10/2025 3:03:01 PM

Gatsby's proposed marihuana retail establishment would be situated approximately 88 feet from OSTC-SE).

114. At the February 8, 2022 meeting of the Planning Commission, the Planning Commission voted 3-2 to recommend that the City Commission *deny* special land use approval for Gatsby. According to the meeting minutes, the reasons for the recommended denial were:

a. The proposed use and location would be hazardous and disturbing to existing uses or uses reasonably anticipated in the future.

b. The proposed use and location would not be consistent with the intent and purposes of the zoning ordinance and would not comply with all applicable provisions and standards which are established for the use by the zoning ordinance and other applicable codes.

115. The two members of the Planning Commission who voted against the recommended denial are the only two members of the Planning Commission who are *also* members of the City Commission (Royal Oak's legislative body): Commissioner Sharlan Douglas and Mayor Michael Fournier.

116. Also at the February 8, 2022 meeting of the Planning Commission, the Planning Commission voted 4-1 to recommend approval of Royal Treatment's proposed special land use permit and voted unanimously to recommend approval of Royal Treatment's proposed site plan.

117. On February 18, 2022, Oakland Schools' outside counsel, Miller Canfield, sent a letter to the Royal Oak City Commission explaining, *once again*, a number of reasons why OSTC-SE is a public school sufficient to trigger the 1,000-foot school buffer and why Gatsby's proposed marihuana establishment location violated state and local law. **Exhibit G: February 18, 2022 Letter from Oakland Schools' Counsel to City Commission**.

118. Despite the recommendation of the Planning Commission to deny Gatsby's proposed special land use permit, despite repeated correspondence from Oakland Schools, Royal Oak Schools, and counsel articulating sound legal reasons why the 1,000-foot school buffer

established by MRTMA and the City's own Ordinances precluded Gatsby's proposed marihuana retail site, and despite ongoing litigation on that very same subject, the City Commission conducted a hearing on Gatsby's proposed special land use permit and site plan request on April 25, 2022.

119. On February 28, 2022, City Manager Paul Brake sent letters to certain applicants and/or their representatives indicating that those applicants' administrative appeals from their application denials were unsuccessful. **Exhibit H: February 28, 2022 Letters from Paul Brake**. Evidently, ***some*** administrative appeals did take place.

120. That same day, on April 25, Royal Oak Schools Superintendent Mary Beth Fitzpatrick sent a letter to members of the Royal Oak City Commission expressing her continued opposition to the special land use permit requested by Gatsby on the basis of the close proximity between Gatsby's proposed marihuana retail establishment and OSTC-SE.

121. At the April 25, 2022 meeting, the City Commission completely disregarded the recommendation of the Planning Commission and considered Gatsby's request for site plan approval and a special land use permit. At the meeting, once again, several members of the public spoke out against approval of Gatsby's site plan and special land use permit.

122. Moreover, during the April 25, 2022 meeting, multiple members of the City Commission referred to OSTC-SE as a "school" in one regard or another.

123. Nevertheless, at the meeting, the City Commission voted to approve Gatsby's and Royal Treatment's proposed site plans and special land use permits.

124. With these approvals, the City violated important policy considerations underlying MRTMA, including (without limitation) that: (1) marihuana retail facilities would not be in close proximity to schools or school children; and (2) applicants are to be awarded municipal marihuana

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

establishment licenses on the basis of whether they are best suited to operate in accordance with MRTMA within the City, as opposed to whether they have the most advantageous political connections with previous elected City officials.

125. City Manager Paul Brake has testified that Gatsby was considered a superior applicant partly because, as it relates to criterion (g), Gatsby reached out to around four or five neighboring property owners.

126. Brake also testified that Gatsby was elevated above other applicants on the basis of: (1) the scope of the improvements proposed by Gatsby; (2) Gatsby's proposed implementation of "green" infrastructure; and (3) Gatsby's proposed co-location of multiple marihuana establishments in one location. Todd Fenton also stated that Gatsby's selection as a successful applicant was justified because Gatsby proposed multiple marihuana establishment uses in a single location.

127. Neither the scope of proposed improvements nor a proposed co-located marihuana establishment were included among the Licensing Ordinance's competitive criteria, however.

128. And beyond that, Gatsby was not the only applicant to propose physical improvements to the site of its marihuana establishment, sustainable "green" infrastructure, or a co-located business.

129. Brake has further testified that Gatsby was considered a superior applicant partly on the basis of criterion (i), and that some applications "barely satisfied that criteria." But the Licensing Ordinance, § 435-4(C)(4)(i) does not distinguish between applicants who "barely" take steps to include equity, diversity, and inclusion in their operations and those that take significant steps toward such ends.

RECEIVED by MSC 12/10/2025 3:03:01 PM

130. Accordingly, Paul Brake's reasons for considering Gatsby to be one of the two most superior applicants were completely unsupported.

ii. Quality Roots' and Other Applicants' Applications are Formally Denied, and Quality Roots is Not Permitted to Conduct an Administrative Appeal as *Required* Under the Licensing Ordinance

131. It was not until May 18, 2022, that City Manager Paul Brake finally sent Quality Roots a letter notifying it that its applications for marihuana retail establishment licenses had been officially denied and that Gatsby and Royal Treatment had "obtained the necessary approvals and the city has issued retailer licenses to those two businesses." **Exhibit I: May 18, 2022 Denial Letter**.

132. Each of the reasons offered by the City for the denial of Quality Roots' applications was based on a failure to read the materials presented in said applications, a misapplication of the competitive criteria, or a departure from the competitive criteria entirely.

133. On June 8, 2022, Quality Roots sent a letter to City Manager Paul Brake appealing the denial of its applications pursuant to Licensing Ordinance, § 435-4(D)(10). Under that same provision of the Licensing Ordinance, the City Manager was ***required*** to set a date and time within 10 business days of Quality Roots' appeal letter scheduling a hearing where Quality Roots could be heard. See *id*.

134. Quality Roots received no formal response from the City or from City Manager Paul Brake until July 21, 2022—well after the 10-business-day deadline—when City Manager Paul Brake sent a letter to the undersigned stating:

> At this time, all available RME retailer licenses authorized by City of Royal Oak ordinance have been issued to the successful applicants. The ordinance does not authorize me to award additional licenses even upon a successful appeal, so a hearing on the appeal would be futile. Therefore, I will not be scheduling a hearing on the appeal." [**Exhibit J: July 21, 2022 Letter Denying Appeal Request**.]

RECEIVED by MSC 12/10/2025 3:03:01 PM

135. According to Brake, once licenses were awarded, the Ordinance did not give him authority to undo those awards even if unheard administrative appeals were meritorious. Effectively, by the time "standby" applicants like Quality Roots were notified that their applications had been denied, the appeals that they were entitled to under the Licensing Ordinance, § 435-4(D)(10)—even if they had been conducted—were meaningless. Additional licenses could only be granted if the City amended the Licensing Ordinance to allow for more a greater number of marihuana establishments in the City.

G. Members of the City Commission Lied to the Public About Their Knowledge of Application Materials Before the April 25, 2022 Meeting of the City Commission

136. On August 10, 2020, members of the Royal Oak City Commission held a meeting (conducted via Zoom) at which they unanimously voted to approve the following resolution:

> Therefore, be it resolved, the Royal Oak City Commission hereby establishes a policy that no member(s) of the city commission shall have any ex parte communication with any applicant or potential applicant for a recreational marihuana license, or his/her representatives, regarding any recreational marihuana licensing issue. [**Exhibit K: August 10, 2020 City Commission Resolution Policy**.]

137. The resolution was approved with a recommendation that the policy would remain in effect while applications for marihuana retail establishment licensure were taken and while licenses remained available in the City. Moreover, the City Commission agreed that, should any of its members receive an ex parte communication during that time, the communication must be disclosed, in writing, with the City Attorney and the City Manager (and "shared as appropriate" with the other members of the City Commission).

138. At the April 25, 2022 meeting of the City Commission (at which Gatsby's and Royal Treatment's site plans and special land use permit requests were approved), Mayor Fournier stated that, at that time, none of the members of the City Commission had seen any of the applications for marihuana retail establishment licensure.

RECEIVED by MSC 12/10/2025 3:03:01 PM

139. However, on January 27, 2022 (nearly three months before the April 25, 2022 meeting of the City Commission), Commissioner Kyle DuBuc participated in a telephone call with Dr. Theresa Rich, a member of the Oakland Schools Board of Education.

140. During that phone call, Commissioner DuBuc stated his opinion that Gatsby presented "a really good location for a marihuana business" (per Rich's testimony).

141. Commissioner DuBuc's statement to Dr. Rich indicates that, contrary to Mayor Fournier's promise to the public—that, up until April 25, 2022, members of the City Commission had been completely removed from the licensing process and had not seen any application materials related to an application for marihuana establishment licensure—members of the City Commission ***had, in fact, at least seen Gatsby's application materials***. Otherwise, Commissioner DuBuc would not have been able to form an opinion as to the quality of Gatsby's proposed marihuana establishment location at the time of his telephone call with Dr. Rich.

142. Commissioner DuBuc's statement during this telephone call further suggests that, if City Commission members were not actively viewing application materials that should have only been made available to City Manager Paul Brake and the Review Committee, they were receiving ex parte communications from applicants (concerning the quality of their proposed marihuana establishment locations) in contravention of the August 10, 2020 Resolution of the City Commission.

H. The Potential Influence Exerted Over the City and Its Ostensibly 'Competitive' Licensing Process by Former Royal Oak Mayor Dennis Cowan and Former Royal Oak City Commissioner Jim Rasor

143. Recall that the City's Licensing Ordinance was not adopted until July 27, 2020.

144. The Licensing Ordinance was drafted by former Interim City Manager Dave Gillam (with the help of a Grand Rapids law firm). Gillam was also involved in putting together the application forms used by prospective applicants for marihuana establishment licensure.

RECEIVED by MSC 12/10/2025 3:03:01 PM

145. Paul Brake began working as the City Manager of Royal Oak on May 20, 2022.

146. Accordingly, the City began discussions as to the form and substance of the Licensing Ordinance before May 20, 2022.

147. However, on June 9, 2020—between the time when the Licensing Ordinance was being drafted and when the Licensing Ordinance was formally adopted—the City Planning Commission considered the possible rezoning of certain property at 408 E. Harrison Ave., 416 E. Harrison Ave., 420 E. Harrison Ave., and 424 E. Harrison Ave. from General Industrial to Mixed Use 1 Overlay District. That property is the same property that successful applicant Royal Treatment proposed as the site for its marihuana retail establishment.

148. Had this property been rezoned to Mixed Use 1 Overlay District, it would no longer have been eligible to function as the site of a marihuana retail establishment in the City. See Licensing Ordinance, § 435-2(B)(5).

149. However, on June 4, 2020, former Royal Oak Mayor Dennis Cowan drafted a letter to the Planning Commission (for consideration at the June 9, 2020 meeting) actively opposing the proposed rezoning.

150. On July 10, 2020, former City Commissioner Jim Rasor drafted a letter to the Planning Commission on behalf of Royal Oak Storage, which owns the real property located at property at 408 E. Harrison Ave., 416 E. Harrison Ave., 420 E. Harrison Ave., and 424 E. Harrison Ave. In his letter, Rasor notes that the proposed rezoning of said property is set to be considered again at a July 14, 2020 meeting of the Planning Commission, and that his client opposed the rezoning.

151. On July 14, 2020, the City Planning Commission again considered the proposed rezoning of Royal Treatment's prospective marihuana retail establishment site. Planning

RECEIVED by MSC 12/10/2025 3:03:01 PM

Commission member Eric Klooster moved to recommend that the property be rezoned to Mixed Use 1 Overlay District. However, the motion failed "for lack of support." Thus, the real property under consideration remained zoned in a manner eligible for consideration as Royal Treatment's proposed marihuana retail establishment location.

152. Later that year, on December 11, 2020, Anne McLaughlin emailed Jeffrey M. Schroder, a lawyer at Plunkett Cooney (the same law firm that employs Dennis Cowan), to inform him that she had called to discuss a question that he posed regarding the application process.

153. On January 4, 2021, Schroder sent McLaughlin a responsive email, stating that he was following up on a question related to "an option agreement with a 'business operating in the City of Royal Oak' whereby an owner of that business will be a manager or member upon the contingency of a successful license award by the city."

154. And on January 11, 2021, Schroder memorialized a telephone conversation between him and McLaughlin, in which he asked whether "it was acceptable to have an option agreement for Royal Oak business owners to become owners or managers contingent upon license approval.

155. According to Schroder's email, McLaughlin answered that "this is a reasonable expectation given that so much of what will be presented in the application is contingent upon licensure . . . ."

156. Also on January 11, 2021, McLaughlin sent an email to Dennis Cowan, informing him that she had tried to contact him to discuss a question he had submitted to the City online. McLaughlin's email does not provide clarity on what the question was; however, to facilitate further discussion, McLaughlin offered her cell phone number.

157. This curious sequence of events can be summarized:

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) Dennis Cowan and Jim Rasor—both former high-ranking Royal Oak City officials—successfully opposed the rezoning of real property later used as Royal Treatment's proposed marihuana retail establishment location;

(2) As a result, that same real property remained eligible for use as a marihuana retail establishment;

(3) During the window to submit applications for marihuana establishment licensure, a member of Dennis Cowan's law firm confirmed with Anne McLaughlin that, in the City's view, it was acceptable for applicants to execute an option agreement whereby new individuals would become members or managers only upon successful acquisition of a marihuana license;

(4) Cowan served in a representative capacity for Gatsby during the marihuana establishment licensing process, and Rasor served in a similar capacity for Royal Treatment; and

(5) Gatsby and Royal Treatment are selected to receive marihuana retail establishment licenses.

158. It is suspicious (to say the least) that former City officials Cowan and Rasor were able to successfully oppose rezoning of the aforementioned property and then to successfully procure highly lucrative marihuana retail establishment licenses for their clients, Gatsby and Royal Treatment. This is particularly true in light of: (1) Cowan's firm confirming with Anne McLaughlin that applicants could agree to forego recognizing new members or managers until after acquisition of a license; and (2) serious defects in the licensing process and in Gatsby's proposed marihuana establishment location.

RECEIVED by MSC 12/10/2025 3:03:01 PM

159. It is unclear whether Dennis Cowan or Jim Rasor have any current ownership interest in Gatsby or Royal Treatment or whether Cowan or Rasor are poised to become members or managers of those entities now that licenses have been procured.

I. The City Disregarded the 1,000-Foot School-Zone Buffer Created by MRTMA and Its Own Licensing and Zoning Ordinances When It Selected Gatsby For Licensure, Notwithstanding the 88-Foot Distance Between Gatsby's Proposed Site and a School

160. MRTMA, MCL 333.27959(3), provides that the State will award a recreational marihuana establishment license, if, *inter alia*, "(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is ***not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1-12, unless a municipality adopts an ordinance that reduces this distance requirement***" (emphasis added).

161. The City's own Code of Ordinances contain at least two provisions, which also preclude the placement of any marihuana establishment within 1,000 feet of a school. In particular, Section 435-5(A)(5)(a)(1) of the Licensing Ordinance states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any school." And beyond that, the City's Zoning Ordinance (the "Zoning Ordinance") also states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Zoning Ordinance, § 770-52.1(B)(3).

162. The City has not adopted an Ordinance that reduces the distance requirement established by MCL 333.27959(3). To the contrary, as previously stated, the City's Licensing Ordinance and Zoning Ordinance explicitly prohibit any marihuana establishments from being set up within a 1,000-foot radius of any school. Licensing Ordinance, § 435-5(A)(5)(a); Zoning Ordinance, § 770-52.1(B)(3).

RECEIVED by MSC 12/10/2025 3:03:01 PM

163. The Oakland Schools Technical Campus – Southeast ("OSTC-SE," which is situated within Royal Oak) is a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA. See MCL§ 333.27959(3)(c).

164. OSTC-SE provides education for over 600 students in grades 9 through 12, for which said students receive high school credit and attend classes in subjects including (but not limited to): English, Math, Algebra, Biology, Chemistry, Economics, Geometry, Government, Physical Science, and World History.

165. OSTC-SE also provides a summer science, technology, engineering, and math camp program for children in grades 6 through 8.

166. Like other schools, OSTC-SE has teachers employed on staff, as well as its own dean.

167. Dr. Theresa Rich, a member of the Oakland Schools Board of Education, believes that OSTC-SE is a public K-12 school, which would trigger the 1,000-foot school buffer contemplated under the City's Licensing Ordinance.

168. Oakland Schools Intermediate School District ("Oakland Schools") is an intermediate school district created and governed by the School Code. OSTC-SE falls under the operation and oversight of Oakland Schools.

169. OSTC-SE is a "public school" as that term is defined under MCL 380.601 *et seq*. (the "School Code"). See MCL 380.5(6).

170. For these reasons, OSTC-SE is considered a "pre-existing public or private school providing education in kindergarten or any of grades 1 through 12" under MRTMA. See MCL 333.27959(3)(c). Royal Oak Technical Campus is therefore also considered a "school" as contemplated by the Licensing Ordinance, § 435-1, as well as an "existing public or private school

RECEIVED by MSC 12/10/2025 3:03:01 PM

with a curriculum equivalent to kindergarten through 12th grade" as contemplated under the Zoning Ordinance, § 770-52.1(B)(3).

171. Accordingly, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA and the City's own Licensing and Zoning Ordinances.

172. Gatsby's proposed facility falls squarely within the 1,000-foot buffer surrounding the OSTC-SE. Thus, Gatsby's proposed facility cannot function as a marihuana retail establishment under MRTMA, the Licensing Ordinance, or the Zoning Ordinance.

173. The issue of OSTC-SE's status as a school was brought to the City's attention at least as early as April 22, 2020, when an unknown applicant contacted the City for clarification as to the reason why OSTC-SE did not appear in one of the City's buffer maps. **Ex. H, Attachment 1**. City Planner Doug Hedges responded the same day, stating, "We use the definition of school from the state act, which is K through 12 or equivalent. In our opinion that facility does not meet the definition of K-12 or equivalent and would not require a setback." **Ex. G, Attachment 1-A**.

174. Between April 22, 2020 and the present, the City has exchanged numerous communications with representatives of marihuana retail establishment license applicants and Oakland Schools in which the City: (1) gave contradictory statements as to its position regarding OSTC-SE's status as a "school"; and (2) otherwise rejected the notion that OSTC-SE triggered the 1,000-foot school buffer put into place by MRTMA, the Licensing Ordinance, and the Zoning Ordinance.

175. On October 16, 2020, another marihuana retail establishment license applicant sent a direct inquiry to then Commissioner Randy LeVasseur, asking whether OSTC-SE triggered the 1,000-foot school buffer. LeVasseur forwarded the inquiry to Director of Community

RECEIVED by MSC 12/10/2025 3:03:01 PM

Development Tim Thwing, who responded that OSTC-SE did not trigger the 1,000-foot buffer because it merely "provides services for students."

176. Although the City had been aware of the issue regarding applicability of the 1,000-foot buffer to OSTC-SE since April 2020, OSTC-SE administrators did not become aware of the issue until January 25, 2021, when an applicant reached out to potential neighbors—including OSTC-SE—as part of the application process. **Ex. G, Attachment 1**.

177. In January 2021, Dean of OSTC-SE Amy Gole contacted the City to inquire as to potential marihuana establishments near OSTC-SE. **Ex. G, Attachment 1**. Former Royal Oak Planner II Julianna Tschirhart responded via email on January 28, 2021, stating, "It was determined that the OSTC did not meet the definition of a K-12 school under the state law, the Michigan Regulation and Taxation of Marijuana Act. Thus, it was not included as a school to be give the 1,000 ft. buffer in our map of eligible parcels." **Exhibit L: January 28, 2021 Email from Julianna Tschirhart to Amy Gole**.

178. That same day, January 28, 2021, counsel for Oakland Schools at Dickinson Wright sent a letter to Tschirhart asking that the City confirm that Tschirhart's position as to OSCT-SE's status as a K-12 school was the City's final stance on the subject. **Exhibit M: January 28, 2021 Letter from Dickinson Wright to Tschirhart**. The letter also communicated Oakland Schools' position that OSTC-SE did, indeed, trigger the 1,000-foot buffer surrounding pre-existing public schools established by MRTMA and further advised the City to notify applicants proposing marihuana establishments within the buffer area that their eligibility for licensure was contested. **Ex. M**.

179. On February 1, 2021, Oakland Schools' Dickinson Wright counsel sent an email to Mark Liss at the Royal Oak City Attorney's Office, informing Liss that Tschirhart did not respond

RECEIVED by MSC 12/10/2025 3:03:01 PM

to counsel's January 28, 2021 communication and advising that Oakland Schools was a public school sufficient to trigger the 1,000-foot school buffer created by MRTMA. **Exhibit N: February 1, 2021 Email from George Butler to Mark Liss**. Later that same day, Liss responded via email, suggesting that counsel direct Oakland Schools' concerns to Planning Director Joseph Murphy and Director of Community Development Tim Thwing. **Ex. N**. Liss's responsive email offered no further information or clarification to Oakland Schools.

180. Having received no substantive response regarding the basis for the City's stated position as to OSTC-SE's status as a school for purposes of the 1,000-foot school buffer established by MRTMA, on February 1, 2021, counsel for Oakland Schools submitted a FOIA request to the City, asking for—among other things—records reducing the 1,000-foot buffer created by MRTMA. The City did not produce any ordinances reducing the 1,000-foot buffer distance in response to the FOIA request. **Ex. G, Attachment 1**.

181. On February 23, 2021, a representative for a marihuana establishment applicant contacted Director of Community Development Tim Thwing, advising Thwing that the applicant had been contacted by OSTC-SE and requesting clarification from the City regarding OSTC-SE's status as a school for purposes of the 1,000-foot buffer put in place by the City's Licensing Ordinance. **Exhibit O: February 23, 2021 Email Chain Between Applicant Representative and Tim Thwing**. Thwing responded to the applicant that same day—although the City had still not responded to Oakland Schools' counsel's January 28, 2021 letter—stating, in part, "The planning division's position has not changed. The 1,000 foot setback was not applied to OSTC, its had not been treated as K-12 school, K-12 schools are not a permitted use or special land use in the General Industrial Zoning District." **Ex. O**.

RECEIVED by MSC 12/10/2025 3:03:01 PM

182. On March 9, 2021, new counsel for Oakland Schools at Miller Canfield sent a letter to Director of Planning Joseph Murphy, reiterating Oakland Schools' position as to the applicability of the 1,000-foot school buffer to OSTC-SE and requesting that the City: (1) make its stance known; and (2) confirm whether applicants were seeking licensure for proposed marihuana establishment locations within 1,000 feet of OSTC-SE. **Exhibit P: March 9, 2021 Letter from Miller Canfield to Joseph Murphy**. The City delayed its response until March 26, 2021, when Interim City Attorney Anne McLaughlin sent a letter to Oakland Schools' counsel (backdated by a single day to March 25, 2021) arguing that OSTC-SE is either: (1) a public K-12 school that is situated in the City's General Industrial Zone as a nonconforming use (for which the 1,000-foot buffer set forth by the City's Ordinances would not apply); or (2) a " 'business, technical or trade school' " that would not trigger the 1,000-foot buffer in the first instance. **Exhibit Q: March 25, 2021 Letter from Anne McLaughlin to James Crowley**. McLaughlin continued that while "[t]he City's Planning Department ha[d] not made an express determination whether the OSTC is or is not a K-12 school for purposes of the MRTMA[,]" the 1,000-foot buffer would not apply in any circumstances. **Ex. Q**.

183. On March 31, 2021, Oakland Schools' Miller Canfield counsel sent another letter to Interim City Attorney Anne McLaughlin, arguing that OSCT-SE is a pre-existing public school providing K-12 education sufficient to trigger the 1,000-foot buffer contemplated by MRTMA and that, as a public school, OSTC-SE is not subject to local zoning ordinances (rather, the state superintendent has sole and exclusive jurisdiction over review and approval of site plans for school buildings. **Exhibit R: March 31, 2021 Letter from Oakland Schools' Counsel to Anne McLaughlin**.

RECEIVED by MSC 12/10/2025 3:03:01 PM

184. The City did not respond to the March 31, 2021 letter for 41 days. After, on May 12, 2021, Oakland Schools' Miller Canfield counsel sent a follow-up letter to Interim City Attorney Anne McLaughlin restating Oakland Schools' position regarding applicability of MRTMA's 1,000-foot school buffer to OSTC-SE and requesting a response from the City. **Exhibit S: May 12, 2021 Letter from Oakland Schools' Counsel to Anne McLaughlin**.

185. By May 27, 2021, Oakland Schools had received no response to its March 31, 2021 and May 12, 2021 communications. Thus, on May 27, 2021, Oakland Schools' counsel sent a follow-up email to Anne McLaughlin, asked for updates.

186. The City never responded to either the March 31, 2021 or May 12, 2021 communications sent by Oakland Schools' counsel.

187. On January 19, 2022—after Gatsby and Royal Treatment had already been informed that they had been selected to move forward in the licensing process above the other applicants—Gatsby reached out to Oakland Schools *for the first time* to discuss Gatsby's plans to open a marihuana retail establishment across the street from OSTC-SE. **Ex. G, Attachment 1, pp 5-6**.

188. Oakland Schools only learned of the February 8, 2022 meeting of the Planning Commission—at which the subject of Gatsby's proposed site plan and special land use permit approval would be discussed—***via newspaper monitoring***. **Ex. G, Attachment 1, p 6**. The City did not provide Oakland Schools with personal notice of the hearing as required under MCL 125.3103(2). **Ex. G, Attachment 1, p 6**.

189. On February 2, 2022, Royal Oak Schools Superintendent Mary Beth Fitzpatrick sent out email correspondence to Royal Oak residents informing them that the City Planning Commission was scheduled to consider Gatsby's proposal for a special land use permit—related

RECEIVED by MSC 12/10/2025 3:03:01 PM

to a proposed marihuana establishment that would be situated within 1,000 feet of OSTC-SE—at a February 8, 2022 meeting. **Exhibit T: February 2, 2022 Email Chain Between Mary Beth Fitzpatrick and Mayor Fournier**. The email stated that Fitzpatrick believed that Gatsby "should not be granted a special land use permit to operate in such close proximity to a school building" and linked recipients of the email to a letter drafted by Dr. Wanda Cook-Robinson, the Superintendent of Oakland Schools. **Ex. T**.

190. Dr. Cook-Robinson's letter expressed opposition to Gatsby's proposed special land use permit on the basis of the proximity to OSTC-SE and called on OSTC-SE parents and guardians to attend the February 8, 2022 meeting of the Planning Commission to voice like disapproval (or to submit objections via email). **Exhibit U: Letter from Dr. Wanda Cook-Robinson to OSTC-SE Parents and Guardians**.

191. On February 7, 2022, Oakland Schools' counsel from Miller Canfield sent a letter to the City Planning Commission members, outlining Oakland Schools' position on the applicability of the 1,000-foot buffer provided for under MRTMA, the Licensing Ordinance, and the Zoning Ordinance, and requesting that the Planning Commission recommend denial of Gatsby's special land use permit proposal. **Exhibit V: February 7, 2022 Letter from Oakland Schools' Counsel to Planning Commission**.

COUNT I: VIOLATION OF MRTMA (COMPETITIVE PROCESS – FACIAL CHALLENGE)

192. Plaintiff incorporates herein by reference each of the preceding paragraphs.

193. Under MRTMA, MCL 333.27959(4):

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, ***the municipality shall decide among competing applications by a competitive process intended to select applicants who***

RECEIVED by MSC 12/10/2025 3:03:01 PM

> ***are best suited to operate in compliance with this act within the municipality***. [Emphasis added.]

194. The City's Licensing Ordinance did not establish a competitive process intended to select applicants for marihuana business licensure who are best suited to operate in compliance with MRTMA within the City of Royal Oak. The City's 'competitive' process was therefore facially invalid for violating and conflicting with MRTMA's competitive-process mandate.

195. The City's Licensing Ordinance conflicts with MRTMA, as its 'competitive' process for awarding the available Municipal License Slots was based upon an unlawful, subjective, and arbitrary process.

196. The City did not select Gatsby or Royal Treatment for the two available Municipal License Slots on the basis of a finding that they are best suited to operate in compliance with MRTMA in the City.

197. Indeed, it remains unclear whether Gatsby or Royal Treatment have any significant experience operating a marihuana retail operation in Michigan or in any jurisdiction.

198. The Licensing Ordinance does not assign any weight or 'score' to any of the competitive criteria enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion. And neither the City Manager nor the Review Committee internally established a method of objectively weighing or scoring any of the competitive criteria.

199. Thus, where all but one of the competitive criteria were binary "check-the-box" factors—which either were or were not satisfied by each applicant—the ostensibly 'competitive' process offered the City no meaningful way to distinguish between the many applicants for marihuana retail licensure.

200. As far as the public knows, the City Manager (or its designee), in evaluating applications under the competitive criteria of Section 435-4(C)(4), could have assigned 91% of the

RECEIVED by MSC 12/10/2025 3:03:01 PM

weight of his decision to item 4350-4(C)(4)(i) (steps taken by applicants to "yield greater profitability") and only 9% to the other nine factors.

201. Indeed, the City Manager has openly acknowledged that assessments of any non-binary criteria ***were left to his own subjective whims***, rather than any objective analysis. This is antithetical to any truly ***competitive*** process.

202. Moreover, the Licensing Ordinance does not establish any kind of tie-breaking procedure. Thus, to the extent that too many applicants were found to be equally suited to operate in compliance with MRTMA within the City, there was no way to determine which would be selected to fill available Municipal License Slots (other than leaving that determination to the subjective whims of the City Manager).

203. Further still, the enumerated competitive criteria to be applied by the City Manager or his or her designee under Section 435-4(C)(4) of the Licensing Ordinance largely have nothing to do with whether an applicant is "best suited to operate in compliance with [MRTMA] within" the City. See MCL 333.27959(4).

204. The City's process for choosing the applicants/applications that would fill the two available Municipal License Slots was not designed (or applied) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City. The process is therefore in violation of MRTMA, MCL 333.27959(4).

205. Defendant's Licensing Ordinance, as written, was in violation of MRTMA's competitive-process mandate.

COUNT II: VIOLATION OF MRTMA
(COMPETITIVE PROCESS – AS-APPLIED CHALLENGE)

206. Plaintiff incorporates herein by reference each of the preceding paragraphs.

207. Under MRTMA, MCL 333.27959(4):

RECEIVED by MSC 12/10/2025 3:03:01 PM

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, ***the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality***. [Emphasis added.]

208. In implementing the 'competitive' process outlined under the Licensing Ordinance, the City did not engage in a competitive process intended to select applicants for marihuana business licensure who are best suited to operate in compliance with MRTMA within the City of Royal Oak.

209. The City did not select Gatsby or Royal Treatment for the two available Municipal License Slots on the basis of a finding that they are best suited to operate in compliance with MRTMA in the City.

210. To the contrary, the City Manager—who was charged with implementing the City's so-called 'competitive' process—admitted that he did not understand his task to be related to selecting the applicants best suited to operate in compliance with MRTMA ***at all***. Rather, the City Manager has openly acknowledged that he endeavored to select those applicants best suited to comply ***with the City's own Licensing Ordinance, instead***. This is not in compliance with MRTMA's competitive-process mandate.

211. Further, the City Manager has admitted that he and the Review Committee ***failed to actually rank any of the applicants or applications for marihuana retail establishment licensure***. Instead, the City Manager and his Review Committee arbitrarily organized the applicants/applications into three categories: (1) the two selected to complete the licensing process; (2) those on standby, which may have been selected to move forward with the licensing process if one or both of the initially selected two failed to complete the process; and (3) those who were determined to be disqualified from the competitive process altogether.

RECEIVED by MSC 12/10/2025 3:03:01 PM

212. Applicants within each of these three 'tiers' were not ranked among one another; and so if either Gatsby or Royal Treatment were disqualified from eligibility for licensure, there would be no runner-up to fill the available Municipal License Slot(s).

213. Additionally, the Licensing Ordinance does not assign any weight or 'score' to any of the competitive criteria enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion. And neither the City Manager nor the Review Committee internally established a method of objectively weighing or scoring any of the competitive criteria.

214. Thus, where all but one of the competitive criteria were binary "check-the-box" factors—which either were or were not satisfied by each applicant—the ostensibly 'competitive' process offered the City with no meaningful way to distinguish between the many applicants for marihuana retail licensure.

215. And once again, the City Manager has openly acknowledged that assessments of any non-binary criteria ***were left to his own subjective whims***, rather than any objective analysis. This is incompatible with any truly ***competitive*** process.

216. As far as the public knows, the City Manager (or its designee), in evaluating applications under the competitive criteria of Section 435-4(C)(4), could have assigned 91% of the weight of his decision to item 4350-4(C)(4)(i) (steps taken by applicants to "yield greater profitability") and only 9% to the other nine factors.

217. The City and the City Manager's process for choosing the applicants/applications for the two available Municipal License Slots was not applied (or designed) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City and, therefore, is in violation of MRTMA, MCL 333.27959(4).

RECEIVED by MSC 12/10/2025 3:03:01 PM

218. Instead, the City's so-called 'competitive process' was conducted in complete secrecy by an unofficial and unaccountable Review Committee consisting of several City officials/employees, which kept applicants in the dark as to the process and the Committee's findings until final determinations had been made.

219. Moreover, the City Manager's and Review Committees' interpretation and application of the City's competitive criteria throughout the licensing process were inconsistent with the plain text of the Licensing Ordinance.

220. The City's stated reasons for selecting Gatsby and Royal Treatment to receive marihuana retail establishment licenses—and for rejecting Quality Roots and other contending applicants—are also inconsistent with the plain text of the City's own Licensing and Zoning Ordinances, state law, and federal constitutional protections.

221. Further still, the City was obligated, under the Licensing Ordinance, to hear Quality Roots' administrative appeal. However, the City Manager instead dismissed Quality Roots' administrative appeal—though he did not dismiss others filed by certain other (unsuccessful) applicants—because he did not believe he had the authority to grant Quality Roots a license ***even if the grounds for the appeal were meritorious***.

222. Defendant's Licensing Ordinance, both as written and as applied to the evaluation of the applications for marihuana retail licenses in the City (including Defendant's decision to deny Quality Roots a Municipal License Slot) violated MRTMA's competitive-process mandate.

COUNT III: VIOLATION OF MRTMA (SCHOOL BUFFER REQUIREMENT)

223. Plaintiff incorporates herein by reference each of the preceding paragraphs.

224. Under MCL 333.27959(3)(c), an applicant for state adult-use recreational marihuana establishment licensure may only be granted a license if:

RECEIVED by MSC 12/10/2025 3:03:01 PM

> the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement.

225. The City has not adopted an ordinance that reduces the 1,000-foot school-zone buffer established by MCL 333.27959(3).

226. Rather, the City's own Licensing Ordinance ***explicitly prohibits any marihuana establishments from being set up within a 1,000-foot radius of any "school."*** Licensing Ordinance, § 435-5(A)(5)(a).

227. The Licensing Ordinance defines a "school" as "a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade." *Id*. at § 435-1.

228. Similarly, the City's Zoning Ordinance also states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Zoning Ordinance, § 770-52.1(B)(3). Thus, the City's own Zoning Ordinance ***also establishes a 1,000-foot school-zone buffer***.

229. The OSTC-SE—which is situated within a 1,000-foot radius of the property to be used for Gatsby's prospective marihuana retail establishment—is used for the public education of high school students, and has been since well-before the establishment of the Licensing Ordinance.

230. OSTC-SE (of Oakland Schools) is therefore a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA (MCL§ 333.27959(3)(c)).

231. OSTC-SE is therefore also considered a "school" as contemplated by the Licensing Ordinance, § 435-1, and an "existing public or private school with a curriculum equivalent to kindergarten through 12th grade" as contemplated by the Zoning Ordinance, § 770-52.1(B)(3).

RECEIVED by MSC 12/10/2025 3:03:01 PM

232. Therefore, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA and the City's own Ordinances.

233. Notwithstanding this basic requirement, the City has awarded one of the two available Municipal License Slots to Gatsby, whose proposed facility falls squarely within the 1,000-foot buffer surrounding OSTC-SE.

234. Defendant ignored repeated and detailed warnings of this particular violation from Oakland Schools, Royal Oak Schools, and several others made as far back as April 2020 and continuing well beyond the City's application window.

235. Nonetheless, the City has taken the position that the 1,000-foot school-zone buffer established by MRTMA, the Licensing Ordinance, and the Zoning Ordinance simply does not apply to OSTC-SE.

236. However, to the extent that the City believes that this is true as a function of the City's zoning laws, it is well settled that public schools are not subject to local zoning ordinances. See MCL 380.1263(3); *Charter Twp of Northville v Northville Pub Sch*, 469 Mich 285, 291; 666 NW2d 213 (2003).

237. Further still, Gatsby's proposed use does not even satisfy the City's own requirements for approval of a special land use request. See Royal Oak Code of Ordinances, § 770(C).

238. It is also worth noting that, on February 17, 2022, HB 5766 was introduced by Michigan Representative Pamela Hornberger. **Exhibit W: HB 5766**. If enacted, HB 5766 would amend that portion of MRTMA relating to the 1,000-foot school buffer in such a way that, to overcome the buffer, not only would the relevant municipality need to adopt an ordinance reducing the distance requirement, but the governing body of the school from which the buffer emanates

RECEIVED by MSC 12/10/2025 3:03:01 PM

would also need to approve the violative proposed marihuana establishment. **Ex. Z, p 3**. Legislative review of HB 5766 currently remains pending.

239. For these reasons, Gatsby's proposed marihuana retail establishment runs afoul of the 1,000-foot school-zone buffer set forth under MRTMA. See MCL 333.27959(3)(c). And because—as previously stated—there is no ranking by which to determine a "runner-up" that could fill the vacant Municipal License Slot left by Gatsby, the only possible remedy is to restart the competitive process (once it is redrafted to comply with MRTMA's competitive-process mandate).

COUNT IV: VIOLATION OF MICHIGAN CONSTITUTION

240. Plaintiff incorporates herein by reference each of the preceding paragraphs.

241. The Michigan Constitution guarantees that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17.

242. The due process guarantee of the Michigan Constitution has been held to be "coextensive with its federal counterpart." *Grimes v Van Hook-Williams*, 302 Mich App 521, 530; 839 NW2d 237 (2013).

243. Quality Roots—along with all other unsuccessful applicants—was denied due process of law where the City failed to adhere to the terms of its own Licensing Ordinance, issued licenses in an arbitrary and capricious manner, and, on information and belief, issued licenses based on corrupt motivations.

244. Although the Licensing Ordinance required ***only*** the City Manager or his or her designee to assess each application under the 'competitive' criteria outlined under Section 435-4(C)(4) of the Licensing Ordinance, a *de facto* Review Committee was formed to evaluate and rank the applications based on the 'competitive' criteria.

RECEIVED by MSC 12/10/2025 3:03:01 PM

245. And beyond that, the City Manager has admitted that he did not understand his task to be related to selecting the applicants best suited to operate in compliance with MRTMA ***as required under MCL 333.27959(4)***. Rather, the City Manager has openly acknowledged that he endeavored to select those applicants best suited to comply ***with the City's own Licensing Ordinance, instead***. This is not in compliance with MRTMA's competitive-process mandate.

246. Further, the City Manager has admitted that he and the Review Committee ***failed to actually rank any of the applicants or applications for marihuana retail establishment licensure***. Instead, the City Manager and his Review Committee arbitrarily organized the applicants/applications into the aforementioned three 'tiers' of applicants.

247. Applicants within each of these three 'tiers' were not ranked among one another; and so if either Gatsby or Royal Treatment were disqualified from eligibility for licensure, there would be no runner-up to fill the available Municipal License Slot(s).

248. Additionally, the Licensing Ordinance does not assign any weight or 'score' to any of the competitive criteria enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion. And neither the City Manager nor the Review Committee internally established a method of objectively weighing or scoring any of the competitive criteria.

249. Thus, where all but one of the competitive criteria were binary "check-the-box" factors—which either were or were not satisfied by each applicant—the ostensibly 'competitive' process offered the City with no meaningful way to distinguish between the many applicants for marihuana retail licensure.

250. The City Manager has openly acknowledged that assessments of any non-binary criteria ***were left to his own subjective whims***, rather than any objective analysis. This is incompatible with any truly ***competitive*** process.

RECEIVED by MSC 12/10/2025 3:03:01 PM

251. The Court of Appeals has explained, in *Roseland Inn, Inc v McClain*, 118 Mich App 724, 731; 325 NW2d 551 (1982):

> As the Michigan Supreme Court stated in *Osius v St Clair Shores*, 344 Mich 693, 700; 75 NW2d 25 (1956), when striking down a zoning ordinance for lack of standards, ***without definite standards an ordinance becomes an open door to favoritism and discrimination***. We find in this case that ***the absence of standards promotes arbitrary and capricious actions on the part of the local legislative body, and the lack of fair notice of such standards violates a licensee's right to due process***. [Emphasis added.]

252. Likewise, in this case, the absence of definite standards in the City's Licensing Ordinance and the lack of fair notice provided to applicants as to how their applications would be reviewed, processed, and ranked promotes arbitrary and capricious actions on the part of the City in violation of Quality Roots' due process rights.

253. The City and the City Manager's process for choosing the applicants/applications for the two available Municipal License Slots was not applied (or designed) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City.

254. Instead, the City's so-called 'competitive process' was conducted in complete secrecy by an unofficial and unaccountable Review Committee consisting of several City officials/employees, which kept applicants in the dark as to the process and the Committee's findings until final determinations had been made.

255. Moreover, the City Manager's and Review Committees' interpretation and application of the City's competitive criteria throughout the licensing process were inconsistent with the plain text of the Licensing Ordinance.

256. The City's stated reasons for selecting Gatsby and Royal Treatment to receive marihuana retail establishment licenses—and for rejecting Quality Roots and other contending

RECEIVED by MSC 12/10/2025 3:03:01 PM

applicants—are also inconsistent with the plain text of the City's own Licensing and Zoning Ordinances, state law, and federal constitutional protections.

257. Further still, the City was obligated, under the Licensing Ordinance, to hear Quality Roots' administrative appeal. However, the City Manager instead dismissed Quality Roots' administrative appeal—though he did not dismiss others filed by certain other (unsuccessful) applicants—because he did not believe he had the authority to grant Quality Roots a license ***even if the grounds for the appeal were meritorious***. Quality Roots was completely denied its opportunity to be heard on this matter.

258. As a result, the decision to deny Quality Roots a Municipal License Slot was unreasonable, arbitrary, and capricious.

259. The applicants that were chosen for the two Municipal Licenses Slots—Gatsby and Royal Treatment—were chosen based on the subjective whims and improper motivations of certain city officials, instead of whether they were "best suited to operate in compliance with [MRTMA] within the municipality." MCL 333.27959(4).

260. It is difficult, if not impossible, to determine whether applicants were treated in a fair and impartial manner due to the City's Licensing Ordinance, which allows the City to conduct the review process without offering any meaningful insight into how the City arrived at its ultimate licensing determinations.

261. The City's actions were unreasonable, arbitrary, capricious, and/or unconscionable, and thus constitute an abuse of discretion and deprivation of Quality Roots' protected property and liberty interests in violation of state due process protections.

COUNT V: VIOLATION OF U.S. CONSTITUTION

262. Plaintiff incorporates herein by reference each of the preceding paragraphs.

RECEIVED by MSC 12/10/2025 3:03:01 PM

263. The Federal Constitution states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." US Const, Am XIV, § 1.

264. Each violation of the Michigan Constitution's due process protections is also violative of federal due process guarantees.

265. Quality Roots' constitutionally protected property and liberty interests were denied when the City failed to adhere to the terms of its own Ordinances, issued licenses in an arbitrary and capricious manner, and, on information and belief, issued licenses on the basis of corrupt motivations.

266. The City's actions in the aforementioned regards were unreasonable, arbitrary, capricious, and/or unconscionable, and thus constitute an abuse of discretion and deprivation of Plaintiff's protected property and liberty interests in violation of federal due process protections.

267. Quality Roots has a right to the reasonable use of its property free from arbitrary, unreasonable, and capricious actions. Quality Roots also has a right to fair consideration of its application for marihuana retail establishment licensure under the procedures established and legally adopted into the City's Code of Ordinances.

268. Stated differently, Quality Roots has a right to seek licensure—for which it should have succeeded in its application—under an application system established by the City, and for the City to adhere to the terms of its own Licensing Ordinance in reviewing and processing said application.

COUNT VI: VIOLATION OF THE OPEN MEETINGS ACT

269. Plaintiff incorporates herein by reference each of the preceding paragraphs.

270. The Open Meetings Act requires that all meetings of a public body be open to the public and held in a place available to the general public. MCL 15.263(1).

RECEIVED by MSC 12/10/2025 3:03:01 PM

271. All decisions of a public body must be made at a meeting open to the public. MCL 15.263(2).

272. All deliberations of a public body constituting a quorum of its members must generally take place a meeting open to the public. MCL 333.27959(3).

273. The City Charter, ch 3, § 1, vests the City Commission with "full power and authority . . . to exercise all the powers conferred upon the City." Under the City Charter, the City Commission is "the legislative and governing body of" the City. *Id*. at ch 3, § 2.

274. The City Charter also grants the City—and therefore the City Commission—the authority to "license . . . the sale or peddling of goods, wares, merchandise, or any kind of property by persons going about from place to place in the City for the purpose; [and to] license . . . business and occupations . . . ." *Id*. at ch 2, § 1.

275. Moreover, the authority to grant a license falls within a City's police power. *Kethman v Oceola Twp*, 88 Mich App 94, 104; 276 NW2d 529 (1979). Thus, in Royal Oak, licensing is the purview of the City Commission.

276. Under the Licensing Ordinance, §§ 435-2(E) and 435-4(C)(4), the City Commission delegated its authority to make licensing determinations to the City Manager, Paul Brake.

277. Further, although not expressly contemplated by the City Charter or the Licensing Ordinance, the City Manager in this case created a Review Committee for the purpose of narrowing or winnowing down the applicants for marihuana retail establishment licensure. Indeed, the Review Committee ***did, in fact, narrow down the applicants for marihuana retail establishment licensure from 31 hopeful applicants to two successful applicants***.

RECEIVED by MSC 12/10/2025 3:03:01 PM

278. The final licensing determinations were not made by the City Manager, alone; but they were made instead by the City Manager in collaboration with the Review Committee.

279. There can be no question that the City Commission is a public body as contemplated by the OMA.

280. Thus, when the City Commission delegated its authority to make licensing determinations (as to the applicants that would be awarded with marihuana retail establishment licenses) to the City Manager—and when the City Manager further delegated that authority to himself and to the Review Committee—the requirements of the OMA became applicable to the City Manager and the Review Committee.

281. Thus, the secret, closed-door application review meetings, which occurred in August 2021—and for which no notes, minutes, or notices to the public were drafted—ran afoul of the OMA's statutory mandates.

282. The City Manager and the Review Committee were delegated the authority of a public body as contemplated by the OMA and were therefore required to hold all meetings, make all decisions, and conduct all deliberations at meetings open to the public. MCL 15.263(1) through (3).

283. On information and belief, the arrangement whereby the City Commission delegated its licensing authority to the City Manager, who then further delegated that authority to a combination of himself and others in a Review Committee, was an attempt to circumvent the requirements of the OMA.

284. Additionally, "[a] public official who intentionally violates [the OMA] shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total,

RECEIVED by MSC 12/10/2025 3:03:01 PM

plus court costs and actual attorney fees to a person or group of persons bringing the action." MCL 15.273(1).

285. The City Manager's and Review Committee's work in evaluating and ranking the applications for marihuana retail licenses was done in violation of the OMA.

286. This Court has the authority to find that Defendant violated the OMA, set aside any decisions or agreements made during the aforementioned improperly closed meetings, award Plaintiff its costs and attorney fees, and grant any other relief authorized by law.

COUNT VII: UNCONSTITUTIONAL VAGUENESS (STATE AND FEDERAL CONSTITUTIONS)

287. Plaintiff incorporates herein by reference each of the preceding paragraphs.

288. The Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const, amend. XIV, § 1. Laws that fail to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" violate this requirement of due process and are void for vagueness. *Grayned v City of Rockford*, 408 US 104, 108; 92 S Ct 2294; 33 L Ed 2d 222, 228 (1972).

289. A law that "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis" is likewise void for vagueness in light of "the attendant dangers of arbitrary and discriminatory application" that such sweeping delegation entails. *Id*. at 108-109.

290. A statute may be challenged for vagueness on the grounds that it does not provide fair notice of the conduct proscribed, or that it is so indefinite that it invites arbitrary or discriminatory enforcement. See *Hill v Colorado*, 530 US 703, 732; 120 S Ct 2480; 147 L Ed 2d 597 (2000); *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

291. Stated differently (by a Michigan court), a statute or ordinance may generally be declared void for vagueness in one of three ways:

> (1) it is overbroad and infringes First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in concluding whether the statute [or ordinance] has been violated. Vagueness challenges that do not involve a challenge to First Amendment freedoms are examined in light of the facts of the particular case . . . . When a statute is challenged on the basis that it fails to provide fair notice, the statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required. [*Hackel v Macomb Co Comm'n*, 298 Mich App 311, 333; 826 NW2d 753 (2012).]

292. Void-for-vagueness tenets embrace the principle that a law is unconstitutional "if its prohibitions are not clearly defined." *Grayned*, 408 US at 108.

293. For the reasons stated above, the competitive process set up by the City's Licensing Ordinance is void for vagueness.

294. The Licensing Ordinance vests the City Manager (and, in practice, his Review Committee) with unfettered and unlimited discretion in application of the 'competitive' criteria and the ultimate selection of successful applicants.

295. Likewise, the Licensing Ordinance gives applicants no notice whatsoever as to the weight that will be afforded to each 'competitive' criterion, how applicants will be distinguished from one another, or how applicants will be ranked.

296. The Licensing Ordinance does not make applicants aware that certain 'competitive' criteria—and certain factors ***outside the criteria, altogether***—would, if not satisfied to the subjective satisfaction of the City Manager or Review Committee, be grounds for immediate disqualification from the licensing process.

297. The Licensing Ordinance does not offer a person of ordinary intelligence notice of what is required in order to obtain a license to operate a marihuana retail establishment.

298. For these reasons, the Licensing Ordinance is void for vagueness.

RECEIVED by MSC 12/10/2025 3:03:01 PM

COUNT VIII: DECLARATORY RELIEF

299. Plaintiff incorporates herein by reference each of the preceding paragraphs.

300. Under MCR 2.605(A)(1), "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

301. For purposes of MCR 2.605, "an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment." MCR 2.605(A)(2).

302. "An actual controversy exists when a declaratory judgment is necessary to guide the plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545-546; 904 NW2d 192 (2017).

303. In this case, an actual controversy exists where the City has violated the provisions of MRTMA, the OMA, and Plaintiff's constitutionally protected due process rights.

304. Quality Roots requires a judgment from this Court in order to guide its future conduct in order to preserve its legal rights.

305. Quality Roots will be harmed if the City is allowed to issued municipal marihuana business licenses under its legally deficient Licensing Ordinance using legally deficient procedures.

306. Quality Roots respectfully requests, among other things, that this Court enter a judgment declaring that Defendant violated the requirements of MRTMA, the OMA, and the Michigan and federal Constitutions, and that the City's implementation of the Licensing Ordinance and/or the City's issuance of any municipal marihuana establishment licenses under the Licensing Ordinance are invalidated and prohibited.

RECEIVED by MSC 12/10/2025 3:03:01 PM

COUNT IX: PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

307. Plaintiff incorporates herein by reference each of the preceding paragraphs.

308. This Court is authorized to grant injunctive relief to a party in accordance with Michigan law. See MCR 3.310.

309. The objective of preliminary injunctive relief is to "maintain the status quo pending a final hearing regarding the parties' rights." *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 145; 809 NW2d 444 (2011) (quotation marks omitted).

310. "The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy." *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989).

311. In deciding whether a party is entitled to preliminary injunctive relief, court must consider the following four factors:

> (1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued. *Slis v State*, 332 Mich App 312, 337; 956 NW2d 569 (2020).

312. Irreparable harm will befall Quality Roots if this Court does not issue a preliminary injunction. Every day that passes, the arbitrary and capricious actions of the City continue to harm Quality Roots by allowing the two available marihuana retailer licenses to proceed to final authorization. Once the City awards final municipal marihuana retailer licenses to the (unlawfully) selected applicants, Quality Roots will suffer an improperly delayed—if not altogether prevented—entry into the Royal Oak adult-use marihuana market.

RECEIVED by MSC 12/10/2025 3:03:01 PM

313. Moreover, Quality Roots will suffer the imminent loss of its rights to fair and full implementation of the process outlined by the City's own Licensing Ordinance, a fair application of the law pursuant to state and federal guarantees of due process, and significant quantities of time, money, and other valuable resources expended in an effort to obtain one of the two available marihuana retailer licenses.

314. There is no legal measurement of damages that can be determined with any degree of certainty sufficient to compensate Quality Roots, and Quality Roots has no other available remedy to protect its business or its legal property and liberty interests absent injunctive relief.

315. Quality Roots has a strong likelihood of success on the merits of this Complaint.

316. The imposition of the requested injunctive relief would not impose any harm upon the City, and so the irreparable harm that would befall Quality Roots absent injunctive relief (imminent loss of its business and legally protected property and liberty interests) would necessarily outweigh the lack of harm that would affect the City if the Court grants Quality Roots' request for an injunction.

317. The public interest will suffer no harm if this Court grants Quality Roots' request for injunctive relief.

318. Indeed, the public interest favors granting an injunction in this case. The public interest requires that the City: (1) properly adhere to the requirements of MRTMA and its own Code of Ordinances; (2) properly award Quality Roots a municipal marihuana retailer license where Quality Roots is the candidate best suited to operate in compliance with MRTMA in the City; and (3) avoid violating Quality Roots' due process rights.

319. Further still, the Michigan Supreme Court has previously stated that "[i]t is beyond reasonable dispute that a trial court has the authority, and, in appropriate cases, the duty, to enter

RECEIVED by MSC 12/10/2025 3:03:01 PM

permanent injunctive relief against a constitutional violation." *Mich Coalition of State Emple Unions v Mich Civil Serv Comm*, 465 Mich 212, 219; 634 NW2d 692 (2001) (emphasis in original).

320. Accordingly, Quality Roots respectfully requests that this Court enter an Order enjoining the City from issuing special use permits and final authorizations for operation as municipal marihuana retail establishments in the City of Royal Oak until the issues raised in this Complaint have been adjudicated.

RELIEF SOUGHT

For the reasons outlined in above, Plaintiff respectfully requests that this Court enter Judgment:

A. Reversing the City's licensing determinations under the Licensing Ordinance—or any licensing determinations of any City representative or body of City representatives under the Licensing Ordinance—related to any applicant or application for marihuana retailer establishment licensure;

B. Invalidating the City Commission's approval of Gatsby's and Royal Treatment's site plan and special land use permit requests;

C. Requiring the City and/or the City Manager of Royal Oak to rank Quality Roots, Inc. as the top-ranked applicant for municipal marihuana retailer establishment licensure;

D. Requiring the City to show cause why a preliminary injunction should not be issued;

E. Enjoining the City from issuing special land use permits, approving site plans, or taking any other action in furtherance of its Licensing Ordinance until the issues raised in this Complaint have been adjudicated or otherwise resolved;

F. Awarding Plaintiff attorney fees and costs; and

G. Awarding Plaintiff such other relief as this Court deems equitable and just.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC

/s/ Brian E. Etzel
Brian E. Etzel (P54905)
William C. DiSessa (P81906)
Attorneys for Plaintiff
380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

Dated: August 10, 2022

FILED Received for Filing Oakland County Clerk 9/23/2022 3:59 PM

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Consolidated Cases:

ATTITUDE WELLNESS, LLC,
a Michigan limited liability company,

QUALITY ROOTS, INC.,
a Michigan Corporation,

BDE WARREN, LLC,
a Michigan Limited Liability Company,

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiffs,

v

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.
(Attitude and Quality cases, only).

Case No. 2022-192288-CZ

Case No. 2022-192383-CZ

Case No. 2022-192830-CZ

Case No. 2022-193015-CZ

HON. RAE LEE CHABOT

EXCLUSIVE CAPITAL PARTNERS, LLC SECOND AMENDED COMPLAINT

KEVIN M. BLAIR (P76927)
KEITH D. UNDERKOFFLER (P84854)
Attorneys for Plaintiff ***Attitude Wellness, LLC***
kblair@honigman.com
kunderkoffler@honigman.com

BRIAN E. ETZEL (P54905)
WILLIAM C. DISESSA (P81906)
Attorneys for Plaintiff ***Quality Roots, Inc.***
bee@wwrplaw.com; wcd@wwrplaw.com

DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
david@senawilaw.com; meredith@senawilaw.com

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
ab@consultingpllc.com

ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings*** *in Attitude Wellness and Quality Roots cases, only*
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

EXCLUSIVE CAPITAL PARTNERS' SECOND AMENDED COMPLAINT

Plaintiff Exclusive Capital Partners, LLC ("Exclusive" or "Plaintiff"), by and through its attorneys, Legal Consulting, PLLC, for its Second Amended Complaint against Defendant, City of Royal Oak, a Michigan municipal corporation ("City" or "Defendant"), and PGSH Holdings, LLC ("PGSH" or "Gatsby") state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Exclusive Capital Partners, LLC is a Michigan limited liability company that conducts business in Oakland County, Michigan and has a property interest in Royal Oak, MI.

2. Plaintiff has an interest and real property rights at 4712 Fernlee Ave, Royal Oak, MI 48073.

3. Defendant, the City of Royal Oak, is a Michigan municipal corporation located in Oakland County, Michigan, organized under the Home Rule City Act and subject to the laws of the United States and the State of Michigan as well as its charter and ordinances.

4. This Court has jurisdiction over the instant case in that the action arises under the Constitution and laws of the State of Michigan.

5. This Court has jurisdiction over the instant case pursuant to MCR 2.605 and MCR 3.310 as the claims include a request for injunctive and other equitable relief, and the events or actions giving rise to Plaintiff's claims occurred in Oakland County, Michigan.

6. This Court has jurisdiction over the instant case pursuant to MCL 15.270 and MCL 15.271.

7. Jurisdiction is proper under MCL 600.605.

8. Venue in this Court is proper as the dispute and real property at issue in this matter is located in Oakland County, Michigan.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

COMMON ALLEGATIONS

THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA

9. In 2018, the voters in the State of Michigan passed a ballot initiative, the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967 ("MRTMA") which, among other things, establishes a legal and regulatory framework for state-licensed businesses to legally grow, process, and sell marihuana for recreational, adult-use purposes.

10. MRTMA permits municipalities to regulate adult-use marihuana establishments but does not require that municipalities adopt ordinances allowing MRTMA establishments. MCL 333.27959.

11. If a municipality does adopt an ordinance, MRTMA places restrictions on the ordinances. MCL 333.27956(2).

12. MRTMA prohibits such Ordinances from being "unreasonably impracticable." MCL 333.27956(2).

13. Unreasonably impracticable is defined as, " the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment." MCL 333.27953(u).

14. MRTMA prohibits municipalities from imposing qualifications for approval of a municipal permit that conflict with MRMTA or rules promulgated pursuant to it. MCL 333.27956(3).

15. MRTMA mandates that if a municipality limits the number of marihuana

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

establishments that may be licensed within its boundaries, the municipality ***shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the municipality."***. MCL 333.27959(4).

16. The language in this last provision, MCL 333.27959(4), includes both an express, unambiguous command and clear negative implications. It unambiguously states how a municipality that limits its licenses shall award those licenses: "the municipality ***shall*** decide among competing applications by a competitive process intended to select applicants who are ***best suited to operate in compliance with [MRTMA] within the municipality."*** MCL 333.27959(4). This express language limits the criteria of the competitive process to operation in compliance with the Act [MRTMA].

17. By allowing municipalities to place a limit on the number of marihuana retailers that may open within their boundaries, MRTMA gives municipalities a power that it specifically denies to the state.

18. In giving municipalities this power, however, MRTMA requires municipalities award licenses based on objective measures designed to further MRTMA's purpose which is the express regulation of legalized controlled substance. **The strongest objective standards are those based on something outside of either party's relative power, influence, resources or interests**.

19. Subjective measures or standards are not competitive.

20. MRTMA precludes municipalities from undermining those policies by relying on chance, subjective selection, closed door meetings, or criteria unrelated to MRTMA compliance and more towards the economic desires of the municipality.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

ROYAL OAK'S MARIHUANA RETAIL ORDINANCE

21. MRTMA provides that if a municipality decides to opt-in to the adult-use marihuana industry, it may "adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license " MCL 333.27956(3).

22. But the municipality "may not impose qualifications for licensure that conflict with [MRTMA] or rules promulgated by the [Marihuana Regulatory Agency ("MRA")]."

23. On July 27, 2020, Royal Oak decided to opt-in to the adult-use marihuana industry and the City Commission approved Ordinance No. 2020-06 (the "Ordinance"), which governs the licensure of adult-use marihuana businesses in the City. [**Ex A**, Ordinance.]

24. On September 28, 2020, the City Commission approved an amendment to the Ordinance, *see* Ordinance No. 2020-12.

25. The Ordinance prohibits any person from operating an adult-use marihuana retailer in the City without a municipal license. Ordinance, § 435-2(C)

26. The Ordinance permits two adult-use retailers to operate in the City: one in the General Industrial zoning district, and one in either the General Industrial or General Business zoning districts. *Id.* § 435-2(B)(5).

27. The two-license cap on marihuana-retailer licenses prevents the Marihuana Regulatory Agency from issuing a state license to all applicants who are otherwise qualified to receive a state license. See MCL 333.27959(1), (3)(b).

28. As a result, Royal Oak must "decide among competing applications" for the licenses "by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality." MCL 333.27959(4).

29. The City has acknowledged as much in its Ordinance. See *id.* § 435-4(C)(l).

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

30. The Ordinance provides that, if the number of Applications for a Marihuana Establishment Municipal License exceeds the number of available Municipal Licenses, the City "shall decide among Applications by a competitive process intended to select the Applicant(s) who are best suited to operate in compliance with the Act within the City." *Id.* § 435-4(C)(2).

31. "The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee." *Id.* § 435-4(C)(4).

32. The "ranking" was never published nor disclosed by the City Manager or his designee. Instead, the City created a "waiting list" keeping over 20 applicants in complete purgatory as to their rank.

33. Further, it is completely unclear how the applicants were "ranked."

34. In fact, its is so vague that the City Manager failed to rank in order all the applicants as is required by the Ordinance.

35. The ordinance, as written, is completely vague and ambiguous in regards to the ranking and competitive process.

36. The City repeatedly states that the ranking was based on qualitative measurement but has failed to provide anything further to the public in regard to the *qualitative* process.

37. The alleged qualitative process is not referenced in the ordinance.

38. The City created a completely secretive process based on subjective review behind closed doors.

39. Additionally, the City Manager or his designee (singular) were to rank and determine the most qualified applicants.

40. It has now been revealed that it was not the City Manager or an individual designee

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

that ranked and determined the most qualified applicants, but it was a collective body of at least seven (7) individual city employees (some known and some unknown) that whittled down 30 applicants to two winning applicants.

41. This collective body ultimately determined who would advance as the winning applicants and did not present all applicants or the ranking to the planning commission or the city commission.

42. This ranking is then "used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled." See *id.* at § 435-4(C)(4).

43. The Ordinance requires the use of certain "competitive criteria" in ranking Applicants and Applications, including criteria that have nothing to do with a business' suitability to operate in compliance with MRTMA in Royal Oak.

44. The Ordinance requires the City to consider "whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment." See *id.* § 435-4(C)(4)(g).

45. On its face, whether an Applicant has made physical improvements to a building has nothing to do with the Applicant's suitability to operate in compliance with MRTMA in Royal Oak.

46. The Ordinance also requires the Commission to consider "[w]hether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures." *Id.* § 435-4(C)(4)(j).

47. Sustainable infrastructure and efficient building elements and fixtures have absolutely no correlation with an applicant's ability to operate in compliance with MRTMA. In

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

fact, MRTMA does not reference or specifically address building elements and fixtures because its purpose is not economic development. To the contrary, its purpose is to select the most qualified applicant to sell marihuana and comply with MRA regulations related to the sale of marihuana.

48. Contrary to the purpose of MRTMA, city officials have publicly stated that they want to favor local businesses which based on the lack of any operating marihuana businesses in Royal Oak, completely defeats the purpose of selecting the most qualified applicant. While it is *admirable* to promote local businesses in the community, it completely violates MRTMA.

EXCLUSIVE APPLIES FOR A MARIHUANA LICENSE

49. Exclusive Capital Partners is a Michigan limited liability company organized, operating, and in good standing in the State of Michigan. The Applicant has extensive business experience and success within the marihuana industry. Michigan's premier, vertically integrated cannabis company composed of state-of-the-art retail locations, a processing and manufacturing facility, and licensed grow operations, as well as Michigan's home to a breadth of iconic cannabis brands, despite obstacles considering the global pandemic, saw a 1,200 percent sales increase year-over-year with $177 million in sales in 2020, solidifying their standing as Michigan's top-selling cannabis company. In addition, Exclusive grew their team by nearly 900 percent and owns the No. 1 retail store in the state in Exclusive Ann Arbor and the No. 1 edible in Kushy Punch.

50. Despite Exclusive's exceptional qualifications and history of operating compliant and successful marihuana businesses, Exclusive did not receive a license.

51. To be clear, Exclusive was not initially denied a license. According to the City, exclusive was neither denied nor approved but was on a "waitlist." This placed Exclusive in a complete purgatory and forces them to incur substantial costs while they await a *final*

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

determination.

52. The Ordinance does not include any language permitting this purgatory.

53. The Ordinance required all applicants to be ranked in order.

THE CITY MOVES FORWARD WITH A PROCESS THAT ON ITS FACE VIOLATES THEIR ORDINANCE AS WELL AS OTHER LAWS

54. The City received 31 applications for the two licenses to operate a marihuana retailer business in Royal Oak.

55. As a result, the City was required to select applicants through a competitive process designed to select the applicants who are best suited to operate in compliance with MRTMA in Royal Oak. See Ordinance, § 435-4(C); MCL 333.27959(4).

56. The City Manager designated a committee to review and rank applications pursuant to the criteria listed in the Ordinance (the "Ranking Committee").

57. This committee was confirmed by the Mayor at the planning commission meeting on February 8, 2022 as well as by the City Manager on January 24, 2022 at an appeal hearing for another applicant.

58. The ordinance DOES NOT permit a ranking committee to review or rank the applications.

59. As previously stated, the Ordinance states: The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the ***City Manager*** ***or*** his or her **designee**." *Id.* § 435-4(C)(4).

60. At the very most, the City Manager could have appointed a singular ***designee.***

61. The City Manager did not have the authority to create a committee as was the case here.

62. The existence of this selection committee was not publicly disclosed until February

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

8, 2022.

63. Nonetheless, the City created a committee which acted on behalf of the city and therefore subjected this committee to the Open Meetings Act.

64. The committee did not conduct the allegedly "competitive process" in public.

65. Upon information and belief, the committee reviewed and ranked Applicants and Applications in non-public meetings.

66. Materials that were obtained via FOIA reflect that the Ranking Committee members included City Manager Paul Brake, Economic Development Manager Todd Fenton, City Treasurer Jaynmarie Hubanks, Director of Community Development Tim Thwing, City Engineer Holly Donoghue, Police Chief Corrigan O'Donohue, City Clerk Melanie Halas, and City Attorney Aaron Leal. This was confirmed by the City Manager.

67. The committee is clearly a body acting on behalf of the City.

68. The FOIA materials also indicate that the Ranking Committee held several (non-public) meetings, and exchanged several communications between meetings about ranking the applicants.

69. The City did not tell the applicants (or the public) that the Ranking Committee had secretly ranked their applications.

70. The City did not tell applicants how their applications were ranked.

71. The City did not tell applicants who ranked their applications.

72. The City did not tell applicants that they were not selected for a Municipal License Slot or why they were not selected.

73. The Ranking Committee somehow selected Gatsby Cannabis even though its proposed location is right across the street from a school (within 88 feet) and all marihuana stores

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

must be at least 1,000 feet away from schools-under both state and local law. See MCL 333.27959(3)(c); Ordinance, § 770-52.l(B)(3).

74. The City's application process is not competitive because it does not score, rank, or otherwise assign any objective measure of comparison to applications. In the absence of any objective metrics related to compliance with MRTMA, referring only to a totality based on the criteria-particularly in the absence of any explanation or transparency whatsoever about the basis for the City's determination-allows the City to select any applicant it wants.

THE CITY VIOLATES MRTMA AND ITS ORDINANCE

75. On February 8, 2022, the City Planning Commission conducted a public meeting at which it considered the site plans and special land use permit requests submitted by Gatsby and Royal Treatment. At the meeting, many members of the public spoke and expressed concerns over Gatsby's proposed marihuana establishment location within 1,000 feet of a school (indeed Gatsby's proposed marihuana retail establishment would be situated approximately 88 feet from OSTC-SE).

76. At the February 8, 2022 meeting of the Planning Commission, the Planning Commission voted 3-2 to recommend that the City Commission *deny* special land use approval for Gatsby. According to the meeting minutes, the reasons for the recommended denial were:

a. The proposed use and location would be hazardous and disturbing to existing uses or uses reasonably anticipated in the future.

b. The proposed use and location would not be consistent with the intent and purposes of the zoning ordinance and would not comply with all applicable provisions and standards which are established for the use by the zoning ordinance and other applicable codes.

77. The two members of the Planning Commission who voted against the recommended denial are the only two members of the Planning Commission who are *also*

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

members of the City Commission (Royal Oak's legislative body): Commissioner Sharlan Douglas and Mayor Michael Fournier.

78. Also at the February 8, 2022 meeting of the Planning Commission, the Planning Commission voted 4-1 to recommend approval of Royal Treatment's proposed special land use permit and voted unanimously to recommend approval of Royal Treatment's proposed site plan.

79. On February 18, 2022, Oakland Schools' outside counsel, Miller Canfield, sent a letter to the Royal Oak City Commission explaining, *once again*, a number of reasons why OSTC-SE is a public school sufficient to trigger the 1,000-foot school buffer and why Gatsby's proposed marihuana establishment location violated state and local law.

80. Despite the recommendation of the Planning Commission to deny Gatsby's proposed special land use permit, despite repeated correspondence from Oakland Schools, Royal Oak Schools, and counsel articulating sound legal reasons why the 1,000-foot school buffer established by MRTMA and the City's own Ordinances precluded Gatsby's proposed marihuana retail site, and despite ongoing litigation on that very same subject, the City Commission conducted a hearing on Gatsby's proposed special land use permit and site plan request on April 25, 2022.

81. That same day, on April 25, Royal Oak Schools Superintendent Mary Beth Fitzpatrick sent a letter to members of the Royal Oak City Commission expressing her continued opposition to the special land use permit requested by Gatsby on the basis of the close proximity between Gatsby's proposed marihuana retail establishment and OSTC-SE.

82. At the April 25, 2022 meeting, the City Commission completely disregarded the recommendation of the Planning Commission and considered Gatsby's request for site plan approval and a special land use permit. At the meeting, once again, several members of the public

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

spoke out against approval of Gatsby's site plan and special land use permit.

83. Moreover, during the April 25, 2022, meeting, multiple members of the City Commission referred to OSTC-SE as a "school" in one regard or another.

84. Nevertheless, at the meeting, the City Commission voted to approve Gatsby's and Royal Treatment's proposed site plans and special land use permits.

85. MRTMA, MCL 333.27959(3), provides that the State will award a recreational marihuana establishment license, if, *inter alia*, "(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is ***not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1-12, unless a municipality adopts an ordinance that reduces this distance requirement***" (emphasis added).

86. The City's own Code of Ordinances contain at least two provisions, which also preclude the placement of any marihuana establishment within 1,000 feet of a school. In particular, Section 435-5(A)(5)(a)(1) of the Licensing Ordinance states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any school." And beyond that, the City's Zoning Ordinance (the "Zoning Ordinance") also states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Zoning Ordinance, § 770-52.1(B)(3).

87. The City has not adopted an Ordinance that reduces the distance requirement established by MCL 333.27959(3). To the contrary, as previously stated, the City's Licensing Ordinance and Zoning Ordinance explicitly prohibit any marihuana establishments from being set up within a 1,000-foot radius of any school. Licensing Ordinance, § 435-5(A)(5)(a); Zoning Ordinance, § 770-52.1(B)(3).

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

88. The Oakland Schools Technical Campus – Southeast ("OSTC-SE," which is situated within Royal Oak) is a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA. See MCL§ 333.27959(3)(c).

89. OSTC-SE provides education for over 600 students in grades 9 through 12, for which said students receive high school credit and attend classes in subjects including (but not limited to): English, Math, Algebra, Biology, Chemistry, Economics, Geometry, Government, Physical Science, and World History.

90. OSTC-SE also provides a summer science, technology, engineering, and math camp program for children in grades 6 through 8.

91. Like other schools, OSTC-SE has teachers employed on staff, as well as its own dean.

92. Dr. Theresa Rich, a member of the Oakland Schools Board of Education, believes that OSTC-SE is a public K-12 school, which would trigger the 1,000-foot school buffer contemplated under the City's Licensing Ordinance.

93. Oakland Schools Intermediate School District ("Oakland Schools") is an intermediate school district created and governed by the School Code. OSTC-SE falls under the operation and oversight of Oakland Schools.

94. OSTC-SE is a "public school" as that term is defined under MCL 380.601 *et seq*. (the "School Code"). See MCL 380.5(6).

95. For these reasons, OSTC-SE is considered a "pre-existing public or private school providing education in kindergarten or any of grades 1 through 12" under MRTMA. See MCL 333.27959(3)(c). Royal Oak Technical Campus is therefore also considered a "school" as contemplated by the Licensing Ordinance, § 435-1, as well as an "existing public or private school

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

with a curriculum equivalent to kindergarten through 12th grade" as contemplated under the Zoning Ordinance, § 770-52.1(B)(3).

96. Accordingly, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA and the City's own Licensing and Zoning Ordinances.

97. Gatsby's proposed facility falls squarely within the 1,000-foot buffer surrounding the OSTC-SE. Thus, Gatsby's proposed facility cannot function as a marihuana retail establishment under MRTMA, the Licensing Ordinance, or the Zoning Ordinance.

98. The issue of OSTC-SE's status as a school was brought to the City's attention at least as early as April 22, 2020, when an unknown applicant contacted the City for clarification as to the reason why OSTC-SE did not appear in one of the City's buffer maps. City Planner Doug Hedges responded the same day, stating, "We use the definition of school from the state act, which is K through 12 or equivalent. In our opinion that facility does not meet the definition of K-12 or equivalent and would not require a setback."

99. Between April 22, 2020 and the present, the City has exchanged numerous communications with representatives of marihuana retail establishment license applicants and Oakland Schools in which the City: (1) gave contradictory statements as to its position regarding OSTC-SE's status as a "school"; and (2) otherwise rejected the notion that OSTC-SE triggered the 1,000-foot school buffer put into place by MRTMA, the Licensing Ordinance, and the Zoning Ordinance.

100. On October 16, 2020, another marihuana retail establishment license applicant sent a direct inquiry to then Commissioner Randy LeVasseur, asking whether OSTC-SE triggered the 1,000-foot school buffer. LeVasseur forwarded the inquiry to Director of Community Development Tim Thwing, who responded that OSTC-SE did not trigger the 1,000-foot buffer

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

because it merely "provides services for students."

101. Although the City had been aware of the issue regarding applicability of the 1,000-foot buffer to OSTC-SE since April 2020, OSTC-SE administrators did not become aware of the issue until January 25, 2021, when an applicant reached out to potential neighbors—including OSTC-SE—as part of the application process.

102. In January 2021, Dean of OSTC-SE Amy Gole contacted the City to inquire as to potential marihuana establishments near OSTC-SE.

103. Former Royal Oak Planner II Julianna Tschirhart responded via email on January 28, 2021, stating, "It was determined that the OSTC did not meet the definition of a K-12 school under the state law, the Michigan Regulation and Taxation of Marijuana Act. Thus, it was not included as a school to be give the 1,000 ft. buffer in our map of eligible parcels."

104. That same day, January 28, 2021, counsel for Oakland Schools at Dickinson Wright sent a letter to Tschirhart asking that the City confirm that Tschirhart's position as to OSCT-SE's status as a K-12 school was the City's final stance on the subject. The letter also communicated Oakland Schools' position that OSTC-SE did, indeed, trigger the 1,000-foot buffer surrounding pre-existing public schools established by MRTMA and further advised the City to notify applicants proposing marihuana establishments within the buffer area that their eligibility for licensure was contested.

105. On February 1, 2021, Oakland Schools' Dickinson Wright counsel sent an email to Mark Liss at the Royal Oak City Attorney's Office, informing Liss that Tschirhart did not respondto counsel's January 28, 2021 communication and advising that Oakland Schools was a public school sufficient to trigger the 1,000-foot school buffer created by MRTMA. Later that same day, Liss responded via email, suggesting that counsel direct Oakland Schools' concerns to

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

Planning Director Joseph Murphy and Director of Community Development Tim Thwing. Liss's responsive email offered no further information or clarification to Oakland Schools.

106. Having received no substantive response regarding the basis for the City's stated position as to OSTC-SE's status as a school for purposes of the 1,000-foot school buffer established by MRTMA, on February 1, 2021, counsel for Oakland Schools submitted a FOIA request to the City, asking for—among other things—records reducing the 1,000-foot buffer created by MRTMA. The City did not produce any ordinances reducing the 1,000-foot buffer distance in response to the FOIA request.

107. On February 23, 2021, a representative for a marihuana establishment applicant contacted Director of Community Development Tim Thwing, advising Thwing that the applicant had been contacted by OSTC-SE and requesting clarification from the City regarding OSTC-SE's status as a school for purposes of the 1,000-foot buffer put in place by the City's Licensing Ordinance.

108. Thwing responded to the applicant that same day—although the City had still not responded to Oakland Schools' counsel's January 28, 2021 letter—stating, in part, "The planning division's position has not changed. The 1,000 foot setback was not applied to OSTC, its had not been treated as K-12 school, K-12 schools are not a permitted use or special land use in the General Industrial Zoning District."

109. On March 9, 2021, new counsel for Oakland Schools at Miller Canfield sent a letter to Director of Planning Joseph Murphy, reiterating Oakland Schools' position as to the applicability of the 1,000-foot school buffer to OSTC-SE and requesting that the City: (1) make its stance known; and (2) confirm whether applicants were seeking licensure for proposed marihuana establishment locations within 1,000 feet of OSTC-SE.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

110. The City delayed its response until March 26, 2021, when Interim City Attorney Anne McLaughlin sent a letter to Oakland Schools' counsel (backdated by a single day to March 25, 2021) arguing that OSTC-SE is either: (1) a public K-12 school that is situated in the City's General Industrial Zone as a nonconforming use (for which the 1,000-foot buffer set forth by the City's Ordinances would not apply); or (2) a " 'business, technical or trade school' " that would not trigger the 1,000-foot buffer in the first instance.

111. McLaughlin continued that while "[t]he City's Planning Department ha[d] not made an express determination whether the OSTC is or is not a K-12 school for purposes of the MRTMA[,]" the 1,000-foot buffer would not apply in any circumstances.

112. On March 31, 2021, Oakland Schools' Miller Canfield counsel sent another letter to Interim City Attorney Anne McLaughlin, arguing that OSCT-SE is a pre-existing public school providing K-12 education sufficient to trigger the 1,000-foot buffer contemplated by MRTMA and that, as a public school, OSTC-SE is not subject to local zoning ordinances (rather, the state superintendent has sole and exclusive jurisdiction over review and approval of site plans for school buildings.

113. The City did not respond to the March 31, 2021 letter for 41 days. After, on May 12, 2021, Oakland Schools' Miller Canfield counsel sent a follow-up letter to Interim City Attorney Anne McLaughlin restating Oakland Schools' position regarding applicability of MRTMA's 1,000-foot school buffer to OSTC-SE and requesting a response from the City.

114. By May 27, 2021, Oakland Schools had received no response to its March 31, 2021 and May 12, 2021 communications. Thus, on May 27, 2021, Oakland Schools' counsel sent a follow-up email to Anne McLaughlin, asked for updates.

115. The City never responded to either the March 31, 2021 or May 12, 2021

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

communications sent by Oakland Schools' counsel.

116. On January 19, 2022—after Gatsby and Royal Treatment had already been informed that they had been selected to move forward in the licensing process above the other applicants—Gatsby reached out to Oakland Schools *for the first time* to discuss Gatsby's plans to open a marihuana retail establishment across the street from OSTC-SE.

117. Oakland Schools only learned of the February 8, 2022 meeting of the Planning Commission—at which the subject of Gatsby's proposed site plan and special land use permit approval would be discussed—***via newspaper monitoring***.

118. The City did not provide Oakland Schools with personal notice of the hearing as required under MCL 125.3103(2).

119. On February 2, 2022, Royal Oak Schools Superintendent Mary Beth Fitzpatrick sent out email correspondence to Royal Oak residents informing them that the City Planning Commission was scheduled to consider Gatsby's proposal for a special land use permit—related to a proposed marihuana establishment that would be situated within 1,000 feet of OSTC-SE—at a February 8, 2022 meeting. The email stated that Fitzpatrick believed that Gatsby "should not be granted a special land use permit to operate in such close proximity to a school building" and linked recipients of the email to a letter drafted by Dr. Wanda Cook-Robinson, the Superintendent of Oakland Schools.

120. Dr. Cook-Robinson's letter expressed opposition to Gatsby's proposed special land use permit on the basis of the proximity to OSTC-SE and called on OSTC-SE parents and guardians to attend the February 8, 2022 meeting of the Planning Commission to voice like disapproval (or to submit objections via email).

121. On February 7, 2022, Oakland Schools' counsel from Miller Canfield sent a letter

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

to the City Planning Commission members, outlining Oakland Schools' position on the applicability of the 1,000-foot buffer provided for under MRTMA, the Licensing Ordinance, and the Zoning Ordinance, and requesting that the Planning Commission recommend denial of Gatsby's special land use permit proposal.

122. With these approvals, the City violated important policy considerations underlying MRTMA, including (without limitation) that: (1) marihuana retail facilities would not be in close proximity to schools or school children; and (2) applicants are to be awarded municipal marihuana establishment licenses on the basis of whether they are best suited to operate in accordance with MRTMA within the City, as opposed to whether they have the most advantageous political connections with previous elected City officials.

123. City Manager Paul Brake has testified that Gatsby was considered a superior applicant partly because, as it relates to criterion (g), Gatsby reached out to around four or five neighboring property owners.

124. Brake also testified that Gatsby was elevated above other applicants on the basis of: (1) the scope of the improvements proposed by Gatsby; (2) Gatsby's proposed implementation of "green" infrastructure; and (3) Gatsby's proposed co-location of multiple marihuana establishments in one location. Todd Fenton also stated that Gatsby's selection as a successful applicant was justified because Gatsby proposed multiple marihuana establishment uses in a single location.

125. Neither the scope of proposed improvements nor a proposed co-located marihuana establishment were included among the Licensing Ordinance's competitive criteria, however and beyond that, Gatsby was not the only applicant to propose physical improvements to the site of its marihuana establishment, sustainable "green" infrastructure, or a co-located business.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

126. Brake has further testified that Gatsby was considered a superior applicant partly on the basis of criterion (i), and that some applications "barely satisfied that criteria." But the Licensing Ordinance, § 435-4(C)(4)(i) does not distinguish between applicants who "barely" take steps to include equity, diversity, and inclusion in their operations and those that take significant steps toward such ends.

127. Accordingly, Paul Brake's reasons for considering Gatsby to be one of the two most superior applicants were completely unsupported.

128. Brake also testified that he and/or the group to did not the rank all the applications and applicants as is required by the ordinance.

129. Brake also testified that he used an analysis (qualitative) which is not defined in the Ordinance nor is it permitted by the Ordinance.

THE CITY COMMISSION MISREPRESENTED TO THE PUBLIC ABOUT THEIR KNOWLEDGE OF APPLICATION MATERIALS BEFORE THE APRIL 25, 2022 MEETING OF THE CITY COMMISSION

130. On August 10, 2020, members of the Royal Oak City Commission held a meeting (conducted via Zoom) at which they unanimously voted to approve the following resolution:

> Therefore, be it resolved, the Royal Oak City Commission hereby establishes a policy that no member(s) of the city commission shall have any ex parte communication with any applicant or potential applicant for a recreational marihuana license, or his/her representatives, regarding any recreational marihuana licensing issue.

131. The resolution was approved with a recommendation that the policy would remain in effect while applications for marihuana retail establishment licensure were taken and while licenses remained available in the City.

132. Moreover, the City Commission agreed that, should any of its members receive

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

an ex parte communication during that time, the communication must be disclosed, in writing, with the City Attorney and the City Manager (and "shared as appropriate" with the other members of the City Commission).

133. At the April 25, 2022 meeting of the City Commission (at which Gatsby's and Royal Treatment's site plans and special land use permit requests were approved), Mayor Fournier stated that, at that time, none of the members of the City Commission had seen any of the applications for marihuana retail establishment licensure.

134. However, on January 27, 2022 (nearly three months before the April 25, 2022 meeting of the City Commission), Commissioner Kyle DuBuc participated in a telephone call with Dr. Theresa Rich, a member of the Oakland Schools Board of Education.

135. During that phone call, Commissioner DuBuc stated his opinion that Gatsby presented "a really good location for a marihuana business" (per Rich's testimony).

136. Commissioner DuBuc's statement to Dr. Rich indicates that, contrary to Mayor Fournier's promise to the public—that, up until April 25, 2022, members of the City Commission had been completely removed from the licensing process and had not seen any application materials related to an application for marihuana establishment licensure—members of the City Commission ***had, in fact, at least seen Gatsby's application materials***. Otherwise, Commissioner DuBuc would not have been able to form an opinion as to the quality of Gatsby's proposed marihuana establishment location at the time of his telephone call with Dr. Rich.

137. Commissioner DuBuc's statement during this telephone call further suggests that, if City Commission members were not actively viewing application materials that should have only been made available to City Manager Paul Brake and the Review Committee, they were receiving ex parte communications from applicants (concerning the quality of their proposed

marihuana establishment locations) in contravention of the August 10, 2020 Resolution of the City Commission.

COUNT I

DECLARATORY RELIEF AND INJUNCTIVE RELIEF THAT THE CITY FAILED TO COMPLY WITH ORDINANCE

138. Plaintiff incorporates by reference the prior paragraphs.

139. The Royal Oak ordinance specifically states: "The Applicants and their Applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City **as determined by the *City Manager or* his or her *designee***." *Id.* § 435-4(C)(4). (emphasis added)

140. The clear and unambiguous language of this section of the ordinance requires the *City Manager* or a singular *designee* to determine and rank the most qualified applicant.

141. The ordinance DOES NOT permit a committee, group, body, or MORE THAN ONE PERSON to review, rank, and determine the most qualified applicant.

142. On February 8, 2022, long after the closed door ranking by the committee, it was revealed that contrary to the ordinance, it was not the Manager or an individual designee that ranked and determined the most qualified applicants, but it was a committee of at least seven (7) individual city employees (some known and some unknown) that whittled down 30 applicants to two winning applicants.

143. The City created a completely secretive process based on subjective review behind closed doors.

144. The City Manager and his designees completely failed to rank the applicants and applications in order of which is best suited to operate in compliance with the Act.

145. This committee ultimately determined who would advance as the winning two (2)

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

applicants and did not present all applicants or the ranking to the planning commission or the city commission.

146. At deposition, the City Manager admitted that there are no notes which he can reference that will inform anyone of the ranking after the two winning applications.

147. At deposition, the City Manager admitted that he does not know the ranking after the two winning applications.

148. At deposition, the City Manager admitted that a ranking after the two winning applications.

149. At deposition, the City Manager admitted that he applied a *qualitative analysis* which is not defined in the Ordinance nor referenced in the Ordinance.

150. This ranking by the GROUP of the two winning applicants was then "used to fill available Municipal License Slots, starting with the best suited Applicant and Application, until all available Municipal License Slots are filled." See *id.* at § 435-4(C)(4).

151. Defendant violated its Ordinance by creating a GROUP to review, rank, and determine the most qualified applicant.

152. Defendant violated its Ordinance by failing to rank in order ALL applicants.

153. Additionally, as previously referenced, Defendant violated the Ordinance on its face by granting a license to an applicant located within 88 feet of a school.

154. MRTMA, MCL 333.27959(3), provides that the State will award a recreational marihuana establishment license, if, *inter alia,* "(c) the property where the proposed marihuana establishment is to be located is ***not*** within an area zoned exclusively for residential use and is ***not*** within 1,000 feet of a pre-existing public or private school providing education in kindergarten or

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

any of grades 1-12, unless a municipality adopts an ordinance that reduces this distance requirement" (emphasis added).

155. The City adopted an ordinance that does not reduce the buffer zone.

156. Rather, the City's ordinance explicitly prohibits any marihuana establishments from being set up within a 1,000-foot radius of **any** school. "No Marihuana Establishment shall be permitted within 1,000-foot radius of any exiting retailer or microbusiness." (Exhibit A)

157. The City's ordinance defines school as "a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade." (Exhibit A)

158. On April 25, 2022, the Royal Oak City Commission approved the site plan and special land use for PGSH Holdings, LLC d/b/a Gatsby.

159. The vote passed 5-1 with one counsel member abstaining due to an undisclosed conflict. The non-approving commissioner (Melanie Macey) stated that the Gatsby location violated the Ordinance. Additionally, she stated that it was NOT the City's legislative intent to permit a location within 1000 feet of a school hence why the Ordinance was drafted with the 1000-foot buffer requirement for schools. She was in favor of less restrictions, but she made it clear that these are the restrictions which the Commission originally passed, and they are bound by them.

160. The other Commissioners justified the approval with the fictitious belief that since the school is a non-conforming use the buffer does not apply. This *justification* is completely contrary to the express language of the Ordinance. In fact, the Ordinance states that a school is defined as a pre-existing public school. It does not state anything about the use of the school or if it is zoned as a school. The opinion of the nonconforming exemption was not provided by the City's attorney who was present at the meeting. Instead, the City's Economic Development head provided all the opinions related to this topic.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

161. The location of Gatsby is located within 100 feet of the Royal Oak Technical Campus. This fact is undisputed.

162. As much as the City may not want to acknowledge its existence, the Royal Oak Technical school exists and is located within 100 feet of Gatsby's proposed location.

163. The City's approval of Gatsby's special land use and site plan are a clear violation of MRTMA and the Ordinance.

164. The City blatantly violated its Ordinance by approving the location within 100 feet from the school.

165. Plaintiff has a substantial likelihood of success on the merits of its case because Defendant's ordinance related to this count is clear and unambiguous.

166. The process followed by the City is contrary to its Ordinance and/or MRTMA.

167. Plaintiff and the community suffered and will continue to suffer an irreparable harm if Defendant is allowed to violate the Ordinance.

168. The harm that Plaintiff and the public suffer by Defendant's violation of the Ordinance and state law far outweighs any harm that Defendant will suffer by being required to follow its Ordinance and state law.

169. An injunction requiring the City to comply with its Ordinance is in the best interest of the public.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant declaring that Defendant violated its Ordinance, declaring that the City violated MRTMA, declaring that awarded licenses are invalid, enjoining Defendant from proceeding forward with the process, enjoining Gatsby from moving forward, and correcting the process by ranking ALL the applicants in a public forum, and grant such other relief as is just and appropriate.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

COUNT II

DECLARATORY RELIEF AND INJUNCTIVE RELIEF THAT THE ORDINANCE IS VOID (VOID FOR VAGUENESS DOCTRINE)

170. Plaintiff incorporates by reference the prior paragraphs.

171. The Fourteenth Amendment provides that "[n]o State shall … deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Laws that fail to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" violate this requirement of due process and are void for vagueness. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

172. A law that "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis" is likewise void for vagueness in light of "the attendant dangers of arbitrary and discriminatory application" that such sweeping delegation entails. Id. at 108-09.

173. A statute may be challenged for vagueness on the grounds that it does not provide fair notice of the conduct proscribed, or that it is so indefinite that it invites arbitrary or discriminatory enforcement. See *Hill v Colorado*, 530 U.S. 703, 732; 120 S Ct 2480; 147 L Ed 2d 597 (2000) and *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004).

174. Stated differently (by a Michigan court), a statute or ordinance may generally be declared void for vagueness in one of three ways:

> (1) it is overbroad and infringes First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in concluding whether the statute [or ordinance] has been violated. Vagueness challenges that do not involve a challenge to First Amendment freedoms are examined in light of the facts of the particular case

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

175. An [ordinance] is unconstitutionally vague if it contains inadequate standards to guide those charged with its enforcement, or if it impermissibly gives the trier of fact unstructured and unlimited discretion in applying the law. *People v Douglas*, 295 Mich App 129, 138; 813 NW2d 337 (2011).

176. Void-for-vagueness tenets embrace the principle that a law is unconstitutional "if its prohibitions are not clearly defined." *Grayned v City of Rockford*, 408 U.S. 104, 108; 92 S Ct 2294; 33 L Ed 2d 222 (1972).

177. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

178. As is the case here, the ordinance creates a completely subjective basis which resulted in an arbitrary discriminatory application of the ordinance.

179. The ordinance is completely vague as to how the applicants will be ranked. Specifically, there is absolutely no quantitative parameter to analyze and rank the applicants.

180. The Licensing Ordinance vests the City Manager (and, in practice, his Review Committee) with unfettered and unlimited discretion in application of the 'competitive' criteria and the ultimate selection of successful applicants.

181. Likewise, the Licensing Ordinance gives applicants no notice whatsoever as to the

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

weight that will be afforded to each 'competitive' criterion, how applicants will be distinguished from one another, or how applicants will be ranked.

182. The Licensing Ordinance does not make applicants aware that certain 'competitive' criteria—and certain factors ***outside the criteria, altogether***—would, if not satisfied to the subjective satisfaction of the City Manager or Review Committee, be grounds for immediate disqualification from the licensing process.

183. The Licensing Ordinance does not offer a person of ordinary intelligence notice of what is required in order to obtain a license to operate a marihuana retail establishment.

184. Due to the vagueness of the ordinance, a completely subjective and uncompetitive process occurred.

185. Due to the vagueness, the City Manager who was tasked with carrying out the ordinance and enforcing failed to implement a competitive process that the applicant would be aware of from the plain language of the Ordinance.

186. The process needs to be objective, clear, and unambiguous.

187. It is not the burden of Plaintiff or the public to read the minds of legislators.

188. The ordinance is void for vagueness.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant declaring that the ordinance is void for vagueness, declare that awarded licenses are invalid, enjoining Defendant from proceeding forward with the process, and grant such other relief as is just and appropriate.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

COUNT III
VIOLATION OF THE OPEN MEETINGS ACT
(MCL 15.270 AND 15.271)

189. Plaintiff incorporates by reference the prior paragraphs.

190. The Open Meeting Act provides that "all meetings of a public body must be open to the public." MCL 15.263(1).

191. Further, "[a]ll decisions of a public body must be made at a meeting open to the public." MCL 15.263(2).

192. "The primary purpose of the OMA is to ensure that public entities conduct all their decision-making activities in open meetings and not simply hold open meetings where they rubber stamp decisions that were previously made behind closed doors." *Schmiedicke v Clare School Bd,* 228 Mich App 259,264; 577 NW2d 706 (1998).

193. The OMA defines a "public body" to include "a board, commission, committee**,** subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." See MCL 15.262(a).

194. The OMA defines a "decision" as "a ***determination,*** action, vote, or disposition upon a motion, proposal, ***recommendation***, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." See MCL 15.262(b).

195. Here, the Ordinance empowers the City Manager or his or her designee to ***determine*** the ranking of which Applications are best suited to operate in compliance with MRTMA. See Ordinance,§ 435-4(C)(4).

196. Despite the violation of the Ordinance by creating a committee of more than one,

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

the City Manager created a group committee comprised of several City employees, to review, rank, and determine the most qualified applicants.

197. Out of 30 applicants, this illegal committee selected and advanced what they felt were the most qualified applicants.

198. The evaluation of applications for a Municipal License Slot is undoubtedly governmental in nature, as the Ordinance required the City Manager or his or her designee to scrutinize and rank the Applications as a necessary part of the application review process.

199. A determination from the City Manager or his or her designee was required before the Planning Commission had discretion to recommend Special Land Use Permit applications and the City Commission had discretion to approve or deny the Application. See *id.* at 435-4(D)(4)(f).

200. This committee met in secret and determined the most qualified applicants.

201. Upon information and belief, the City's "competitive process" was designed to avoid and circumvent the OMA's requirements.

202. The first public mention of this committee was by the Mayor at the February 8, 2022, planning commission meeting when he described the *process* of selecting the most qualified applicants.

203. This committee is governed by the Michigan Open Meetings Act. *See Booth Newspapers, Inc. v. U of M Board of Regents,* 444 Mich 211 (1993).

204. The entire process has been secretive and void of transparency.

205. NONE of the applicants or the public know what actually occurred during the process or how the applicants were ranked.

206. This committee never held a public meeting while it was determining the most qualified applicants.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

207. Defendant failed to provide a reason or basis for holding closed meetings.

208. Defendant never gave the public notice of the closed meetings, or the existence of any meetings.

209. Defendant failed to record proper minutes of the closed meetings.

210. Defendant's closed meetings violate the Open Meetings Act.

211. This court has the authority to declare that City violated the Open Meetings Act, issue an injunction, force the City to cure the defect by redoing the process, and award attorney fees to Plaintiff.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the City violated the Open Meetings Act, enjoin Defendant from moving forward with the process, invalidate the conditional approvals, require the City to cure the process in compliance with the Open Meeting Act, award attorney fees to Plaintiff and any such further and additional relief as may be fair and just under the circumstances.

COUNT IV
VIOLATION OF MRTMA
(FACIAL CHALLENGE TO THE ORDINANCE)

212. Plaintiff incorporates by reference the prior paragraphs.

213. Under MRTMA, the City is required to award its marihuana retailer license through "a competitive process intended to select applicants who are best suited to operate in compliance with [MRTMA] within the [City]." MCL 333.27959(4).

214. On its face, there are several criteria in the City's Ordinance that are clearly not designed to assess which applicants are "best suited to operate in compliance with [MRTMA]" in Royal Oak.

215. The Ordinance requires the City to consider whether an Applicant plans to renovate

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

a building, and whether a proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

216. A municipal ordinance may not stand if it is "in direct conflict with the state statutory scheme." *People v Llewellyn,* 257 NW2d 902, 904 (Mich 1977). "A direct conflict exists when the ordinance permits what the statute prohibits, or the ordinance prohibits what the statute permits." *Ter Beekv City of Wyoming,* 846 NW2d 531,541 (Mich 2014).

217. The process established by the City was not competitive.

218. The City's Licensing Ordinance did not establish a competitive process intended to select applicants for marihuana business licensure who are best suited to operate in compliance with MRTMA within the City of Royal Oak. The City's 'competitive' process was therefore facially invalid for violating and conflicting with MRTMA's competitive-process mandate.

219. The City's Licensing Ordinance conflicts with MRTMA, as its 'competitive' process for awarding the available Municipal License Slots was based upon an unlawful, subjective, and arbitrary process.

220. The City did not select Gatsby or Royal Treatment for the two available Municipal License Slots on the basis of a finding that they are best suited to operate in compliance with MRTMA in the City.

221. Indeed, it remains unclear whether Gatsby or Royal Treatment have any significant experience operating a marihuana retail operation in Michigan or in any jurisdiction.

222. The Licensing Ordinance does not assign any weight or 'score' to any of the competitive criteria enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion. And neither the City Manager nor the Review Committee internally established a method of objectively weighing or scoring any of the competitive criteria.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

223. The City failed to rank the applicants in order as was required by the Ordinance. The lack of ranking created a process which was not competitive.

224. Thus, where all but one of the competitive criteria were binary "check-the-box" factors—which either were or were not satisfied by each applicant—the ostensibly 'competitive' process offered the City no meaningful way to distinguish between the many applicants for marihuana retail licensure.

225. None of the applicants (besides the *winners*) know where they "rank" or how the winning applicants were selected.

226. As far as the public knows, the City Manager (or its designee), in evaluating applications under the competitive criteria of Section 435-4(C)(4), could have assigned 91% of the weight of his decision to item 4350-4(C)(4)(i) (steps taken by applicants to "yield greater profitability") and only 9% to the other nine factors.

227. Indeed, the City Manager has openly acknowledged that assessments of any non-binary criteria ***were left to his own subjective whims***, rather than any objective analysis. This is antithetical to any truly ***competitive*** process.

228. Moreover, the Licensing Ordinance does not establish any kind of tie-breaking procedure. Thus, to the extent that too many applicants were found to be equally suited to operate in compliance with MRTMA within the City, there was no way to determine which would be selected to fill available Municipal License Slots (other than leaving that determination to the subjective whims of the City Manager).

229. Further still, the enumerated competitive criteria to be applied by the City Manager or his or her designee under Section 435-4(C)(4) of the Licensing Ordinance largely have nothing to do with whether an applicant is "best suited to operate in compliance with [MRTMA] within"

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

the City. See MCL 333.27959(4).

230. The City's process for choosing the applicants/applications that would fill the two available Municipal License Slots was not designed (or applied) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City. The process is therefore in violation of MRTMA, MCL 333.27959(4).

231. There is an actual case or controversy here because Plaintiff respectfully contends that, on its face, the City's Ordinance violates MRTMA.

232. The City's process for choosing the applicants/applications that would fill the two available Municipal License Slots was not designed (or applied) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City. The process is therefore in violation of MRTMA, MCL 333.27959(4).

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance on its face violates MRTMA, and any such further and additional relief as may be fair and just under the circumstances.

COUNT V
VIOLATION OF MTRMA
(AS APPLIED CHALLENGE TO THE ORDINANCE)

233. Plaintiff incorporates by reference the prior paragraphs.

234. MRTMA requires a competitive process.

235. If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, ***the municipality shall decide among competing applications by a competitive process***

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

intended to select applicants who are best suited to operate in compliance with this act within the municipality. [Emphasis added.]

236. This process applied is not competitive because no one knows what occurred during the actual process or where any of the applicants ranked.

237. In implementing the 'competitive' process outlined under the Licensing Ordinance, the City did not engage in a competitive process intended to select applicants for marihuana business licensure who are best suited to operate in compliance with MRTMA within the City of Royal Oak.

238. The City did not select Gatsby or Royal Treatment for the two available Municipal License Slots on the basis of a finding that they are best suited to operate in compliance with MRTMA in the City.

239. The City's selection process, as applied, was clearly not designed to assess which applicants are "best suited to operate in compliance with [MRTMA]" within Royal Oak.

240. Further, the approved applicants are less qualified than Plaintiff.

241. The ordinance fails to account for factors which actually qualify an applicant and relies on factors that promote economic development. Economic development is a proper aspiration for a city, but it is not the purpose of MRTMA. The purpose of MRTMA is to issue licenses to business which are the most qualified to sell marihuana in compliance with MRTMA.

242. To the contrary, the City Manager—who was charged with implementing the City's so-called 'competitive' process—admitted that he did not understand his task to be related to selecting the applicants best suited to operate in compliance with MRTMA ***at all***. Rather, the City Manager has openly acknowledged that he endeavored to select those applicants best suited to comply ***with the City's own Licensing Ordinance, instead***. This is not in compliance with

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

MRTMA's competitive-process mandate.

243. Further, the City Manager has admitted that he and the Review Committee ***failed to actually rank any of the applicants or applications for marihuana retail establishment licensure***. Instead, the City Manager and his Review Committee arbitrarily organized the applicants/applications into three categories: (1) the two selected to complete the licensing process; (2) those on standby, which may have been selected to move forward with the licensing process if one or both of the initially selected two failed to complete the process; and (3) those who were determined to be disqualified from the competitive process altogether.

244. Applicants within each of these three 'tiers' were not ranked among one another; and so if either Gatsby or Royal Treatment were disqualified from eligibility for licensure, there would be no runner-up to fill the available Municipal License Slot(s).

245. Additionally, the Licensing Ordinance does not assign any weight or 'score' to any of the competitive criteria enumerated under Section 435-4(C)(4); nor does it assign a system of points to each criterion. And neither the City Manager nor the Review Committee internally established a method of objectively weighing or scoring any of the competitive criteria.

246. Thus, where all but one of the competitive criteria were binary "check-the-box" factors—which either were or were not satisfied by each applicant—the ostensibly 'competitive' process offered the City with no meaningful way to distinguish between the many applicants for marihuana retail licensure.

247. And once again, the City Manager has openly acknowledged that assessments of any non-binary criteria ***were left to his own subjective whims***, rather than any objective analysis. This is incompatible with any truly ***competitive*** process.

248. As far as the public knows, the City Manager (or its designee), in evaluating

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

applications under the competitive criteria of Section 435-4(C)(4), could have assigned 91% of the weight of his decision to item 4350-4(C)(4)(i) (steps taken by applicants to "yield greater profitability") and only 9% to the other nine factors.

249. The City and the City Manager's process for choosing the applicants/applications for the two available Municipal License Slots was not applied (or designed) in a way to objectively determine those applications/applications best suited to operate in compliance with MRTMA in the City and, therefore, is in violation of MRTMA, MCL 333.27959(4).

250. Instead, the City's so-called 'competitive process' was conducted in complete secrecy by an unofficial and unaccountable Review Committee consisting of several City officials/employees, which kept applicants in the dark as to the process and the Committee's findings until final determinations had been made.

251. Moreover, the City Manager's and Review Committees' interpretation and application of the City's competitive criteria throughout the licensing process were inconsistent with the plain text of the Licensing Ordinance.

252. The City's stated reasons for selecting Gatsby and Royal Treatment to receive marihuana retail establishment licenses—and for rejecting Exclusive and other contending applicants—are also inconsistent with the plain text of the City's own Licensing and Zoning Ordinances, state law, and federal constitutional protections.

253. Further still, the City was obligated, under the Licensing Ordinance, to hear Exclusive's administrative appeal. However, the City Manager instead dismissed Exclusive's administrative appeal—though he did not dismiss others filed by certain other (unsuccessful) applicants—because he did not believe he had the authority to grant Exclusive a license ***even if the grounds for the appeal were meritorious***.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

254. Defendant's Licensing Ordinance, both as written and as applied to the evaluation of the applications for marihuana retail licenses in the City (including Defendant's decision to deny Exclusive a Municipal License Slot) violated MRTMA's competitive-process mandate.

255. There is an actual case or controversy here because Plaintiff respectfully contends that, as applied here, the City's Ordinance violates MRTMA.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance on its face violates MRTMA, and any such further and additional relief as may be fair and just under the circumstances.

COUNT VI
VIOLATION OF UNITED STATES CONSTITUTION AND INTERSTATE COMMERCE CLAUSE

256. Plaintiff incorporates by reference the prior paragraphs.

257. The United States Constitution empowers the federal Congress "To regulate Commerce ... among the several States." See US Const, art I,§ 8, cl. 3.

258. The United States Supreme Court has "long held" that this Clause also prohibits state and municipal laws that unduly restrict interstate commerce. *Tenn Wine & Spirits Retailers Ass'n v Thomas,* 139 S Ct 2449, 2459 (2019); see also *Dean Milk Co v City of Madison,* 340 US 349,354 & n 4 (1951).

259. A law that discriminates against interstate commerce is "virtually *per se* invalid, and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." See *Dep't of Revenue of Ky v Davis,* 553 US 328, 338 (2008) (internal quotation marks and citations omitted).

260. Municipal marihuana ordinances that discriminate on the basis of residency violate the dormant Commerce Clause. See, e.g., *NPG, LLC v City of Portland,* No. 2:20-cv-00208,

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

2020 WL 4741913 (D Me, Aug 14, 2020) (preliminarily enjoining municipal marihuana ordinance that discriminated on the basis of residency) *Lowe v City of Detroit,* 21-CV-10709, 2021 WL 2471476 (ED Mich, June 17, 2021).

261. The City's Ordinance violates the dormant Commerce Clause because it discriminates against out-of-state residents and punishes people for moving between states.

262. The Ordinance's preferences for business owners from Royal Oak and Oakland County do not advance a legitimate local purpose-and, even if they do, that interest could be adequately served by reasonable nondiscriminatory alternatives.

263. There is an actual case or controversy here because Plaintiff contends that the process used to award the licenses to operate adult-use retailer establishment licenses violates the Commerce Clause of the United States Constitution.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance as it relates to residency is void, and any such further and additional relief as may be fair and just under the circumstances.

COUNT VII
VIOLATION OF THE MICHIGAN CONSTITUTION

264. Plaintiff incorporates by reference the prior paragraphs.

265. The Michigan Constitution provides that "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection." Mich Const 1963, art 1, § 1.

266. It further guarantees that "No person shall be denied the equal protection of the laws " Mich Const 1963, art 1, § 2.

267. And it provides that "No person shall be ... deprived of life, liberty or property,

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

without due process of law." Mich Const 1963, art 1, § 17.

268. These provisions guarantee, among other things, a right to intrastate travel, a right to interstate travel, and a right to be free from arbitrary or impermissible discrimination.

269. Municipal marihuana ordinances that discriminate on the basis of residency violate these provisions. See *Lowe,* 2021 WL 2471476, at *8-9.

270. The City's Ordinance violates the Michigan Constitution because its preferences for current or recent business operators in Royal Oak punishes Exclusive's owners for exercising their rights to intrastate and interstate travel, and draw distinctions between them and other applicants that are not rationally related to any legitimate government purpose.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance as it relates to residency is void, and any such further and additional relief as may be fair and just under the circumstances.

COUNT VIII
VIOLATION OF MRTMA (SCHOOL BUFFER ZONE)

271. Plaintiff incorporates by reference the prior paragraphs.

272. Under MCL 333.27959(3)(c), an applicant for state adult-use recreational marihuana establishment licensure may only be granted a license if

> the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement.

273. The City has not adopted an ordinance that reduces the 1,000-foot school-zone

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

buffer established by MCL 333.27959(3).

274. Rather, the City's own Licensing Ordinance ***explicitly prohibits any marihuana establishments from being set up within a 1,000-foot radius of any "school."*** Licensing Ordinance, § 435-5(A)(5)(a).

275. The Licensing Ordinance defines a "school" as "a pre-existing public or private school with a curriculum equivalent to kindergarten through 12th grade." *Id*. at § 435-1.

276. Similarly, the City's Zoning Ordinance also states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Zoning Ordinance, § 770-52.1(B)(3). Thus, the City's own Zoning Ordinance ***also establishes a 1,000-foot school-zone buffer***.

277. The OSTC-SE—which is situated within a 1,000-foot radius of the property to be used for Gatsby's prospective marihuana retail establishment—is used for the public education of high school students, and has been since well-before the establishment of the Licensing Ordinance.

278. OSTC-SE (of Oakland Schools) is therefore a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA (MCL§ 333.27959(3)(c)).

279. OSTC-SE is therefore also considered a "school" as contemplated by the Licensing Ordinance, § 435-1, and an "existing public or private school with a curriculum equivalent to kindergarten through 12th grade" as contemplated by the Zoning Ordinance, § 770-52.1(B)(3).

280. Therefore, the location of a licensed marihuana facility within 1,000 feet of this

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

school is strictly prohibited under MRTMA and the City's own Ordinances.

281. Notwithstanding this basic requirement, the City has awarded one of the two available Municipal License Slots to Gatsby, whose proposed facility falls squarely within the 1,000-foot buffer surrounding OSTC-SE.

282. Defendant ignored repeated and detailed warnings of this particular violation from Oakland Schools, Royal Oak Schools, and several others made as far back as April 2020 and continuing well beyond the City's application window.

283. Nonetheless, the City has taken the position that the 1,000-foot school-zone buffer established by MRTMA, the Licensing Ordinance, and the Zoning Ordinance simply does not apply to OSTC-SE.

284. However, to the extent that the City believes that this is true as a function of the City's zoning laws, it is well settled that public schools are not subject to local zoning ordinances. See MCL 380.1263(3); *Charter Twp of Northville v Northville Pub Sch*, 469 Mich 285, 291; 666 NW2d 213 (2003).

285. Further still, Gatsby's proposed use does not even satisfy the City's own requirements for approval of a special land use request. See Royal Oak Code of Ordinances, § 770(C).

286. It is also worth noting that, on February 17, 2022, HB 5766 was introduced by Michigan Representative Pamela Hornberger. HB 5766. If enacted, HB 5766 would amend that portion of MRTMA relating to the 1,000-foot school buffer in such a way that, to overcome the buffer, not only would the relevant municipality need to adopt an ordinance reducing the distance requirement, but the governing body of the school from which the buffer emanates would also need to approve the violative proposed marihuana establishment. Legislative review of HB 5766

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

currently remains pending

287. For these reasons, Gatsby's proposed marihuana retail establishment runs afoul of the 1,000-foot school-zone buffer set forth under MRTMA. See MCL 333.27959(3)(c). And because—as previously stated—there is no ranking by which to determine a "runner-up" that could fill the vacant Municipal License Slot left by Gatsby, the only possible remedy is to restart the competitive process (once it is redrafted to comply with MRTMA's competitive-process mandate).

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendant, declaring that the approved applications are void, enjoin the City from awarding marihuana retail licenses, declare that the Ordinance as it relates to residency is void, and any such further and additional relief as may be fair and just under the circumstances.

COUNT IX
WRIT OF MANDAMUS
(PLED IN THE ALTERNATIVE)

288. Plaintiff incorporates by reference the prior paragraphs.

289. An action for mandamus seeks to compel a governmental official to perform a legal duty, and thus, addresses a claim of governmental inaction.

290. In order to be entitled to mandamus, it must be demonstrated that:

> (1) the Plaintiffs have a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the Plaintiffs have no other adequate legal or equitable remedy. *Id.* at 284; *White-Bey v Dep't of Corrections,* 239 Mich App 221, 223-24 (1999).

291. A clear legal right is a right that is "clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided." *Univ Med Affiliates, PC v Wayne Cty Executive,* 142 Mich App 135, 143 (1985) (citation omitted).

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

292. "A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Hillsdale Cty Senior Servs, Inc v. Hillsdale Cty,* 494 Mich 46, 58 n 11 (2013) (quotation marks and citation omitted).

293. Defendant has a clear legal duty to comply with the City's Ordinances.

294. Plaintiff has a clear legal right to have Defendant comply with the City's Ordinances and MRTMA.

295. Because Defendant's failure to comply with the Ordinances, law, and MRTMA, Plaintiff has no adequate legal or equitable remedy.

WHEREFORE, Plaintiff request that this court to issue a writ of mandamus requiring the City to comply with the City's Ordinances, laws, and MRTMA and to properly rank the applicants and not award a license to a facility within 1,000 feet of a school. Plaintiff also requests an order or judgment awarding Plaintiff its damages, costs and attorney's fees wrongfully incurred, and such other relief as the Court deems just and appropriate.

COUNT X
VIOLATION OF DUE PROCESS

296. Plaintiff incorporates by reference the prior paragraphs.

297. The federal and Michigan Constitution prohibits depriving a person of property without due process of law. U.S. Const. Am XIV; Mich. Const 1963, Art 1, Sec. 17. Further, the state and federal constitutions guarantee equal protection of the laws. US Const, Am XIV; Const 1963, art 1, § 2; *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999).

298. Procedural due process principles protect persons from deficient procedures that lead to the deprivation of cognizable property interests.

299. A procedural due process violation occurs when the government unlawfully

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

interferes with the protected property or liberty interest without providing adequate procedural safeguards.

300. Procedural due process requires that a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner.

301. A substantive due process violation occurs when the government unlawfully interferes with a protected property or liberty interest through a decision or series of decisions that are made without foundation in reason and are merely arbitrary or an irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare.

302. In addition, "'Due process applies to any adjudication of important rights.'" *In re Brock,* 442 Mich 101, 110; 499 N.W.2d 752 (1993), quoting *In re LaFlure,* 48 Mich. App. 377, 385; 210 N.W.2d 482 (1973). It is a flexible concept calling "'for such procedural protections as the particular situation demands." *Brock,* p.111, quoting *Mathews* v *Eldridge,* 424 U.S. 319, 334; 96 S. Ct. 893; 47 L. Ed. 2d 18 (1976).

303. Due process requires fundamental fairness, which involves consideration of the private interest at stake, the risk of an erroneous deprivation of such interest through the procedures used, the probable value of additional or substitute procedures, and the state or government interest, including the function involved and the fiscal or administrative burdens imposed by substitute procedures. *Brock,* p 111, citing *Mathews,* p 335. *Dobrzenski v Dobrzenski,* 208 Mich App 514, 515; 528 NW2d 827 (1995).

304. On May 18, 2022, Appellant was removed from the "waitlist" and formally denied.

305. On May 23, 2022, Appellant, pursuant to Royal Oak Ordinance Sec. 435-4(D)(10)

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

requested its right to appeal the denial.

306. On August 1, 2022, Appellant received notice from the City of Royal that it was not allowing the right of appeal due to their opinion that the appeal is "futile." Therefore, the City Manager refused to schedule an appeal hearing.

307. Royal Oak Ordinance Sec. 435-4(D)(10) states:

> Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who **will** set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City. (Emphasis added).

308. The refusal to permit the appeal hearing within 10 days of the request is a violation of the Ordinance.

309. The denial of the appeal per the ordinance is a due process violation.

310. Plaintiff is entitled to due process rights provided by the City's appeal rights in its Ordinance.

311. Plaintiffs were not offered an opportunity to defend at a hearing (as is afforded to them by the Ordinance) as to why they were deprived a license.

312. The entire process was arbitrary and capricious.

313. The denial of the appeal is a due process violation.

WHEREFORE, Plaintiff requests that the Court determine, declare, and adjudge that the City's denial of the appeal and/or license constituted an arbitrary, capricious, and unreasonable

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

decision contrary to the law, the City's ordinance, and the due process rights afforded Plaintiff through the City's Ordinance. Plaintiff also requests an order or judgment awarding Plaintiff its damages, costs and attorney's fees wrongfully incurred, and such other relief as the Court deems just and appropriate.

COUNT XI
NUISANCE PER SE
ABATEMENT OF NUISANCE

314. Plaintiff incorporates by reference the prior paragraphs.

315. Plaintiff has a real interest in the subject of this case.

316. Plaintiff has an actual legal claim.

317. Plaintiff's property interest is directly diminished and damaged as a result of the improperly approved license(s).

318. Plaintiff's business has been effected by Defendants use of its property.

319. Defendant PGSH HOLDINGS, LLC use of the property is within 1,000 feet of a school. This use is a violation of the zoning ordinance.

320. Despite the recommendation of the Planning Commission to deny Gatsby's proposed special land use permit, despite repeated correspondence from Oakland Schools, Royal Oak Schools, and counsel articulating sound legal reasons why the 1,000-foot school buffer established by MRTMA and the City's own Ordinances precluded Gatsby's proposed marihuana retail site, and despite ongoing litigation on that very same subject, the City Commission conducted a hearing on Gatsby's proposed special land use permit and site plan request on April 25, 2022.

321. That same day, on April 25, Royal Oak Schools Superintendent Mary Beth Fitzpatrick sent a letter to members of the Royal Oak City Commission expressing her continued

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

opposition to the special land use permit requested by Gatsby on the basis of the close proximity between Gatsby's proposed marihuana retail establishment and OSTC-SE.

322. At the April 25, 2022 meeting, the City Commission completely disregarded the recommendation of the Planning Commission and considered Gatsby's request for site plan approval and a special land use permit. At the meeting, once again, several members of the public spoke out against approval of Gatsby's site plan and special land use permit.

323. Moreover, during the April 25, 2022, meeting, multiple members of the City Commission referred to OSTC-SE as a "school" in one regard or another.

324. Nevertheless, at the meeting, the City Commission voted to approve Gatsby's and Royal Treatment's proposed site plans and special land use permits.

325. MRTMA, MCL 333.27959(3), provides that the State will award a recreational marihuana establishment license, if, *inter alia*, "(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is ***not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1-12, unless a municipality adopts an ordinance that reduces this distance requirement***" (emphasis added).

326. The City's own Code of Ordinances contain at least two provisions, which also preclude the placement of any marihuana establishment within 1,000 feet of a school. In particular, Section 435-5(A)(5)(a)(1) of the Licensing Ordinance states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any school." And beyond that, the City's Zoning Ordinance (the "Zoning Ordinance") also states, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Zoning Ordinance, § 770-52.1(B)(3).

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

327. The City has not adopted an Ordinance that reduces the distance requirement established by MCL 333.27959(3).

328. To the contrary, as previously stated, the City's Licensing Ordinance and Zoning Ordinance explicitly prohibit any marihuana establishments from being set up within a 1,000-foot radius of any school. Licensing Ordinance, § 435-5(A)(5)(a); **Zoning Ordinance, § 770-52.1(B)(3)**.

329. The Oakland Schools Technical Campus – Southeast ("OSTC-SE," which is situated within Royal Oak) is a "pre-existing public . . . school providing education in kindergarten or any grades 1-12" as contemplated by Section 9 of MRTMA. See MCL§ 333.27959(3)(c).

330. OSTC-SE provides education for over 600 students in grades 9 through 12, for which said students receive high school credit and attend classes in subjects including (but not limited to): English, Math, Algebra, Biology, Chemistry, Economics, Geometry, Government, Physical Science, and World History.

331. OSTC-SE also provides a summer science, technology, engineering, and math camp program for children in grades 6 through 8.

332. Like other schools, OSTC-SE has teachers employed on staff, as well as its own dean.

333. Dr. Theresa Rich, a member of the Oakland Schools Board of Education, believes that OSTC-SE is a public K-12 school, which would trigger the 1,000-foot school buffer contemplated under the City's Licensing Ordinance.

334. Oakland Schools Intermediate School District ("Oakland Schools") is an intermediate school district created and governed by the School Code. OSTC-SE falls under the operation and oversight of Oakland Schools.

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEGAL CONSULTING

335. OSTC-SE is a "public school" as that term is defined under MCL 380.601 *et seq*. (the "School Code"). See MCL 380.5(6).

336. For these reasons, OSTC-SE is considered a "pre-existing public or private school providing education in kindergarten or any of grades 1 through 12" under MRTMA. See MCL 333.27959(3)(c). Royal Oak Technical Campus is therefore also considered a "school" as contemplated by the Licensing Ordinance, § 435-1, as well as an "existing public or private school with a curriculum equivalent to kindergarten through 12th grade" as contemplated under the **Zoning Ordinance, § 770-52.1(B)(3). Ex B.**

337. Accordingly, the location of a licensed marihuana facility within 1,000 feet of this school is strictly prohibited under MRTMA and the City's own Licensing and Zoning Ordinances.

338. Gatsby's proposed facility falls squarely within the 1,000-foot buffer surrounding the OSTC-SE. Thus, Gatsby's proposed facility cannot function as a marihuana retail establishment under MRTMA, the Licensing Ordinance, or the **Zoning Ordinance**.

339. Plaintiff seeks to enforce the City's zoning ordinance through a nuisance abatement.

340. Except as other provided by law, a **use of land** or a dwelling, **building, or structure**, including a tent or recreational vehicle, used, erected, altered, razed or converted **in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se**. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. MCL 125.3407.

341. Defendant's use of the land for a marihuana facility within 1,000 feet of a school is a violation of the City's zoning ordinance.

342. Therefore, Defendant's use is a nuisance per se.

343. Plaintiff is requesting the abatement of this nuisance and that the use be prohibited.

344. These activities have directly and proximately caused Plaintiff's substantial damage, including diminution of the value of their property; damage to Plaintiffs' property and possessions; and other damages that flow naturally and consequentially from Defendants' actions.

WHEREFORE, Plaintiff requests that this court enter a judgment in its favor against Defendants, awarding damages for which they are entitled, grant preliminary and final injunctive relief ordering Defendants to cease and desist in the construction and use of the property as a marihuana facility use, Plaintiff also requests that nuisance be abated and enjoined, Plaintiff also requests that its attorney fees and costs are paid by Defendants for having to file this action, and any such further and additional relief as may be fair and just under the circumstances and permitted by law. Plaintiff also requests monetary damages related to the nuisance.

Legal Consulting, PLLC

By: */s/ Anthony J. Bologna*
Anthony J. Bologna (P72698)
Attorney for Exclusive Capital Partners
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278

Dated: September 23, 2022

LEGAL CONSULTING

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 9/14/2022 8:53 AM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

-vs-

Case No. 2022-192383-CZ
HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan municipal corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

NOTICE OF HEARING

RECEIVED by MSC 12/10/2025 3:03:01 PM

PLEASE TAKE NOTICE that the Defendant CITY OF ROYAL OAK's *Motion for Summary Disposition of First Amended Complaint* will be brought on for hearing before the Honorable Rae Lee Chabot of the Oakland County Circuit Court on a **date and time to be set by the court**.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

DATED: September 14, 2022

PROOF OF SERVICE

I certify that on September 14, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

FILED Received for Filing Oakland County Clerk 9/13/2022 10:50 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

JSG

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan municipal corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

Case No. 2022-192383-CZ

HON. RAE LEE CHABOT

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

MOTION FOR SUMMARY DISPOSITION OF FIRST AMENDED COMPLAINT

Defendant, CITY OF ROYAL OAK, by and through its attorneys, ROSATI, SCHULTZ,

FEE

RECEIVED by MSC 12/10/2025 3:03:01 PM

JOPPICH & AMTSBUECHLER, P.C., moves the Court for summary disposition pursuant to MCR 2.116(C)(7) basis upon Defendant's immunity granted by law, 2.116(C)(8) for failure to state a claim upon which relief can be granted, and (C)(10) for lack of a genuine issue of material fact. This motion is more fully supported by the Brief in Support of Defendant's Motion for Summary Disposition and the exhibits appended to it.

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION OF FIRST AMENDED COMPLAINT

At the time of filing this Motion, the parties have fully briefed the City's first Motion for Summary Disposition (**Ex A**) brought under MCR 2.116(C)(8) and (10) on the original Complaint, and are awaiting a hearing on September 21. 2022 and decision of that motion. Plaintiff Quality Roots (Quality) filed its First Amended Complaint (FAC), reiterating the same claims as the original Complaint,[1], albeit with additional factual allegations and a somewhat different request for relief. At the present time, Defendant City relies upon the factual background, exhibits, and arguments made in

[1] These claims are: Count I – facial challenge to the City's marijuana licensing ordinance as violating the MRMTA; Count II – MRTMA as applied challenge; Count III – that the City has violated the 1,000 feet distancing requirement from a public K-12 school; Count IV – violation of due process as under the Michigan Constitution; Count V – violation of due process under the U.S. Constitution; and Count VI – Open Meetings Act.

RECEIVED by MSC 12/10/2025 3:03:01 PM

its original Motion for Summary Disposition and Reply Brief (**Exs A and B**) and incorporates same by reference. In this motion, the City will not revisit for the sake of brevity all of the arguments in the original dispositive motion, but will focus on the additional claims that were not part of the original Complaint, and on further facts and/or law that has been developed since the original Complaint was filed.

LEGAL ARGUMENT

I. ROYAL OAK HAS NOT VIOLATED THE OPEN MEETINGS ACT.

In Count VI, Quality has reiterated its claim under the Open Meetings Act, claiming that discovery has bolstered this claim. The City relies upon its previous Motion for Summary Disposition applying the well-established holdings of *Herald v Bay City*, 463 Mich 111 (2000) and *Pinebrook Warren, LLC v City of Warren*, ___Mich App___ (August 25, 2022) 2022 WL 3691938, to the City Manager—that as an individual executive official exercising his own authority conferred by the City's recreational marijuana establishment (RME) ordinance is not a "public body." **Ex A**, Brief, pp 5-8; **Ex B**, pp 2-3. Quality has also included an allegation at ¶ 284 of the FAC citing MCL 15.273(1). That section provides that, "A *public official* who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action." (Emphasis added.) Quality seems to infer either that City Manager Brake is liable under this section, or that the City of Royal Oak is liable for the actions of the manager. In either case., this allegation fails for two reasons: (1) the City of Royal Oak, not Paul Brake, is the defendant here, and the OMA makes the liability for intentional violation of the Act personal to a "public official," not to a public body; and (2) Paul Brake is not a "public official" to whom the OMA applies.

The term "public official" is not defined under the OMA. However, the Michigan Court of Appeals has interpreted it to mean *a member of a "public body"* as defined in MCL 15.262(a). *People v*

RECEIVED by MSC 12/10/2025 3:03:01 PM

Whitney, 228 Mich App 230; 578 NW2d 329 (1998). In *Bitterman v Bolf*, unpublished decision *per curiam* of the Court of Appeals issued Apr. 14, 2015 (Docket No. 319663), 2015 WL 1650937, **Ex C**, the plaintiff filed a complaint against the clerk for the Village of Oakley, alleging that she had falsified minutes from a Village Council Meeting. The parties filed cross-motions for summary disposition. In her motion, the clerk asserted that a village clerk is not a "public official" for purposes of the OMA. The trial court granted summary disposition to the clerk on that basis. The Court of Appeals, relying on *People v Whitney, supra*, affirmed. It noted that *a person is a "public official" if they are a member of a "public body".*

> The Act does not define the term "public official." *Wilkins v Gagliardi,* 219 Mich App 260, 271; 556 NW2d 171 (1996). … [W]e have already interpreted this phrase in a different section of the statute. In *People v Whitney,* this Court interpreted the language in MCL 15.272(1), which provides that "[a] public official who intentionally violates this act is guilty of a misdemeanor...." *Whitney,* 228 Mich App at 253. ***In interpreting this provision, we determined that the prosecution must show that the defendant was a member of a public body.*** *Id.* at 253. We also recognized a possible distinction between public officials and nonpublic officials. See *Id.* at 253 n 14.
>
> We also conclude that *Whitney's* interpretation of this language is instructive in this case. Both statutory sections are part of the same Act, so we must construe these provisions together. The operative language of MCL 15.272(1) and MCL 15.273(1) are almost identical—both sections refer to "[a] public official who intentionally violates this act[.]" ***This Court in Whitney held that a person is not a public official unless they are a member of a public body. Construing these provisions together, we conclude that a person is only a public official for the purposes of MCL 15.273(1) if they are a member of a public body.*** *Bitterman*, 2015 WL 1650937 at *4 (emphasis added).

The Court of Appeals concluded that the "public body" in question was the village council. This included the president and trustees, but not the village clerk. *Bitterman,* at *4. Because the clerk "was not a member of the council, she was not a member of a public body and was not a public official under MCL 15.273(1)." *Id.*

The decisions in *Bitterman* and *Whitney, supra,* are dispositive and require disposal of the OMA claims. The "public body" that is the governing body of the City of Royal Oak is the Royal

RECEIVED by MSC 12/10/2025 3:03:01 PM

Oak City Commission, whose elected members are the mayor and six commissioners. City Charter, Chapter 3, §§ 1 and 2[2]. The City Manager is not a member of the City Commission. He is therefore not a "public official" to which MCL 15.273(1) applies, and the City of Royal Oak itself is not subject to the personal liability expressed in that section of the OMA. Summary disposition is therefore warranted on the OMA claim as a matter of law. MCR 2.116(C)(8).

II. PLAINTIFF'S CONSTITUTIONAL DUE PROCESS AND VOID-FOR-VAGUENESS CHALLENGES ARE FRIVOLOUS, AS PLAINTIFF LACKS A PROPERTY INTEREST PROTECTED BY THE CONSTITUTION.

Quality has continued to assert constitutional claims under the Michigan and U.S. Constitutions for alleged violation of due process of law. Quality continues these claims despite the more-than-ample authority cited in the City's first Motion for Summary Disposition (**Ex A**, pp 10-13) , and the two recent, published cases of the Michigan Court of Appeals expressly holding that *first-time applicants for licenses do not have a property interest protected by the Constitution. Cary Investments v Mt. Pleasant*, ___Mich App___ (July 20, 2022); *Pinebrook Warren LLC v City of Warren, supra.* Yet, Quality persists in its due process claims, even furthering in the FAC that its claims for declaratory and equitable relief (Counts VIII and IX) are brought to vindicate its "constitutional due process rights." The appellate courts have unequivocally and unanimously held that in these circumstances, applicants like Quality do have not an interest protected by the Constitution.. Persisting in advancing these claims despite no

[2] "**Section 1.** The form of government provided for in this Charter shall be known as the Commission-Manager form. There is hereby created a Commission, consisting of a Mayor and six Commissioners, who shall be qualified electors of said City, and who shall be elected in the manner hereinafter specified, shall have full power and authority, except as herein otherwise provided, to exercise all the powers conferred upon the City.
Section 2. The Commission shall constitute the legislative and governing body of said City, possessing all the powers herein provided for, with power and authority to pass such ordinances and adopt such resolutions as they shall deem proper in order to exercise any or all of these powers possessed by said City."

RECEIVED by MSC 12/10/2025 3:03:01 PM

case authority to the contrary, and even in utter disregard that the two most recent decisions specifically applied this principle to applicants for recreational marijuana establishment licenses, *Cary Investments, supra; Pinebrook Warren, supra,* makes the FAC in this respect frivolous. The frivolous action statute defines frivolousness as advancing a "legal position …devoid of arguable legal merit." MCL 600.2591(3)(a)(iii).

Even more, Quality has doubled down on its constitutional claims by adding to its FAC a claim that the City's RME ordinance is void-for-vagueness. Count VII of Quality's FAC alleges that the Royal Oak marijuana ordinance is void because it confers "unfettered and unlimited discretion in application of the `competitive' criteria and the ultimate selection of successful applicants, " and it "gives applicants no notice whatsoever as to the weight that will be afforded to each 'competitive' criterion, how applicants will be distinguished from one another, or how applicants will be ranked." First Am Cplt, ¶¶ 46-47. As the City argued in its original dispositive motion as to consolidated plaintiff Exclusive Capital Partners, which asserted a similar void-for-vagueness challenge, the void-for-vagueness doctrine does not apply to these circumstances

A statute or ordinance may be void for vagueness if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the *trier of fact* unstructured and unlimited discretion in determining *whether the statute has been violated. Township of Yankee Springs v Fox*, 264 Mich App 604, 606; 692 NW2d 728 (2004) (emphasis added); *In Re England*, 314 Mich App 245, 256-257; 887 NW2d 10 (2016). As the U.S. Supreme Court explained in *Grayned v City of Rockford*, 408 US 104, 108-109; 92 SCt 2294; 33 L.Ed.2d 222 (1972):

> It is a basic principle of due process that an enactment is void for vagueness *if its prohibitions are not clearly defined.* Vague laws offend several important values. First, because we assume that man is free to steer between *lawful and unlawful conduct*, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries

RECEIVED by MSC 12/10/2025 3:03:01 PM

> for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut(s) upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of (those) freedoms.' Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked.' (Footnotes omitted)(Emphasis added).

Again, Quality does not possess any due process rights in this case, so the frivolousness of this position is even more patent. Moreover, the vagueness doctrine does not apply to a case like this in which Plaintiff merely objects to the stated criteria for evaluating licensing applications under the Royal Oak RME ordinance and that the ordinance conferred broad discretion on the City Manager to apply those criteria. *Plaintiff's conduct* is not at issue here, which is what the void-for-vagueness doctrine protects. It prevents persons from being prosecuted or charged with a violation of the law and subject to a penalty for that conduct if the "trier of fact" (i.e., a judge or jury) has unfettered discretion to determine whether the law has been violated. *Id.*. Plaintiff here has not been and is not being prosecuted or even accused of violating the law. The City has not sought to impose any type of penalty or sanction on Quality. The licensing provisions of the ordinance do not implicate Plaintiff's or any other unsuccessful applicant's due process rights[3]. There is no "conduct" regulated in this process, making the void-for-vagueness doctrine inapplicable. This claim fails to state a claim upon which relief can be granted. MCR 2.116(C)(8).

On September 1, 2022, the Michigan Court of Appeals approved for publication its Opinion in *In re TEM*, ___ Mich App ___ (2022), 2022 WL 2760849. The petitioners in that case had argued that the Adoption Code and Michigan statutes governing the Superintendent of the Michigan Children's Institute (MCI) were constitutionally void for vagueness because they left the MCI Superintendent with unlimited discretion. The Court of Appeals reiterated that the void-for-vagueness doctrine is an extension of constitutional guarantee of due process:

---

[3]This is distinguished from the property interest in a license that has been issued and is held by a *license holder*.

RECEIVED by MSC 12/10/2025 3:03:01 PM

> "A challenge to the validity of an ordinance predicated on vagueness invokes constitutional principles of due process." *Turunen v Dir of Dep't of Natural Resources*, 336 Mich App 468, 482; 971 NW2d 20 (2021). To show that a statute is void for vagueness, petitioners must show: "(1) it is overbroad and infringes First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in concluding whether the statute has been violated." (Citation omitted.) *Id.*, 2022 WL 2760849 at *4.

The Court held that the petitioners failed to overcome their burden of proving vagueness. The Court further reasoned that the petitioners failed to demonstrate that they hold a protected interest for purposes of due process. The court further held that the Adoption Code and statutes read in whole and together were evidence that the MCI Superintendent was not without standards or guidance.

Royal Oak's marijuana ordinance is clear and not vague and Quality, as a mere first-time applicant in the City, has no protected interest to invoke a right to due process. See **Ex A**, pp 5-7, 8-12, and **Ex B**, its reply brief, p 2. Therefore, this Honorable Court must grant the City's motion for summary disposition.

Even Quality's allegations of so-called subjective standards in the RME ordinance are unavailing. First, the MRTMA requires a "competitive" process but does not direct what shape or form that process must take. "Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed." *Guertin v State*, 912 F3d 907, 938 (CA 6 2019). Specifically, MRTMA does not prohibit a "subjective" or discretionary process. "Subjective," as Quality terms it, does not mean vague. Second, and more significantly, the criteria in the RME ordinance, especially those contained in RME Ord, § 435-4.C(4)(a)-(j), are *objective* criteria. Whether, for example, an applicant is currently in arrears in taxes to the City, or has a history of criminal convictions, is not subjective in the least. The fact that the RME ordinance confers discretion to the city manager as to the application of those criteria and the awarding of license slots does not render the ordinance constitutionally infirm.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Moreover, the first of the criteria listed in RME Ord, § 435-4.C(4) is, "(a) Review of the *applicant's completely submitted, detailed application* (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), *which illustrates the likely success of the proposed business*, in harmony with surrounding properties at the proposed site[.]" (Emphasis added.) The requirements of the "completely submitted, detailed application" are set forth in the Ordinance at § 435-4.A. See **Ex E**.

The full application documents required to be submitted include first and foremost a "prequalification for recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan." § 435-4.A(3)(a). Further, the ordinance requires submission with the application of a "Business and operations plan, *showing in detail the marihuana establishment's proposed plan of operation*[.]" Ord. 435-4.A(3)(h) (emphasis added). The details required of the business plan also address specific requirements of operating a marijuana establishment. See § 435-4.A(3)(h)(1).

Overall, the ordinance provides for a comprehensive review of the full application documents "which illustrates the likely success of the proposed business." § 435-4.C(4)(a). In requiring a review of the application containing all the, the city manager's evaluation is to assess the likely success of the proposed business. The remainder of the competitive criteria, which are all objectively described, simply add to the review. The ordinance is not without standards for the city manager to apply in evaluating each application. There is no claim in the FAC that the ordinance allows the not to consider the likely success of the proposed business in each application.

Therefore, irrespective of Quality's lack of an interest protected by due process, the RME ordinance is not vague, the vagueness doctrine does not apply here, and Quality's claim of void for vagueness must be summarily disposed of. MCR 2.116(C)(8).

RECEIVED by MSC 12/10/2025 3:03:01 PM

III. THE ROYAL OAK CITY MANAGER DID NOT VIOLATE MRTMA OR THE CITY'S ORDINANCE.

The previous argument dovetails into the FAC claim that the City Manager violated the City's RME ordinance by not conducting a competitive process. Although the MRTMA, MCL 333.27956, requires a competitive process where there are more applications for licensure than licenses available, the Act is silent on what that competitive process must look like. By its very nature, a competitive process would necessarily require that the applications be compared with one another. Contrary to Quality's claim, the City Manager testified at deposition that he compared the applications to one another. **Ex D**, dep Paul Brake 378:1-3. ("Q: During the competitive process, did you compare the applications with one another? A: Yes.") As a result of that process, he decided on the two applicants best suited for municipal licensure.

The FAC also claims that the City Manager did not rank the applicants, allegedly in violation of the City's ordinance. Quality apparently construes this to mean assigning an ordinal number (first, second, third, etc.) to every application. The ordinance does not contain a specific definition of "ranking." It merely states that, "The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. *This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled.*" Ord. § 435-4.(C)(4) (emphasis added). The City Manager did rank the applications into three tiers: Tier 1 were the two leading applications that were approved for municipal license slots, and who eventually have obtained licenses. Tier II were placed on "standby" status, so that if one of the initially successful applicants did not or could not successfully complete the process to full licensure, the vacancy in a license slot would be filled from those on standby status. Tier III were those applications deemed deficient or devoid of substance from the outset. See **Ex A**, Motion for Summary Disposition Ex 2, Affidavit of Paul Brake, ¶¶ 12-15; **Ex F**, Def City's Answers to Interrogatories of Pl, BDE Warren (consolidated),

RECEIVED by MSC 12/10/2025 3:03:01 PM

Interrogatory 9, pp 7-8. Perhaps more importantly, however, once the two license slots were filled, at that juncture, there was no need to rank any of the other applications. **Ex D**, Dep Paul Brake, 378:4-7 ("Q: And with respect to the ranking order of the applications, once two licenses -- license slots had been awarded was there any need to rank the others? A: No.") The law does not require the doing of a futile or useless act. *Cichecki v Hamtramck Police Dep't*, 382 Mich 428, 437; 170 NW2d 58 (1969); *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 669; 66 NW2d 92 (1954); *Miller Bros v Dep't of Natural Resources,* 203 Mich App 674, 681; 513 NW2d 217 (1994).

Quality also complains in its pleading that the city manager did not follow the MRTMA, but instead followed the City's ordinance. FAC, ¶¶ This argument entirely disregards a significant portion of the ordinance that contains the "completely submitted, detailed application" whose components are set forth in § 435-4.A (**Ex E**). The ordinance actually requires application materials that specifically relate to the MRTMA. Indeed, other than identification of the applicant, the first item required to be submitted to the City is a "prequalification from the state for either a recreational marihuana establishment or a medical marihuana facility." Ord. § 435-4.A.(3)(a). Further application materials require the applicant to demonstrate what steps the applicant proposes in operating a marijuana related business. Ord. § 435-4.A(3)(b), (h)[1]-[6], (j), (k) and (l). **Ex E**.

For all of Quality's complaints that the city manager did not apply the MRTMA and considered only the ordinance, Quality never identifies any provision of the MRTMA that applied to the competitive process and that the city manager did not consider. Moreover, Quality overlooks that the application requirements and review of those requirements in fact deal in detailed fashion with the operation of a marijuana business for compliance with MRTMA. Quality's FAC does not address the city manager's evaluation of each application and whether it "illustrates likely success as a marijuana business," the first criterion of the competitive process set forth in Ord. § 435-4.C(4)(a).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff has also, again, restated its claims that the City has violated the 1,000-foot buffer requirement contained in MCL 333.27959(3), which states in pertinent part:

> 3. Except as otherwise provided in this section, *the department* shall approve a *state license application* and issue a *state license* if:
>
> ***
>
> (c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement[.] (Emphasis added.)

MCL 333.27953(b) defines "the department" as "the department of licensing and regulatory affairs."

As with any other legislation, the words and phrases of MRTMA must be given their plain and ordinary meaning. *Pohutski v City of Allen Park*, 465 Mich 675; 683 NW2d 219 (2002); *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000). Courts may not speculate about an unstated purpose or probable intent of the legislature beyond the language used in the statute. *Pohutski, supra*, at 683. These well-established principles of statutory construction do not require this court to go further than the plain language of MCL 333.27959(3).

While Quality complains that the City has violated MCL 333.27959(3) and its own ordinance, the statute itself expressly addresses the obligations of the State of Michigan through the department of licensing and regulatory affairs. The statute only confers local, municipal discretion in adopting an ordinance in which the 1,000 foot buffer is relaxed, but this section of MRTMA does not place any obligations on the local municipality.[4]

Thus, the City Ordinance does not violate the MRTMA. Indeed, it specifically adopts criteria for applications that deal directly with the operation of a marijuana business. In this respect, then, Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). There is further

[4] For all the volume of words spent in the FAC arguing about the Oakland Schools Technical Center (OSTC) and its proximity to the Gatsby location, OSTC is glaringly absent from this or the other consolidated cases and is not complaining to this court about the issuance of a license to Gatsby.

RECEIVED by MSC 12/10/2025 3:03:01 PM

no genuine issue of material fact that the City Manager conducted an appropriate, competitive process, that he ranked the applicants, and that he properly exercised his broad discretion under the Ordinance by choosing the applicants for two license slots that were best suited to operate in compliance with MRTMA within the City of Royal Oak. The City of Royal Oak is therefore entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

IV. PLAINTIFF'S CLAIMS ARE MOOT AND NOT JUSTICIABLE.

In Count IX and in its prayer for relief, Quality seeks preliminary injunctive relief to prevent the City of Royal Oak from issuing marijuana licenses to the successful applicants. However, as demonstrated in the original Motion for Summary Disposition, the City has already issued two licenses to Gatsby Cannabis and Royal Treatment. **Ex A.** In this respect, then this relief is unavailable to Quality. Furthermore, Quality Roots moved at the outset of this case for a preliminary injunction to prevent the City from proceeding through the application process to licensure of the successful applicants. The Court without oral argument denied that request by Order of March 9, 2022, expressly holding that "Plaintiff has not demonstrated a likelihood of success on the merits nor irreparable harm."

> Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case. See *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy. *Id. Pinebrook Warren*, 2022 WL 3691938 at *9.

Count IX and the request for relief also seek the Court to invalidate the licenses that the City has issued to Gatsby and Royal Treatment. Unlike Plaintiff, however, Gatsby and Royal Treatment are *current license holders*, not merely first-time applicants, and they do have a property interest in their respective licenses. Thus, those are rights for which they may not be deprived without due process of law. Even the case cited in ¶ 213 of the FAC, *Roseland Inn, Inc v McClain,* 118 Mich App 724, 731; 325

RECEIVED by MSC 12/10/2025 3:03:01 PM

NW2d 551 (1982), recognized that a current holder of a license may not be subjected to arbitrary reasons for denial of its renewal. See also, *Cary Investment, supra* and *Pinebrook Warren, supra*, where those courts distinguish between first-time applicants and current holders of licenses. Even more so, Royal Treatment is not a party to this case and the Court does not have jurisdiction over Royal necessary to take a property right away from it.

Mootness being a factual issue, there is no genuine issue of material fact that precludes the Court from holding that the claims with respect to issuance of Royal Oak RME retailer licenses are moot. The City is entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH
& AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

PROOF OF SERVICE

I certify that on September 13, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ *Anne McClorey McLaughlin*

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT A

FILED Received for Filing Oakland County Clerk 3/11/2022 4:58 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

JSG

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

Case No. 2022-192383-CZ

-vs-

HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan municipal corporation, and PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Defendants.

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

NOTICE OF HEARING

RECEIVED by MSC 12/10/2025 3:03:01 PM

PLEASE TAKE NOTICE that the Defendant CITY OF ROYAL OAK's *Motion for Summary Disposition* will be brought on for hearing before the Honorable Rae Lee Chabot of the Oakland County Circuit Court on a **date and time to be set by the court**.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

DATED: March 11, 2022

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

Case No. 2022-192383-CZ

-vs-

HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan municipal corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Defendant PGSH Holdings, LLC
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 12/10/2025 3:03:01 PM

Defendant, CITY OF ROYAL OAK, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., moves the Court for summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim upon which relief can be granted, and (C)(10) for lack of a genuine issue of material fact. This motion is more fully supported by the Brief in Support of Defendant's Motion for Summary Disposition and the exhibits appended to it.

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

As has become increasingly common, by adopting ordinances to allow licensing of recreational marijuana establishments (RME) under the Michigan Regulation and Taxation of Marihuana Act (MRTMA) and by implementing those local regulations, municipalities have bought themselves litigation by the unsuccessful applicants in virtually every instance. This case is no different. Plaintiff claims that because it is an existing marijuana business with more experience than those initially selected through the competitive process required by state law and City ordinance, it is per se the "best suited" to operate in compliance with MRTMA within Royal Oak. But even the statute does not define what is "best suited" or guarantee that any applicant for an adult use (recreational) marijuana license will be successful. Naturally, an unsuccessful applicant will be disappointed, but

RECEIVED by MSC 12/10/2025 3:03:01 PM

disappointment does not translate to a right either to challenge the award of (in Royal Oak's case) a "license slot," to another applicant or to compel the issuance of a license to the losing bidder.[1]

Plaintiff seeks declaratory and injunctive relief in this case, requesting that the Court declare the City of Royal Oak's process unlawful under the MRTMA and enter equitable relief preventing the City from continuing its process and ultimately, if appropriate, issuing RME licenses to the successful applicants. But the allegations in the Complaint and the factual background do not support relief sought in this case, warranting summary disposition in Defendant's favor.

FACTUAL BACKGROUND

In 2018, the electorate of the State of Michigan voted to adopt Initiated Law 1 of 2018, the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951, *et seq.*, by a margin of 55-45%. Wojcik, *Royal Oak Extending Recreational Marijuana Opt-Out Period*, Royal Oak Review, Dec 23, 2019, https://www.candgnews.com/news/royal-oak-extending-recreational-marijuana-optout-period-116316. last accessed March 7, 2022. In the City of Royal Oak, approval was even greater, with 70% of Royal Oak voters approving of the new measure to legalize recreational marijuana. *Id.*

As a result, after a period of opting out of the marijuana licensing process (*Id.*), the Royal Oak City Commission adopted a recreational marijuana establishment licensing ordinance (RME ordinance) in July 2020, Chapter 435 "Marihuana" (**Ex 1**), under the authority granted by MRTMA, MCL 333.27956(2) and (3). The ordinance authorized licenses for growers (one each for classes A, B and C), one processor, a total of two (2) retail establishments and two (2) microbusinesses, as defined

[1] Michigan law provides for writ of mandamus, a vehicle to compel the exercise of discretion by a public official, where the plaintiff has "a clear legal right to performance of the specific duty sought to be compelled and that the defendant has a clear legal duty to perform such act...." *Grabow v Macomb Twp*, 270 Mich App 222, 226; 714 NW2d 674 (2006) (internal quotations and citations omitted), but not the manner in which the official is to exercise that discretion to reach a particular outcome sought by the petitioner. *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994). Apparently, Plaintiff recognizes that it has no right to mandamus to compel the City of Royal Oak or its Manager to exercise his discretion under the City's RME ordinance in Plaintiff's favor.

RECEIVED by MSC 12/10/2025 3:03:01 PM

in the MRTMA. RME Ord, § 435-2(A) and (B). Because there are limitations of the number for each type of license, the Ordinance further provides for the City Manager to open a "window" for receipt of applications for the various types of RME licenses. RME Ord, § 435-4(C)(1), to evaluate the applications and assign a "license slot" to successful applicants for each type of license. RME Ord, § 435-4(A)(2). If there are more applications received than available licenses, the ordinance directs the City Manager to conduct a "competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City." RME Ord, § 435-4(C)(2). The City Manager is to conduct this process by considering various criteria established by the Ordinance. RME Ord, § 435-4(C)(4)(a)-(j).

In accordance with the ordinance, Royal Oak City Manager Paul Brake opened a window from December 7, 2020- February 1, 2021, for receipt of RME license applications. Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications. (**Ex 2**, Affidavit of Paul Brake, ¶ 8[2]). Plaintiff, Quality Roots, applied for two (2) RME retailer licenses (**Ex 3**). Mr. Brake conducted his evaluation and assigned license slots to one applicant, Intervening Defendant PGSH Holdings (Gatsby), for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment. *Id.*, ¶ 12.

The City Manager notified Plaintiff that its application was not initially chosen as a result of the competitive process for the retailer license slot in the zoning district where it applied. (**Ex 3**, Dec 15, 2021 letter to Plaintiff). Plaintiff was one of several applicants placed on a "standby" or waiting list, so that if an applicant failed to complete or pass the remainder of the process, the available license

[2] City Manager Brake's Affidavit was also attached as Exhibit 2 to Defendant's Response to Plaintiff's Motion for Preliminary Injunction and Order to Show Cause.

RECEIVED by MSC 12/10/2025 3:03:01 PM

slot(s) could be filled by the next highest ranked applicant. *Id.*, ¶ 15. Manager Brake did not deny Plaintiff's application, but allowed Plaintiff to remain in consideration if one of the other license slots was unable to be filled. *Id.*; Ex 3. If the other recipients of a license slot complete the process and are eventually licensed, then the City Manager will issue a letter denying Plaintiff's application. *Id.* The City Commission has not yet scheduled site plan approval for any license slot recipient, one of the further necessary steps for completion prior to issuance of an RME license. *Id.*, ¶ 13.

Plaintiff has filed this suit seek declaratory and injunctive relief based on a purported violation of the dormant Commerce Clause, rights of due process and equal protection under both the U.S. and Michigan Constitutions, and facial and as-applied challenges to the City's ordinance allegedly in violation of the MRTMA.

LEGAL ARGUMENT

I. ROYAL OAK HAS NOT VIOLATED THE OPEN MEETINGS ACT.

Plaintiff claims that the process implemented by the Royal Oak city manager by consulting with other department heads to seek their advice in making his determination of which applicants to award license slots violated the Open Meetings Act (OMA), MCL 15.261, *et seq*.

The OMA provides that all decisions and deliberations of a "public body" must be held at a meeting open to the public and held in a place available to the general public. MCL 15.263(1)-(3). The OMA expressly defines "public body":

> "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

"Public body" connotes a collective entity. *Herald Co v City of Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). In *Herald*, the Supreme Court concluded that, "[A]n individual executive acting in his

RECEIVED by MSC 12/10/2025 3:03:01 PM

executive capacity is not a public body for the purposes of the OMA." *Id.*, at 130.

In *Herald*, the Bay City manager made a hiring recommendation, per the city charter, to serve as the new chief of the city's fire department. The city manager created a committee to advise him in that task. The manager took the advice and developed a hiring recommendation to the city council. A local newspaper challenged this process under the OMA, claiming that the committee was a public body to which the OMA applied, and that the committee's meetings had been in violation of the OMA.

The Supreme Court ultimately disagreed with the plaintiff's argument. It also distinguished the plaintiff's citation to other cases[3] where the Court had held that committees created by statute or by other public bodies themselves exercised governmental authority were public bodies and subject to the OMA. *Id.*, at 133-135.

The Royal Oak RME ordinance, § 435-2(E), provides that, "The City Manager is granted the power *to fully and effectively* implement and administer the municipal license application process." (Emphasis added.) § 435-4(C) of the ordinance confers the following decision-making authority for the selection process to determine recipients of City licenses:

> 1. If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.
> 2. At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.
>
> ***
>
> 3. The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City *as determined*

[3] *Menominee Co Taxpayers Alliance, Inc v Menominee Co Clerk,* 139 Mich App 814; 362 NW2d 871 (1984); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents,* 444 Mich 211; 507 NW2d 422 (1993).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> *by the City Manager or his or her designee*. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. (Emphasis added.)

Under the ordinance, then, the City Manager is the decision-making authority for awarding license slots, and City Manager Brake made those decisions for certain types of licenses available in this instance. Ex 2, ¶ . As an individual executive official and the chief administrative officer exercising his executive administrative authority[4], the city manager is not a "public body" to which the OMA applies. *Herald, supra.*

Nor does City Manager Brake's seeking advice from other City officials or even meeting with them violate the OMA. Manager Brake attests that he consulted with other City officials, whom Plaintiff has termed the "Ranking Committee," in an attempt to make that so-called "committee" a public body and subject to the OMA. However, the Supreme Court rejected this very argument in *Herald*:

> Nor do we agree with the contention that the committee that was formed by the city manager was subject to the requirements of the OMA under the rationale in *Booth*. The city manager may have delegated some of his authority to the committee he created and, were the city manager himself subject to the OMA, the committee he created might also have been subject to the OMA pursuant to *Booth*. *Here, however, because the city manager was not subject to the OMA, Booth has no application*. Because the city manager's committee in this case was not "empowered by state constitution, statute, charter, ordinance, resolution, or rule," it was not a public body for purposes of the OMA, and the committee's actions did not violate that statute. *Id.*, at 135-136 (emphasis added).

This circumstance is on all-fours with the case before this Court. Importantly, there is no provision in the Royal Oak RME ordinance for decision-making by committee. Ex 1, Chapter 435. Rather, the ordinance confers upon the City Manager the authority "to fully" implement the scheme created in the ordinance. The so-called "ranking committee" here has no legal status as a public body, but is simply a collection of administrative staff providing opinions and advice to the City Manager to

[4] See discussion of executive authority in *Coeus v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued January 20, 2022 (Docket No. 353844) – **Ex 4**.

RECEIVED by MSC 12/10/2025 3:03:01 PM

help *him* carry out *his* functions and duties under the ordinance.

The city manager sought input from the various administrative staff, but he alone made the decisions under his authority conferred by the ordinance. Ex 2, ¶ 11. He did not even delegate his authority in any respect to the other administrative officials, but simply sought their advice as to the specific areas of expertise relevant to the applications. *Id.* No other person's opinion was dispositive and there was no consensus or vote taken to reach the final decision to award license slots. *Id.*

The City Manager's status as an individual executive official exercising his own authority conferred by the ordinance is not a public body to which the OMA applies. *Herald, supra.* Thus, the holding in *Herald* directly applies to this case and there has been no violation of the OMA here. Plaintiff has failed to state a claim upon which relief can be granted, and there is no genuine issue of material fact that would make the City Manager a "public body" subject to the OMA.[5]

II. PLAINTIFF'S CLAIMS ARE NOT RIPE, AS PLAINTIFF HAS NOT BEEN DENIED A LICENSE.

The doctrine of ripeness is closely related to the standing doctrine in that it focuses on the timing of the action. *Van Buren Chrtr Twp v Visteon Corp*, 319 Mich App 538, 553-554; 904 NW2d 192 (2017), *Mich. Chiropractic Council v. Comm'r of Office of Fin. & Ins. Servs.*, 475 Mich. 363, 379; 716 NW2d 561 (2006) (opinion by Young J.) (emphasis omitted), overruled on other grounds by *Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.*, 487 Mich. 349; 792 NW2d 686 (2010). The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. *Id.* A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. *Id.*; *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (2008).

[5] The OMA also authorizes a cause of action for its violation against "a public body [that] is not complying with [the OMA]." MCL 15.271(1). If, as Plaintiff posits, the city manager or the so-called ranking committee is not complying with the OMA, then that public body, and not the City of Royal Oak, is the proper party to sue for violation of the OMA. See MCR 2.201(C)(5).

RECEIVED by MSC 12/10/2025 3:03:01 PM

"'A challenge to the validity of a zoning ordinance 'as applied' ... is subject to the rule of finality.'" *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 764; 630 NW2d 646 (2001), quoting *Paragon Properties Co v Novi,* 452 Mich 568, 576; 550 NW2d 772 (1996). "The legislatively established authorities for enacting zoning ordinances, and for granting variances, must render a final decision on a zoning request before the issue is ripe for judicial review." *Vestevich, supra*, citing *Paragon, supra*, at 573–583. Plaintiff is effectively challenging the application of the ordinance by the City Manager here, but there is not yet a final decision.

In the present case, Quality Roots has not been denied a license. If either of the two applicants granted a license slot fails to complete the process, Plaintiff might still obtain a license slot. However, this is entirely speculative at this point. If the City Manager ultimately denies Plaintiff's applications, as explained in Ex 3, then it has a right to appeal that determination. Ex 1, § 435-4(D)(10). In either case, there has not been a final decision to deny Plaintiff's applications. Plaintiff's filing here is therefore premature as not ripe, and if its applications are ultimately denied, it must exhaust administrative remedies available to it under the ordinance before resorting to litigation. See *Judges of the 74th Judicial Dist v Bay County*, 385 Mich 710, 727-728; 190 NW2d 219 (1971); *School Dist of the City of Benton Harbor v State Tenure Comm*, 372 Mich 270; 126 NW2d 102 (1964).

There is no genuine issue of material fact that the licensing process is not final and Plaintiff's claims here are therefore not ripe and entirely speculative at this juncture. Defendant is therefore entitled to summary disposition. MCR 2.116(C)(10).

RECEIVED by MSC 12/10/2025 3:03:01 PM

III. PLAINTIFF'S CONSTITUTIONAL CLAIMS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiff claims a violation of the due process guarantees of the federal and Michigan Constitutions, US Const, Am XIV, § 1, as well as Const 1963, art I, § 17[6]. The Michigan constitutional provision is construed coextensively with its federal counterpart. *Cummins v Robinson Twp,* 283 Mich App 677, 700–701; 770 NW2d 421 (2009); *Shepherd Montessori Center Milan v Ann Arbor Charter Twp,* 486 Mich 311, 319-320; 783 NW2d 695 (2010). Therefore, federal law interpreting the U.S. Constitution guarantees of due process and equal protection applies to construction of the Michigan versions of those protections.

In order to assert *any* of the constitutional claims, Plaintiff must establish a liberty or property interest protected by the rights asserted. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 740; 605 NW2d 18 (1999). "'Constitutionally protected property interests are not created by the Constitution itself but rather by 'existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.' " *RSWW Inc v Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005). To establish a property interest, a person must have more than an abstract desire for it or unilateral expectation of it; rather, it must have a "legitimate claim of entitlement to it"- in this case, a clear right or entitlement to a recreational marijuana establishment license slot. *Id.,* citing *Board of Regents v Roth*, 408 US 564, 577 (1972); *Braun v Ann Arbor Charter Twp*, 519 F3d 564, 573 (CA 6, 2008); *Youkhanna v Sterling Heights*, 332 FSupp3d 1058, 1068 (ED Mich, 2018).

"[A] party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *Id* at 435, quoting *Med Corp, Inc v*

[6] "No person shall be … deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

RECEIVED by MSC 12/10/2025 3:03:01 PM

City of Lima, 296 F3d 404, 409 (CA 6, 2002). In this case, Plaintiff applied for licenses to operate recreational marijuana retailer establishments. Whether to award or to deny the license is wholly within the City Manager's discretion. RME Ord, § 435-2(E). Therefore, Plaintiff's interest in its application and in a license is, at best, merely a unilateral expectation, and does not create a property right. Nor may Plaintiff claim a property right in government procedures themselves. *Janosek v City of Cleveland*, 718 F3d 578, 582 (CA 6, 2013), citing *Richardson v Twp of Brady,* 218 F3d 508, 517 (CA 6, 2000). Therefore, Plaintiff does not have a property right which is protected by the Constitution here.

This conclusion does not change because of Plaintiff's allegations of arbitrary or capricious actions. "To succeed on a substantive due process claim based on this theory, a plaintiff is required to show that '(1) a constitutionally protected property or liberty interest exists, and (2) the constitutionally protected interest has been deprived through arbitrary and capricious action.'" *Paterek v Village of Armada*, 801 F3d 630, 648 (CA 6 2015), quoting *Braun, supra.*

The U.S. Sixth Circuit Court of Appeals considered a claim of deprivation of property without due process of law in a case involving an applicant for a license permitted by state law and local ordinance. *Wojcik v City of Romulus*, 257 F3d 600 (CA 6 2001) is particularly applicable in this case, where the court affirmed that Michigan law confers a property interest to a liquor license only upon *a current holder* of the license. The Court relied on its opinion in *Shamie v City of Pontiac*, 620 F2d 118 (CA 6 1980), stating that "a first-time liquor license applicant was not entitled to procedural due process rights under Michigan law." *Wojcik, supra.* The Court continued:

> [U]nder Michigan law an applicant for a liquor license, as distinguished from a license holder facing renewal or revocation proceedings, does not have a protected interest. The holder of a liquor license may well have a legitimate claim of entitlement to its renewal. One applying for a liquor license has no such claim of entitlement. In the former case there is a 'property' interest; in the latter there is none. *Shamie v City of Pontiac*, 443 F Supp 679, 683 (E D Mich 1977), aff'd in part, 620 F.2d 118. Similarly, first-time applicants for an entertainment permit are likewise not entitled to due process. *Bradfield v Blesma*, 675 F. Supp. 382 (W D Mich 1987).

Wojcik, 257 F3d at 610.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The *Wojcik* Court relied upon *Morse v Liquor Control Comm'n*, 319 Mich 52, 66 (1947). In that case, a liquor licensee of a class 'A' license was denied upon application a class 'B' license. Affirming the denial, the Supreme Court held:

> Notwithstanding that the liquor business is entirely lawful, no one has an inherent right to a liquor license which is a privilege granted by the State under proper restrictions. (Citation omitted.) A liquor license is not a contract in the sense that the licensee has thereby acquired any vested or property rights, but is in the nature of a permit subject to the control of the State in the exercise of its police power. (Citation omitted.) Although [the] defendant … may be granted a renewal of his hotel class 'A' license … we find that he is not entitled to a hotel class 'B' license.

Like *Wojcik, Shamie* and *Bradfield*, this case involves a license application in a pervasively regulated industry. The MRTMA is designed similarly to the Liquor Control Code of 1998, MCL 436.1101, *et seq*, featuring implementation by regulatory rules and oversight by a state board (the Liquor Control Commission) with local government regulation as to number and types of licenses available. There is no reason to treat Plaintiff, a first-time applicant for a Royal Oak recreational marijuana establishment license, any differently than if it had applied for a liquor license. There is no legitimate claim of entitlement to an RME license any more than for a liquor license. Therefore, Plaintiff does not have a property interest for purposes of its claims of due process violations under the U.S. and Michigan Constitutions alleged in Counts III and IV of the Complaint.

The Michigan Court of Appeals adopted the foregoing rationale and upheld summary disposition on these very grounds in *Coeus, LLC v City of Walled Lake*, unpublished decision *per curiam* of the Court of Appeals issued Jan 20, 2022 (Docket No. 353844), (**Ex 4**). There, the plaintiff sued the city under various theories, including Michigan constitutional claims of due process and equal protection, for the city's grant of a medical marijuana license to another applicant and denial of plaintiff's application. The Court applied the foregoing law related to first-time liquor license applicants to the plaintiff who applied for a first-time medical marijuana license, and held that Plaintiff had no property interest in a medical marijuana license that had not been issued. *Id.*, sl. op. at p 10.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The second clause of Art I, § 17 provides Plaintiff no help, either. That clause reads, "The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." The appellate courts have unanimously interpreted this clause to apply only to "investigations and hearings". *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 210; 684 NW2d 910 (2004) ("Plainly, the constitutional provision at issue here provides no protection unless plaintiff's claims arose out of an investigation. See *Johnson v Wayne Co.,* 213 Mich App 143, 155, 540 NW2d 66 (1995) (fair and just treatment clause did not apply because case did not involve a hearing or investigation))." Plaintiff has not alleged an investigation or a hearing, and its due process claim therefore fails to state a claim upon which relief can be granted. MCR 2.116(C)(8).

IV. ROYAL OAK'S ORDINANCE DOES NOT VIOLATE MRTMA.

MRTMA, specifically MCL 333.27956 and 27959, provides municipalities with discretion to adopt an ordinance that sets forth a competitive process, which Royal Oak here did. The Royal Oak City Commission adopted its RME ordinance in accordance with §§ 6 and 9(4) of MRTMA:

> Sec. 6. 1. [A] municipality *may* completely prohibit or limit the number of marihuana establishments within its boundaries. …
>
> 2. A municipality *may* adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that:
>
> (a) establish reasonable restrictions on public signs related to marihuana establishments;
>
> (b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;
>
> ***
>
> 3. A municipality *may* adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.
>
> 4. A municipality *may* charge an annual fee of not more than $5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality. MCL 333.27956(1)-(4) (emphasis added).

RECEIVED by MSC 12/10/2025 3:03:01 PM

The provisions of the RME ordinance that Plaintiff claims violate MRTMA in fact do not conflict with MRTMA. The qualifications imposed by the ordinance to obtain a license do not conflict with MRTMA or the "rules promulgated by the department". MCL 333.27956(2) and (3).

MCL 333.27959(4) allows municipalities to use local criteria when deciding among competing applications by a competitive process for licenses:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act . . . *the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality*." (Emphasis added.)

Plaintiff recognizes that the statute requires that the City select applicants who are best suited to operate in compliance with MRTMA but entirely disregards the crucial language, "within the municipality", when focusing on the command in the above section. "[W]ords in a statute must be read harmoniously to give effect to the statute as a whole, and 'every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.'" *People v Jones,* 301 Mich App 566, 578 (2013), quoting *People v Peltola,* 489 Mich 174, 181 (2011). In reading Section 9(4) of MRTMA in whole, where the number of applications exceeds the available licenses, a municipality must create a competitive process that is *intended* to select applicants that are best suited to operate in compliance with MRTMA, as well as best suited to operate in the particular municipality.

Read in full and in its proper context, § 9(4) of MRTMA gives municipalities a level of local discretion in selecting criteria that comply with MRTMA and that satisfy the municipality's own goals and particularized concerns of each community. It makes sense that MRTMA would confer municipalities discretion in deciding what applicants are best for their own communities, because § 6(1) of the Act gives broad local discretion in choosing whether to even allow marijuana businesses in the first place. MCL 333.27956(1). It would be illogical to place strict requirements on municipalities in one section of MRTMA, while at the same time giving broad discretion to municipalities in another.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Additionally, the statute clearly (and correctly) contemplates high interest in adult use marijuana businesses where they are authorized by ordinance, and that municipalities would receive more applications than licenses available. Thus, local ordinances must supplement the Act's requirements to establish the process intended to select the best applicants to operate in each municipality. Otherwise, the MRTMA could have prohibited *any* additional requirements other than those expressed in the statute. It did not. Instead, the only limitations it placed on other ordinances is that they must "not [be] unreasonably impracticable and do not conflict with this act." MCL 333.27956(2). Therefore, in foreseeing this problem, the statutory language grants communities the ability to distinguish between many equally qualified applicants, as the City did. Furthermore, the phrase "intended to select applicants" is also crucial here. The language in MCL 333.27959(4) focuses on the intent of the municipalities, not any other entity, in directing them to choose an applicant through a process best suited to operate within their communities.

Plaintiff's interpretation of § 9(4) of MRMTA is flawed and inaccurate since the City adopted criteria in the ordinance that allows it to select the applicants best suited to operate in the City while also complying with MRTMA. If the City could not add to the statute's selection criteria in MRTMA, there would be no reason for the statute to allow municipalities to restrict the number of licenses. Here, a prerequisite to applying for a license in the City was prequalification from the Marijuana Regulatory Agency (MRA). RME Ord, § 435-4(A)(3)(a). Once prequalified by the MRA, the applicants are already in compliance with MRTMA and there would be no reason (or ability) for the City to turn down any of the 31 license applications it received. That was clearly not the legislative intent of MRTMA, as it unambiguously provides, "a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries". MCL 333.27956(1).

The competitive process MRTMA requires is meant to select applicants from a pool of otherwise qualified applicants who have already demonstrated their ability to comply with MRTMA.

RECEIVED by MSC 12/10/2025 3:03:01 PM

But an applicant may be "best suited" relative to other applicants who have demonstrated an ability to comply with MRTMA because it can operate in a manner which brings additional benefits to the community, or better achieves the community's other objectives, or simply provides a better fit for the community. To have a competitive process among applicants who all have demonstrated their ability to operate in compliance with MRTMA, it follows that the City should have – and that MRMTA contemplates the City will have – the ability to consider and weigh the full range of what an applicant brings to the table.

The MRA requires a two-step process for state marijuana licensing. The State will not allow the applicant's State step two application for a State adult use marijuana license to proceed without an attestation signed by the municipality where the applicant wishes to operate and leaves it to each municipality to select the best suited to operate. The State does not interfere with the selection process. The City adopted a process that was intended to select the applicants best suited to operate a marijuana business in the City and in compliance with MRTMA. There is no doubt the process was competitive for retailer establishment licenses since the City received 31 applications. The ordinance expands upon the applicant requirements of MRTMA and does not directly conflict with MRTMA. A "direct conflict" exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. *Ter Beek v City of Wyoming,* 495 Mich 1, 20; 846 NW2d 531 (2014), *People v. Llewellyn,* 401 Mich. 314, 322, n 4; 257 NW2d 902 (1977).

The Michigan Supreme Court, in *Miller v Fabius Twp Bd, St Joseph Cty,* 366 Mich 250 (1962), held that a statute and ordinance can coexist when the only difference between them is that the ordinance goes further in its prohibition, not countering the statute's prohibition. *Id.* at 256-257. The Court in *Miller* also held that, "…an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict" and "[u]nless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of

RECEIVED by MSC 12/10/2025 3:03:01 PM

uniformity in detail". *Id.* at 256, 257. More recently, the Michigan Supreme Court, in 2020, held that a local ordinance is not preempted by State statute if the ordinance is not in direct conflict with the statute. *DeRuiter v Byron Twp,* 505 Mich 130 (2020). In *DeRuiter,* the Court ruled that the local zoning ordinance that was the subject of that case only added to the statute, Michigan Medical Marihuana Act (MMMA), MCL 333.26421, *et seq*, and did not contradict the requirements in the statute. *Id.* at 147.

In the absence of a direct conflict between the City's licensing standards and evaluation criteria, there is no conflict. The City ordinance cannot be found to violate MRTMA by adding additional selection criteria and considerations to establish a competitive process to determine which applicants – among all of the qualified applicants – "are best suited to operate in compliance with [MRTMA] within the municipality" in accordance with MCL 333.27959(4).

Plaintiff also complains of the award of a license slot to Intervening Defendant Gatsby Cannabis, because it is located less than 1,000 feet from a purported "school." Whether the Oakland Technical Center qualifies as a school or not, the City has the authority to reduce the statutory distancing requirement.

MRTMA provides certain standards in MCL 333.27958 for state licensure of a marijuana establishment. One of these criteria is that, "the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement[.]" MCL 333.27958(3)(c). To this end, in conjunction with the RME licensing ordinance, Royal Oak also adopted amendments to its zoning ordinance under its zoning authority conferred by the Michigan Zoning Enabling Act, MCL 125.3101, *et seq*., allowing marijuana uses in certain zoning districts as a special land use. Zoning Ordinance (ZO), § 770-52.1(B). (**Ex 5**). The special land use

RECEIVED by MSC 12/10/2025 3:03:01 PM

process requires site plan review and recommendation by the Planning Commission before a final decision by the City Commission. *Id.*

The Royal Oak ordinance does contain the 1,000-foot distancing requirement. ZO, § 770-52.1(B)(3). However, it also bestows discretionary authority to deviate from the strict requirements of the ordinance upon the City Commission: "Deviations from applicable setback, parking, a*nd other requirements* may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section." ZO, § 770-52.1(B)(14) (emphasis added). Thus, the City Commission will have to decide whether the purported school falls within the definition of a school to which the buffer requirement applies, and if so, whether it will authorize a deviation from the distancing standard in conjunction with Gatsby's application for site plan approval.

Thus, the City Ordinances do not violate the MRTMA. Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). There is further no genuine issue of material fact, and Royal Oak is entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH
& AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

PROOF OF SERVICE

I certify that on March 11, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 1

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 435. Marihuana

[HISTORY: Adopted by the City Commission of the City of Royal Oak as indicated in article histories. Amendments noted where applicable.]

Article I. Recreational Marihuana Establishments

[Adopted 7-27-2020 by Ord. No. 2020-06]

§ 435-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed as follows:

APPLICANT

Unless specifically stated to mean a state license, means an individual, organization, partnership, company, corporation, enterprise, or other entity that applies for a municipal license as well as the person or persons associated with the applicant.

A. For purposes of this definition, an applicant includes a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

(1) For an individual or sole proprietorship: the proprietor and spouse.

(2) For a partnership and limited liability partnership: all partners and their spouses.

(3) For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.

(4) For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

(5) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(6) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(7) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(8) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

B. For purposes of this definition, an applicant does not include:

(1) A person who provides financing to an applicant or licensee under a bona fide financing agreement at a reasonable interest rate.

(2) A franchisor who grants a franchise to an applicant, provided that the franchisor does not have the right to receive royalties based upon the sale of marihuana or marihuana-infused products by the applicant who is a franchisee. Nothing herein shall be construed to preclude a franchisor from charging an applicant who is a franchisee a fixed fee. As used in this definition, the terms "franchise," "franchisor," and "franchisee" shall have the meanings set forth in Section 2 of the Franchise Investment Law, 1974 PA 269, MCLA 445.1502, as may be amended.

(3) A person receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation.

(4) A person receiving reasonable payment under a licensing agreement or contract concerning the licensing of intellectual property, including, but not limited to, brands and recipes.

APPLICATION

An application for a municipal license under this article and includes all supplemental documentation attached or required to be attached thereto; the person filing the application shall be known as the "applicant."

APPLICATION DOCUMENTS

The items required as part of an application submitted to the City prior to them being accepted as complete as provided in § **435-4**.

BOARD

The Marihuana Licensing Board, as anticipated by the MRTMA to be created at LARA in order to regulate and administer state licenses.

CLERK

The City of Royal Oak Clerk or his/her designee.

CO-LOCATED FACILITY or CO-LOCATION

Marihuana businesses holding two or more types of state operating licenses under the MRTMA and MMFLA operating within a single location.

CULTIVATE or CULTIVATION

To propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

DEPARTMENT

The Michigan State Department of Licensing and Regulatory Affairs or any authorized designated Michigan agency authorized to regulate, issue, or administer a Michigan license for a marihuana establishment.

DESIGNATED CONSUMPTION ESTABLISHMENT

A commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

EXCESS MARIHUANA GROWER

RECEIVED by MSC 12/10/2025 3:03:01 PM

A license issued to a person holding five class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

GROWER

A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

LICENSE

A current and valid license for a marihuana establishment issued by the State of Michigan.

LICENSEE

A person holding a current and valid Michigan license for a marihuana establishment.

MARIHUANA

That term as defined in Section 3 of the MRTMA, MCLA 333.27953, as may be amended.

MARIHUANA ACCESSORIES

Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

MARIHUANA CONCENTRATE

The resin extracted from any part of the plant of the genus cannabis.

MARIHUANA ESTABLISHMENT

A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the Department pursuant to MCLA 333.27951, as may be amended.

MARIHUANA EVENT ORGANIZER

A person licensed to apply for a temporary marihuana event license under these rules.

MARIHUANA MICROBUSINESS

A person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

MARIHUANA PROCESSOR

A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

MARIHUANA RETAILER

A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

MARIHUANA-INFUSED PRODUCT

A topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

MICHIGAN MARIHUANA FACILITIES LICENSING ACT or MMFLA

Public Act 281 of 2016, MCLA 333.27101 et seq., as may be amended.

MICHIGAN MARIHUANA TRACKING ACT

RECEIVED by MSC 12/10/2025 3:03:01 PM

Public Act 282 of 2016, MCLA 333.27901 et seq., as may be amended.

MICHIGAN MEDICAL MARIHUANA ACT or MMMA
2008 IL 1, MCLA 333.26421 et seq., as may be amended.

MUNICIPAL LICENSE
A current and valid license for a marihuana establishment issued under this article, which shall be granted to a municipal license holder only for and limited to a specific municipally licensed premises and a specific municipally licensed property. Said municipal license shall be in addition to the special use permit and site plan approval required to be obtained pursuant to the City Zoning Ordinance.

MUNICIPAL LICENSE HOLDER
An individual, organization, partnership, company, corporation, enterprise, or other entity that holds a current and valid municipal license issued under this article as well as the person or persons associated with the municipal license holder as applicant(s) for that municipal license.

MUNICIPAL LICENSE SLOT
An unissued permit available to be issued to an applicant.

MUNICIPALLY LICENSED PREMISES
The particular building, buildings, or tenant space within which the municipal license holder will be authorized to conduct the facility's activities pursuant to the municipal license.

MUNICIPALLY LICENSED PROPERTY
The real property comprised of a lot, parcel, or other designated unit of real property upon which the municipally licensed premises is situated.

PERSON
A natural person, company, partnership, profit or nonprofit corporation, limited liability company, or any joint venture for a common purpose.

PREMISES
The particular building, buildings, section of land, or tenant space within which a particular use is conducted.

PUBLIC PLACE
Any area in which the public is invited or generally permitted in the usual course of business.

RULES
Rules promulgated by the Department in consultation with the Board to implement the Act, including the LARA Rules, as may be amended.

SAFETY COMPLIANCE ESTABLISHMENT
A person licensed to test marihuana, including certification for potency and the presence of contaminants.

SCHOOL
A preexisting public or private school with a curriculum equivalent to kindergarten through 12th grade.

SECURE TRANSPORTER
A person licensed to obtain marihuana form marihuana establishments in order to transport marihuana to marihuana establishments.

STACKED LICENSE
More than one state license issued to a single licensee to operate as a Class C marihuana

RECEIVED by MSC 12/10/2025 3:03:01 PM

grower as specified in each state license at a marihuana establishment.

STATE OPERATING LICENSE or, unless the context requires a different meaning, LICENSE
A license issued by the Department that allows a person to operate a marihuana establishment.

TEMPORARY MARIHUANA EVENT LICENSE
A state license held by a marihuana event organizer for an event where the on-site sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

WINDOW
The time period set by the City Manager to receive applications for evaluation by the competitive process as specified in this article.

§ 435-2. Municipal license required; eligibility; general provisions.

A. The City hereby authorizes the operation of the following types of marihuana establishments:

(1) Growers, Class A.

(2) Growers, Class B.

(3) Growers, Class C.

(4) Processors.

(5) Retailer.

(6) Safety compliance facilities.

(7) Secure transporters.

(8) Marihuana microbusiness.

(9) Co-located facilities as defined in this article.

B. The following number of municipal licenses can be issued for each authorized marihuana establishment type:

(1) Growers, Class A: one.

(2) Growers, Class B: one.

(3) Growers, Class C: one.

(4) Processors: one.

(5) Retailers: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

(6) Safety compliance facilities: one.

(7) Secure transporters: one.

(8) Marihuana microbusiness: two total but only in the General Business Zone (as defined by § **770-41** of the City of Royal Oak Zoning Ordinance and the Zoning Map) or General

RECEIVED by MSC 12/10/2025 3:03:01 PM

Industrial Zone (as defined by § **770-44** of the City of Royal Oak Zoning Ordinance and the Zoning Map), except that no more than one may be located in the General Business Zone.

C. No person shall operate a marihuana establishment at any time or any location within the City unless a currently effective municipal license for that person at that location has been issued under this article. No marihuana establishments are allowed nor shall a municipal license be considered or granted for those activities and facilities defined as a "special license," being a state license described under Section 8 of the MRTMA and issued by the state pursuant to Section 9 of the MRTMA, MCLA 333.2795 and 333.27959, as may be amended, including, but not limited to, designated consumption establishment, excess marihuana grower, marihuana event organizer, temporary marihuana event, and any special license types hereafter recognized by the state.

D. Marihuana establishments shall operate only as allowed under this article.

E. The City Manager is granted the power to fully and effectively implement and administer the municipal license application process.

F. The requirements set forth in this article shall be in addition to, and not in lieu of, any other licensing or municipal licensing requirements imposed by applicable federal, state, or local laws, regulations, codes, or ordinances.

G. As specified in this article, each applicant shall pay nonrefundable review fees, application fees, annual fees, renewal fees and inspection fees for municipal licenses to the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding marihuana establishments. The City Commission shall by resolution set the fees in an amount not to exceed any limitations imposed by Michigan law. The municipal license fee requirement 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.

H. The City has no obligation to process or approve any incomplete application.

I. A municipal license shall remain valid for one year following removal of all stipulations on an issued municipal license.

J. It is the sole and exclusive responsibility of each municipal license holder or applicant at all times during the application period and during its operation to immediately provide the City with all material changes in any information submitted on an application and any other changes that may materially affect any state license or its City municipal license.

K. No municipal license issued under this article may be assigned or transferred to another person or entity except as specified in this article. No municipal license issued under this article is transferrable to any other location except for the municipally licensed premises on the municipally licensed property.

L. The original municipal license issued under this article shall be prominently displayed at the municipally licensed premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.

M. A municipal license holder may not engage in any other marihuana establishment in the municipally licensed premises or on the municipally licensed property, or in its name at any other location within the City, without first obtaining a separate municipal license.

N. No municipal license shall be granted or renewed for a marihuana establishment in a residence.

O. Co-located facilities are subject to state law for multiple uses per premises, subject to the City Manager or his designee'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

RECEIVED by MSC 12/10/2025 3:03:01 PM

is consistent with zoning and other provisions of the City Code of Ordinances. If these conditions are met, more than one business may be located on one parcel.

§ 435-3. Other laws and ordinances.

In addition to the terms of this article, any marihuana establishment shall comply with all City ordinances, including, without limitation, the City Zoning Ordinance, and with all other applicable state and local ordinances, laws, codes and regulations.

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan.
[Amended 10-12-2020 by Ord. No. 2020-12]

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

[1] A description of the type of marihuana establishment proposed and the

RECEIVED by MSC 12/10/2025 3:03:01 PM

anticipated or actual number of employees.

[2] A security plan meeting the requirements of § **435-5** of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § **740-7**.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § **770-12**, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect, or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § **435-5A(5)** of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

RECEIVED by MSC 12/10/2025 3:03:01 PM

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § **435-4** of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any

RECEIVED by MSC 12/10/2025 3:03:01 PM

public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment;
[Amended 10-12-2020 by Ord. No. 2020-12]

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant.

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state

RECEIVED by MSC 12/10/2025 3:03:01 PM

or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request an extension up to six months to this time frame, which may be granted by the City Clerk.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their applications as detailed in § **435-4C**, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following:

(a) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § **435-5A(5)** of this article.

(b) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

(d) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

RECEIVED by MSC 12/10/2025 3:03:01 PM

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § **435-4D(7)(a)** will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

§ 435-5. Operational requirements for marihuana establishments.

A. A marihuana establishment issued a municipal license under this article and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

(1) Scope of operation. Marihuana establishments shall comply with all respective applicable codes of the local zoning, building, and health departments. The marihuana establishment must hold a valid local municipal license and state marihuana establishment license for the type of marihuana establishment intended to be carried out on the municipally licensed property. The marihuana establishment operator, owner or licensee must have documentation available that local and state sales tax requirements, including holding any licenses, if applicable, are satisfied.

(2) Required documentation. Each marihuana establishment shall be operated from the

RECEIVED by MSC 12/10/2025 3:03:01 PM

municipally licensed premises on the municipally licensed property. No marihuana establishment shall be municipally licensed to operate from a movable, mobile or transitory location, except for a municipally licensed or licensed secure transporter when engaged in the lawful transport of marihuana. No person under the age of 18 shall be allowed to enter into the municipally licensed premises without a parent or legal guardian.

(3) Security. Municipal license holders shall at all times maintain a security system that meets state law requirements and, in addition, shall also include the following:

(a) Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, seven days a week, and which will contact local law enforcement if triggered;

(b) A locking safe permanently affixed to the municipally licensed premises that shall store all marihuana and cash remaining in the marihuana establishment overnight;

(c) All marihuana in whatever form stored at the municipally licensed premises shall be kept in a secure manner and shall not be visible from outside the municipally licensed premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the municipally licensed premises; and

(d) All security recordings and documentations shall be preserved for at least 30 days by the municipal license holder and made available to any law enforcement upon request for inspection.

(4) Operating hours. No retailer or retail portion of a microbusiness shall operate between the hours of 8:00 p.m. and 8:00 a.m.

(5) Required spacing.

(a) The following spacing requirements for marihuana establishments are required:

[1] No marihuana establishment shall be permitted within a 1,000-foot radius of any school.

[2] No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness.

[3] Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(b) Spacing requirements become effective upon issuance of a municipal license, whether conditional or not.

(6) Amount of marihuana. The amount of marihuana on the municipally licensed property and under the control of the municipal license holder, owner or operator of the marihuana facility shall not exceed that amount permitted by the state license or the City's municipal license.

(7) Sale of marihuana. The marihuana offered for sale and distribution must be packaged and labeled in accordance with state law. The marihuana establishment is prohibited from selling, soliciting, or receiving orders for marihuana or marihuana products over the internet.

(8) Sign restrictions. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any municipally licensed premises nor be visible outside of the municipally licensed premises on the municipally licensed property nor advertise in a way that is inconsistent with the provisions of the MRTMA, LARA rules, or the City of Royal Oak Sign Ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(9) Use of marihuana. The sale, consumption or use of alcohol or tobacco products on the municipally licensed premises is prohibited. Smoking or consumption of controlled substances, including marihuana, on the municipally licensed premises is prohibited.

(10) Indoor operation. All activities of marihuana establishment, including, without limitation, distribution, growth, cultivation, or the sale of marihuana, and all other related activity municipally licensed under the municipal license holder's license or municipal license must occur indoors. The marihuana establishment's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the municipally licensed premises. No consumption of marihuana shall take place on the premises of a marihuana establishment.

(11) Distribution. No person operating a marihuana establishment shall provide or otherwise make available marihuana to any person who is not legally authorized to receive marihuana under state law.

(12) Permits. All necessary building, electrical, plumbing and mechanical municipal licenses must be obtained for any part of the municipally licensed premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of marihuana are located.

(13) Waste disposal. The municipal license holder, owner and operator of the marihuana establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the license or municipal license. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.

(14) Proof of insurance. A municipal license holder shall at all times maintain in full force and effect for the duration of the license workers' compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A municipal license holder shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Royal Oak and its officials and employees as additional insureds to the limits required by this subsection. 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.

(15) Transportation.

(a) Marihuana may be transported by a secure transporter within the City under this article, and to effectuate its purpose, only:

[1] By persons who are otherwise authorized by state law to possess marihuana;

[2] In a manner consistent with all applicable state laws and rules, as may be amended; and

[3] In a secure manner designed to prevent the loss of marihuana.

(b) No vehicle used for the transportation or delivery of marihuana under this article shall have for markings the words "marihuana," "marijuana" or "cannabis" or any similar words; pictures or other renderings of the marihuana plant; advertisements for marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture; or any other word, phrase or symbol indicating or tending to indicate that the vehicle is

RECEIVED by MSC 12/10/2025 3:03:01 PM

transporting marihuana.

(c) No vehicle may be used for the ongoing or continuous storage of marihuana, but it may only be used incidental to, and in furtherance of, the transportation of marihuana.

(16) Additional conditions. The City may impose such reasonable terms and conditions on a marihuana establishment special use as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this article and applicable law.

§ 435-6. Penalties and consequences for violation.

A. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances, a violation of the provisions of this article or failure to comply with any of the requirements of this article shall constitute a misdemeanor, punishable by up to 93 days in jail and/or a fine of up $500, plus the costs of prosecution. Each day a violation continues shall be considered a separate offense.

B. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties and forfeitures provided above, except as excluded from responsibility by state law.

C. In addition to any other remedies, the City may institute proceedings for injunction, mandamus, abatement, or other appropriate remedies to prevent, enjoin, abate, or remove any violations of this article. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this article.

§ 435-7. City liability and indemnification.

A. By accepting a municipal license issued pursuant to this article, the municipal license holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of marihuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

B. By accepting a municipal license issued pursuant to this article, all municipal license holders agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a municipally licensed property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marihuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the municipal license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), or any other alleged violation of the law.

C. By accepting a municipal license issued pursuant to this article, a municipal license holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law, including the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Chapter 7 of the Michigan Public Health Code, MCLA 333.7101 et seq., as may be amended.

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-8. Municipal license as revocable privilege.

A. A municipal license granted by this article is a revocable privilege granted by the City and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each municipal license is exclusive to the municipal license holder, and a municipal license holder or any other person must apply for and receive the City's approval before a municipal license is transferred, sold, or purchased. A municipal license holder or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a municipal license without prior state and local approval is grounds for suspension or revocation of the municipal license or for other sanction considered appropriate by the City.

B. Nonrenewal, suspension or revocation of municipal license. The City may, after notice and hearing as provided in § 434-4D(10) of this article, suspend, revoke, or refuse to renew a municipal license for any of the following reasons:

(1) The applicant or municipal license holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this section or with any applicable state or local law or regulation.

(2) The applicant or municipal license holder, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its municipal license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the municipal license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the municipal license.

(3) The marihuana establishment has been operated in a manner that adversely affects the public health, safety, or welfare.

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

§ 435-9. Authorization to inspect, search and examine.

A marihuana establishment and all articles of property in the establishment are subject to inspection, search and examination at any time by a member of the Royal Oak Police Department, the Department of State Police, or the Royal Oak Building Department, and the application for a marihuana establishment constitutes consent by the applicant, and all owners, managers, and employees of the marihuana establishment, and the owner of the property to permit the City Manager to conduct routine examination and inspection of the marihuana establishment to ensure compliance with this article or any other applicable law, rule, or regulation without a search warrant and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a municipal license without a search warrant.

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 2

RECEIVED by MSC 12/10/2025 3:03:01 PM

AFFIDAVIT OF PAUL BRAKE

STATE OF MICHIGAN)
)SS.
COUNTY OF OAKLAND)

PAUL BRAKE, being first duly sworn, deposes and says that:

1. I have personal knowledge of the facts stated in this Affidavit and if called to testify, I am able to do so.

2. I hold a master's degree in public administration. I completed the Harvard Kennedy School for Senior Executives in State and Local Government, and the University of Virginia, Weldon Cooper School of Public Policy Senior Executive Institute.

3. I hold a certification as a Business Solutions Professional from Michigan State University and am a Certified Economic Developer (CEcD), certified by the International Economic Development Council.

4. I am employed by the City of Royal Oak as City Manager, a position I have held since May 2020.

5. I have previously held municipal management positions in Meridian Township and Grand Blanc, Michigan, and Morgantown, West Virginia, totaling more than 20 years in municipal administration before joining Royal Oak.

6. In my position as city manager, I frequently consult with department heads and other city administrative staff in various areas of concern that may affect decisions that I must make from day to day as the city's chief administrative officer.

7. Under the Royal Oak recreational marijuana licensing ordinance, I am responsible to evaluate applications for marijuana licenses and to assign municipal marijuana "license slots" to applicants judged to be best suited to operate in Royal Oak and in compliance with the state

RECEIVED by MSC 12/10/2025 3:03:01 PM

recreational marijuana law, which allows those applicants to proceed further through the process to possible licensure.

8. In the window of time during which applicants could submit applications for recreational marijuana licenses in 2020-2021, Royal Oak received 31 applications for two (2) retailer establishment licenses, two (2) applications for microbusinesses, one for a class A grower, and two (2) class C grower applications.

9. In evaluating the applications, I consulted various department heads of the City administrative staff for advice relevant to certain aspects of the applications within their specialties, just as I commonly consult with them about other municipal matters and operations.

10. I consulted with my assistant, Susan Barkman; Timothy Twing, Director of Community Development; Joseph Murphy, City Planner; Holly Donoghue, City Engineer; Todd Fenton, Deputy City Manager and Director of Economic Development; Corey O'Donohue, Chief of Police; Jaynmarie Hubanks, City Treasurer; and City Attorney Aaron Leal.

11. The input I received from each department head varied from person to person. Each of them had different opinions about various aspects of the applications. Some gave me their opinions about how the applicants should be ranked. No other person's opinion was dispositive, and there was no consensus or "vote" taken. I alone decided the final rankings of marijuana applications required under the state law and city ordinance.

12. Upon completing my evaluations, I assigned license slots as follows: one applicant for a co-located marijuana establishment containing a retailer, grower, and processor, one (1) microbusiness, one (1) class A grower, one (1) class C grower, and one (1) stand-alone retail establishment.

RECEIVED by MSC 12/10/2025 3:03:01 PM

13. My decisions assigning license slots do not end the process. After public hearing and recommendation by the Planning Commission of its site plan review of successful applicants, the City Commission makes the final decision as to site plan review under the city's zoning ordinance.

14. If any holder of a license slot does not timely pay its fees or adhere to the other time limits established by the city's Recreational Marihuana ordinance, or does not complete or satisfactorily pass any step required by the ordinance, up to and including final approval, it will lose its license slot status.

15. Any applicant who is not initially assigned a license slot and whose application is not denied is put on a standby list. If another license slot becomes available, the next highest ranked application will be assigned an available license slot and permitted to proceed through the remainder of the process upon timely payment of the required fees. This way, the applicant does not need to reapply, pay additional fees, and begin the process again.

16. Once all applicants assigned a license slot successfully complete the remaining process through full licensure and the license slots are exhausted, then I will send a letter to each unsuccessful applicant advising that their application has been denied. If an applicant is denied, then it may not reapply until another license slot becomes available or a new window for receiving applications is opened.

Further, Affiant sayeth not.

PAUL J. BRAKE

Subscribed and sworn to before me
this 2 day of March, 2022

Notary Public
Oakland County, Michigan

RONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

My Commission Expires: Nov 22, 2023

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 3

Royal Oak

Office of the City Manager
203 S Troy Street
Royal Oak, MI 48067

RECEIVED by MSC 12/10/2025 3:03:01 PM

December 15, 2021

Quality Roots Inc.
123 South Main Street, Suite 200
Royal Oak, MI 48067

Quality Roots Inc.,

Thank you for applying for a Royal Oak marihuana retailer license (RME 4 and RME 5). Based on the applications as they were received, it was clear that everyone spent a significant amount of time creating business plans, identifying sites and funding. This process took longer than we originally anticipated, and the city staff greatly appreciate your patience throughout this time.

There were more retailer license applications than licenses allowed under the ordinance. At this time neither of your applications was selected to move forward in the licensing process. There are several applications that were well positioned to moved forward if one of the applicants selected for a retail license does not successfully complete the licensing process.

This letter is not a denial of your application. If the other business is successfully licensed, you will receive a denial letter at that time.

Again, I want to thank you for your interest in starting a business in Royal Oak and the time you put into the application process.

Sincerely,

Paul J. Brake, ICMA-CM, CEcD
City Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 4

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

COURT OF APPEALS

COEUS, LLC,

Plaintiff/Counterdefendant-Appellant,

v

CITY OF WALLED LAKE, LINDA S. ACKLEY, L. DENNIS WHITT, CHELSEA PESTA, and JENNIFER A. STUART,

Defendants-Appellees,

and

JOHN AND JANE DOES 1 THROUGH 20, FRANK MARRA, and MATTHEW CECCHETTI,

Defendants,

and

CUSTOM BUILT PROPERTIES, LLC, doing business as GREEN HOUSE OF WALLED LAKE, and JERRY MILLEN,

Defendants/Counterplaintiffs.

UNPUBLISHED
January 20, 2022

No. 353844
Oakland Circuit Court
LC No. 2018-170030-CZ

Before: GADOLA, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff, COEUS, LLC, appeals as of right the trial court's stipulated order of dismissal.[1] On appeal, plaintiff challenges the trial court's earlier opinion and order granting summary disposition in favor of defendants city of Walled Lake, Mayor Linda S. Ackley, City Manager L. Dennis Whitt, City Development Manager Chelsea Pesta, and City Clerk Jennifer A. Stuart (collectively, "the city defendants"). On appeal, plaintiff argues that the city defendants are not entitled to governmental immunity and that its claims alleging a violation of due process and promissory estoppel were legally sufficient. We affirm.

This case arises from the city of Walled Lake's implementation, under the authority of the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq*., of its medical marijuana facilities licensing ordinance and plaintiff's subsequent application for a license to operate a provisioning center. The ordinance specifies that there are to be three licenses for provisioning centers, with two located in the C-2 zoning district and one located in the C-3 zoning district. Walled Lake Ordinance C-334-17, § 6b, enacting § 21.49(b) of the Zoning Ordinance. Subsequently, the city passed Resolution 2018-10, which established administrative rules for processing MMFLA permit applications.

After submitting applications to the city, plaintiff attempted numerous times to obtain status updates. In response to plaintiff's repeated phone calls, the city informed plaintiff that no action had been taken on any of the applications, no permits had been issued, and no meetings had been held addressing any of the applications. Plaintiff alleged that contrary to the city's claims that no MMFLA licenses had been issued, it was evident that the city had issued a license to defendant Green House of Walled Lake. Ultimately, plaintiff was advised that its request for the C-3 license was denied.

In its second amended complaint, plaintiff alleged the following counts against the city defendants: fraudulent misrepresentation (Count II); silent fraud (Count III); negligent misrepresentation (Count IV); unjust enrichment (against the city of Walled Lake only) (Count V); breach of an implied contract (Count VI); promissory estoppel (Count VII); violation of due process and equal protection (Count VIII); civil conspiracy (Count IX); injunctive relief (Count X); and gross negligence (Count XI).

The city defendants thereafter moved for summary disposition under MCR 2.116(C)(7), arguing that they were entitled to governmental immunity with respect to the alleged torts, and under MCR 2.116(C)(8) on plaintiff's due-process and promissory-estoppel claims. In a thorough opinion and order, the trial court granted the motion and dismissed all claims against the city defendants.

I. GOVERNMENTAL IMMUNITY

This Court reviews de novo a trial court's decision on a motion for summary disposition, *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008), as well as issues involving

[1] That order dismissed with prejudice plaintiff's claims against defendants Custom Built Properties, LLC, Jerry Millen, Frank Marra, and Matthew Cecchetti. The order also dismissed the counterclaims brought by Custom Built and Millen against plaintiff.

RECEIVED by MSC 12/10/2025 3:03:01 PM

questions of law, such as the construction and interpretation of a city charter or ordinance. *Oakland Co Bd of Co Rd Comm'rs v Mich Prop & Cas Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Ferguson v City of Lincoln Park*, 264 Mich App 93, 95; 694 NW2d 61 (2004).

A party is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are "barred because of immunity granted by law." When considering a motion brought under this subrule, the court considers all the affidavits, depositions, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). "The contents of the complaint are accepted as true unless contradicted by the evidence provided." *Odom*, 482 Mich at 466 (quotation marks and citation omitted).

A. CITY OF WALLED LAKE

The governmental tort liability act (GTLA), MCL 691.1401 *et seq*., provides that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."[2] MCL 691.1407(1); see also *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 326-327; 869 NW2d 635 (2015). While there are six statutory exceptions to this broad grant of immunity, plaintiff did not allege that any applied.[3] Thus, as the trial court noted, the only question is whether the city was engaged in a governmental function.

The GTLA defines "governmental function" as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). Conversely, when "a governmental agency engages in an activity which is not expressly or impliedly mandated or authorized by constitution, statute, or other law (*i.e.*, an *ultra vires* activity), it is not engaging in the exercise or discharge of a governmental function" and "is therefore liable for any injuries or damages incurred as a result of its tortious conduct." *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984). However, when determining whether an act is a "governmental function" or merely an ultra vires act, courts are to " 'look to the general activity involved rather than the specific conduct engaged in when the alleged injury occurred.' " *Genesee Co Drain Comm'r*, 309 Mich App at 327, quoting *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 84; 782 NW2d 514 (2010).

Although plaintiff alleges that the city engaged in fraudulent and corrupt acts, its focus is too narrow. In this instance, the general activity in which the city had been engaged was the implementation and adoption of its medical marijuana facilities licensing ordinance and the

---

[2] There is no dispute that the city of Walled Lake is a "governmental agency" as defined by the GTLA. See MCL 691.1401(a), (d), and (e).

[3] "The six statutory exceptions are: the highway exception, MCL 619.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3)." *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84 n 10; 746 NW2d 847 (2008).

RECEIVED by MSC 12/10/2025 3:03:01 PM

processing of applications for a license. The implementation of the ordinance was expressly authorized by the MMFLA, and the processing of applications for licenses was authorized by the city's ordinance. Therefore, the city was engaged in a governmental function, and accordingly, it is immune from tort liability. Thus, the trial court did not err by granting summary disposition to the city on this ground.[4]

B. CITY DEVELOPMENT MANAGER PESTA AND CITY CLERK STUART

Plaintiff next argues that the trial court erred by granting summary disposition in favor of City Development Manager Pesta and City Clerk Stuart.

The GTLA also grants immunity to officers and governmental agency employees for negligent and intentional conduct if other conditions are met.

Regarding negligent torts, MCL 691.1407(2) provides, in pertinent part:

> [E]ach officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

In response to the city defendants' motion for summary disposition, plaintiff only contested the gross-negligence component by stating, "[T]he sole issue before this Court is whether Plaintiff has properly alleged the elements of gross negligence." Thus, our review is whether the conduct of Pesta and Stuart amounts to gross negligence.

---

[4] To the extent that plaintiff argues that the city could be liable under a theory of gross negligence, the gross-negligence exception to governmental immunity contained in MCL 691.1407(2) only applies to *individuals*; it does not apply to the *governmental agency* itself. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), abrogated on other grounds in *American Transmissions, Inc v Attorney General*, 454 Mich 135; 560 NW2d 50 (1997); see also *Tarlea v Crabtree*, 263 Mich App 80, 89; 687 NW2d 333 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). The alleged failure of Pesta and Stuart to follow the procedures in the city's ordinance and resolution do not amount to gross negligence. Notably, on appeal and without providing any citations to the lower court record, plaintiff merely asserts that it had "specifically plead[ed] that the actions of those individuals [Pesta and Stuart] constituted gross negligence, citing specific examples and drawing upon the deposition of Pesta." This type of cursory argument constitutes an abandonment of the issue on appeal. See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Even considering the cursory argument, however, it appears that plaintiff is referring to its response to the city defendants' motion for summary disposition because it is in that filing that plaintiff cites and provides the deposition of Pesta. But plaintiff's allegations are limited to Pesta failing to advise plaintiff of the results of the preliminary review, which plaintiff asserts was required under the city's Resolution 2018-10. Pesta testified that she thought the resolution only required her to notify applicants if the preliminary review revealed that their application was somehow incomplete.[5] Assuming Pesta had an obligation under the resolution to conduct a preliminary review and to communicate the results to plaintiff, yet failed to do so because she was mistaken, such conduct is not "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). At best, such conduct amounts to ordinary negligence. Therefore, the trial court properly granted summary disposition in favor of Pesta and Stuart on all of plaintiff's negligence claims.

While MCL 691.1407(2) governs negligence claims, intentional-tort claims are governed by MCL 691.1407(3), which simply provides that the law regarding intentional torts is as it existed

---

[5] The pertinent section of Resolution 2018-10 states:

> Upon receipt of an Application for site plan and/or operational approval of a Marijuana Facility and payment of all required fees, the City Clerk shall conduct a preliminary review of the Application for purposes of determining completeness and preliminary eligibility of the proposed or existing facility at the proposed or existing location. The City Clerk shall notify the applicant of the results of the preliminary review, including deficiencies rendering the application incomplete, and afford the applicant an opportunity to withdraw the application and receive a refund of the application fee and consultant review fee if the preliminary review reveals the proposed facility is not eligible for further review. If an application is incomplete, the applicant may withdraw the application and receive a refund of refundable fees, or cure any deficiencies rendering the application incomplete. Preliminary administrative review fees are non-refundable. Unless the Applicant withdraws the application, the Clerk shall forward a complete application for an eligible facility and all supporting materials for final review, recommendation and/or action by City staff, administration and/or consultants as may be required by applicable City Code or ordinance. Unless otherwise provided by these rules or applicable code or ordinances, complete applications for an eligible facility will be processed in the order received as determined by the date the application is completed. [Walled Lake Resolution 2018-10, § 4.]

RECEIVED by MSC 12/10/2025 3:03:01 PM

before July 7, 1986. *Odom*, 482 Mich at 470-471. Thus, with respect to intentional torts, a governmental employee is immune from liability if (1) she was acting within the course of her employment and was acting, or reasonably believed that she was acting, within the scope of her authority; (2) the acts were not undertaken with malice; and (3) the acts were discretionary, as opposed to being ministerial. *Id*. at 480.

It is important to recognize which intentional torts are at issue here. The only intentional torts alleged against the city defendants (and, hence, Pesta and Stuart) are plaintiff's claims of fraudulent representation and silent fraud. We agree with the trial court that plaintiff did not allege in its second amended complaint any facts that would lead to the conclusion that either Pesta or Stuart had acted outside the scope of their authority. Indeed, processing permit applications and communicating with the applicants is within both of their job responsibilities, and given the need to review applications for completeness and sufficiency, the trial court was correct in concluding the process was not ministerial in nature.

That leaves open the question whether the trial court erred when it stated that plaintiff did not plead any facts supporting the conclusion that either Pesta or Stuart acted with malice. A lack of good faith has been described as "malicious intent, capricious action or corrupt conduct" or "willful and corrupt misconduct." *Id*. at 474 (quotation marks and citations omitted). For the reasons articulated in section I.B of this opinion, we again conclude that plaintiff has not adequately presented the argument as to what allegations exist as to Pesta and Stuart on the existence of malice. We have canvassed both plaintiff's principal and reply briefs, and have found no specific citation to the record—or citation to any specific factual allegations—that are meant to show that either defendant acted with malice. Both briefs do contain assertions that these defendants "acted fraudulently and corruptly," and that they (and others) engaged "in corrupt and illegal practices," but those were in reference to the argument that they (and the city) were not engaged in a governmental function, because they were acting ultra vires. But even if those allegations were directed toward whether there was malice as to these two defendants under *Odom*, these allegations are conclusory and come nowhere close to what is required for a properly developed argument. Hence, we conclude that plaintiff has effectively abandoned the argument that there are sufficient factual allegations of malice against defendants Pesta and Stuart to withstand summary disposition. *Peterson Novelties, Inc*, 259 Mich App at 14.[6]

C. CITY MANAGER WHITT

[6] In fact, there is not a single citation to any paragraphs from the second amended complaint (nor the original or first amended complaints) in either brief, and the exhibits cited in the briefs that are written by defendants Petra or Stuart are letters responding on behalf of the city to freedom of information act requests submitted by plaintiff's counsel (by defendant Petra) and a letter to the state licensing agency regarding the status of a certificate of occupancy and pre-approval of a license for Custom Built Properties (by defendant Stuart). Even if the Petra letters reflect a denial of information that existed, without more expansive argument, it is difficult to discern how this reflects malice on the part of Petra. And, confirmation of certain facts to an agency by Stuart could go towards allegations against the city or other decision-maker, but says nothing about decisions made by Stuart.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff also argues that the trial court erred by ruling that City Manager Whitt was absolutely immune from liability. We note that a panel of this Court recently rejected this same argument as to Whitt in a case involving these same parties. See *Jones v Walled Lake*, unpublished opinion per curiam of the Court of Appeals, dated June 17, 2021 (Dkt No. 350997). We agree with the rationale and conclusions reached in that opinion, but set forth our reasoning for the sake of completeness and further appellate review.

The GTLA provides certain high-ranking governmental officials with absolute immunity from tort liability. MCL 691.1407(5) states:

> A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Thus, "[t]o qualify for absolute immunity from tort liability[,] an individual governmental employee must prove his or her entitlement to immunity by establishing, consistently with the statute's plain language, (1) that he or she is a judge, legislator, or the elective or highest appointive executive official of a level of government and (2) that he or she acted within the scope of his or her judicial, legislative, or executive authority." *Petipren v Jaskowski*, 494 Mich 190, 204; 833 NW2d 247 (2013). Because there is no dispute that Whitt was not a judge or legislator, the first question that must be answered is whether he was "the elective or highest appointive executive official" for the city of Walled Lake.

Plaintiff asserts that Whitt is an administrator who lacks any executive function and has no legal role.[7] The duties of the city manager are described by ordinance as follows:

> (1) Be responsible to the council for the efficient administration of all administrative departments of the city government.
>
> (2) *See that all laws and ordinances are enforced*.
>
> (3) Appoint, with the consent of the council, the heads of the several city departments whose appointments are not otherwise specified in the city Charter or ordinance, and to discharge the department heads without the consent of the council, and to direct and supervise the department heads.

[7] Plaintiff raises this argument for the first time on appeal. Plaintiff takes exception to the trial court noting that plaintiff had not "dispute[d]" that Whitt was the highest appointive executive official in the city, but this characterization is accurate because plaintiff never provided any contrary argument in its response to the city defendants' motion for summary disposition. Plaintiff mischaracterizes the trial court's opinion as saying that plaintiff had *conceded* this point, when the court merely said that plaintiff did not *dispute* it.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(4) Give to the proper department or officials ample notice of the expiration or termination of any franchises, contracts or agreements.

(5) See that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed.

(6) Recommend an annual budget to the council and to administer the budget as finally adopted under policies formulated by the council, and to keep the council fully advised at all times as to the financial condition and needs of the city.

(7) Recommend to the council for adoption such measures as may be deemed necessary or expedient, and to attend council meetings with the right to take part in discussions but not to vote.

(8) Exercise and perform all administrative functions of the city that are not imposed by the city Charter or ordinance upon some other official.

(9) Perform such other duties as may be prescribed by the city Charter or as may be required by ordinance or by direction of the council. [Walled Lake Ordinances, § 2-43 (emphasis added).]

The fact that this ordinance omits the use of the term "executive" and uses the term "administrative" is not dispositive. Indeed, the type of administration Whitt performs clearly is "executive administration." See *Black's Law Dictionary* (11th ed) (defining "executive administration" as "[c]ollectively, high public officials who administer chief departments of the government"). Further, "executive branch" is defined as "[t]he division of government charged with *administering* and *carrying out the law*." *Id*. (emphasis added). While Whitt is the chief administrative officer of the city, his duties also include "[s]ee[ing] that all laws and ordinances are enforced." Walled Lake Ordinances, § 2-43(2). Also, "[a]n executive should have broad-based jurisdiction or extensive authority similar to that of a judge or a legislator." *Chivas v Koehler*, 182 Mich App 467, 471; 453 NW2d 264 (1990). Whitt's authority as city manager is very extensive, as evidenced by the lengthy duties delineated in the ordinance. See Walled Lake Ordinances, § 2-43. Thus, it is evident that Whitt possesses executive authority, as that term is commonly understood.[8] See also *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997) (recognizing a city manager as an "executive").

Plaintiff's argument that the Mayor Pro-Tem is the highest appointive person in the city government is not supported by the plain reading of the relevant portions of the city charter, which provide:

[8] The Michigan Supreme Court also has recognized that a city manager is an "executive," stating, "Under the city manager form of government, popular among smaller cities, the executive, the city manager, serves at the will of the legislature, the city commission." *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 267; 566 NW2d 514 (1997).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> At each municipal election, the new Councilman from among those incumbents who ran for re-election at the most recent election, *who has received the highest number of votes* in that election, and who shall have served a tenure of two (2) years shall be Mayor Pro-tem, unless such Councilman shall in writing notify the clerk of their declination to so serve before such *appointment* becomes effective, in which event, the Councilman who has received the second highest number of votes in that election shall become Mayor Pro-tem, provided that person has served as a Councilman for at least two (2) years. [Walled Lake Charter, § 4.4.]

Although the charter uses the word "appointment" once in describing the position, there is nothing about the position that is appointive. Who becomes mayor pro-tem is not decided by any governmental official or body. Instead, the mayor pro-tem is determined by which incumbent council member received the *highest number of votes from the general election*. There is nothing appointive about such a scheme. As such, regardless of how the charter may view this as an "appointive" position, it is not one as contemplated by the GTLA.

Therefore, as the highest appointive executive official in the city, Whitt is absolutely immune from tort liability under the GTLA with respect to actions performed "within the scope of his . . . executive authority," MCL 691.1407(5), and the trial court did not err by coming to the same conclusion.

II. FAILURE TO STATE A CAUSE OF ACTION

Plaintiff also argues that the trial court erred by granting summary disposition in favor of the city defendants on plaintiff's claims of violation of the constitutional right to due process of law and on its tort claim of promissory estoppel.

"A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

A. DUE-PROCESS CLAIM

"The United States and Michigan constitutions preclude the government from depriving a person of life, liberty, or property without due process of law." *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004), citing US Const, Am XIV; Const 1963, art 1, § 17. " 'A procedural[9] due process analysis requires a dual inquiry:

---

[9] In its second amended complaint, plaintiff labeled its due-process claim a "substantive" due-process claim. However, courts are not bound by the labels parties use in their pleadings, *Buhalis v Trinity Continuing Care Servs*, 292 Mich App 685, 691-692; 822 NW2d 254 (2012), and the substance of plaintiff's count demonstrates that it was making a procedural due-process claim. Moreover, plaintiff never disputed that it needed to have a property interest for its due-process claim to be viable.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.' " *Hinky Dinky*, 261 Mich App at 606 (citation omitted). Due process is only implicated "if there is a liberty or property interest at stake." *Galien Twp Sch Dist v Dep't of Ed* (*On Remand*), 310 Mich App 238, 241; 871 NW2d 382 (2015).

The city defendants argued, and the trial court agreed, that plaintiff's claim failed for the simple reason that plaintiff had no viable property interest. On appeal, plaintiff argues that a license under the MMFLA confers on the recipient a property right. While this principle likely is applicable to MMFLA licenses, see *Bundo v City of Walled Lake*, 395 Mich 679, 695; 238 NW2d 154 (1976) (stating that a liquor license holder has a property interest in the license), it is not dispositive because plaintiff ignores the fact that *it never possessed a license*. It is well established that the law treats those who possess a license and are attempting to renew it differently from those who do not possess a license and are first-time applicants. See *Wong v City of Riverview*, 126 Mich App 589, 593; 337 NW2d 589 (1983) ("In fact, a first-time applicant is not even entitled to minimal due process."); *Shamie v City of Pontiac*, 620 F2d 118, 120 (CA 6, 1980) (stating that first-time license applicants do not enjoy procedural due-process rights under Michigan law), citing *Morse v Liquor Control Comm*, 319 Mich 52, 66; 29 NW2d 316 (1967), and *Bisco's, Inc v Liquor Control Comm*, 395 Mich 706, 716; 238 NW2d 166 (1976). Therefore, it is clear that plaintiff did not have a recognized property interest because it never had a license to begin with. Furthermore, because it was undisputed that the city had more applicants than licenses available, there necessarily was discretion involved in selecting who would receive the licenses. "A party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *RSWW, Inc v City of Keego Harbor*, 397 F3d 427, 435 (CA 6, 2005) (quotation marks, citation, and brackets omitted).

The trial court properly dismissed plaintiff's violation of due process of law claim.[10]

B. PROMISSORY-ESTOPPEL CLAIM

In *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999), this Court observed:

> The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on part of the promisee, and (3) that in fact produced reliance or

[10] Plaintiff also asserts that its due-process claim should have survived summary disposition because it was seeking injunctive relief. But plaintiff's Count VIII, alleging a violation of due process, contains no allegations or requests for injunctive relief. Moreover, even if plaintiff's request for injunctive relief survived the city defendants' motion for summary disposition, count X ultimately was dismissed via the stipulated order to dismiss. Because plaintiff agreed to dismiss the "claim" for injunctive relief, it cannot now assert on appeal that the dismissal was erroneous. See *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003); *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006).

RECEIVED by MSC 12/10/2025 3:03:01 PM

> forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided.

In its second amended complaint, plaintiff alleged that the "promise" that forms the basis for its claim of promissory estoppel is found in the city's ordinance and administrative rules, providing that the "orderly, efficient, fair and coordinated" processing of applications would occur. At the outset, it should be clear that the only city defendant that possibly could be subject to this claim would be the city of Walled Lake. The alleged promise is contained in enactments of the city; it is not alleged that any individual city defendant made these promises. Thus, we can affirm the dismissal of this claim against the other city defendants for this reason alone. See *Washburn v Michailoff*, 240 Mich App 669, 678 n 6; 613 NW2d 405 (2000) (stating that this Court can affirm a trial court's decision when it reaches the right result albeit for different reasons).

The city defendants argued in the trial court that the promissory-estoppel count should be dismissed because statutes and ordinances do not create contractual rights. While this is a recognized principle of law, see *Studier v Mich Pub Sch Employees' Retirement Bd*, 472 Mich 642, 661; 698 NW2d 350 (2005), it is not necessarily controlling because promissory estoppel does not require contractual rights. Indeed, "promissory estoppel is an exception to general contract principles in that it permits enforcement of a promise that may have no consideration." *State Bank of Standish v Curry*, 442 Mich 76, 96; 500 NW2d 104 (1993) (RILEY, J., dissenting). Because of this exception, the promise must be definite and clear. *Id.*, citing *McMath v Ford Motor Co*, 77 Mich App 721, 726; 259 NW2d 140 (1977); see also *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993) ("The sine qua non of promissory estoppel is a promise that is definite and clear.").

The specific "promise" plaintiff has identified is located in the preamble section of the city's Resolution 2018-10, which provides:

> WHEREAS, in order to facilitate orderly, efficient, fair and coordinated processing of the various state and local applications and approvals in a manner consistent with the requirements of the Act, the Rules and the City's codes and ordinances, City Council has determined that it is necessary and expedient to adopt the following administrative rules concerning processing of City applications for local approval of Marijuana Facilities. [Walled Lake Resolution 2018-10, p 2.]

The identified "promise" above is not definite and clear. It promises nothing. Instead, this portion of the preamble merely states that its accompanying rules were enacted to facilitate the orderly, efficient, fair, and coordinated processing of applications. That is not the same as a definite and clear promise to actually have orderly, efficient, and fair processes. While those concepts are part of the aspirational goals of the resolution, it is not a promise. Indeed, the passage simply refers the reader to the remainder of the resolution to determine what the specific administrative rules are "concerning [the] processing of City applications for local approval of Marijuana Facilities." Moreover, preambles are not authoritative. *King v Ford Motor Co*, 257 Mich App 303, 311-312; 668 NW2d 357 (2003); see also *Yazoo & MVR Co v Thomas*, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889) (stating that a "preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous"); *Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008).

Consequently, because the promise on which plaintiff relies for its claim of promissory estoppel is not clear and definite, the claim fails as a matter of law. We affirm the trial court's grant of summary disposition in favor of the city defendants because the trial court reached the correct result, albeit for different reasons. See *Washburn*, 240 Mich App at 678 n 6.

Affirmed.

/s/ Michael F. Gadola
/s/ Jane E. Markey
/s/ Christopher M. Murray

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 5

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 770. Zoning

Article V. Special Provisions

§ 770-52.1. Marihuana establishments.

[Added 7-27-2020 by Ord. No. 2020-07]

A. Purpose and intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCLA 333.26421 et seq.), as amended.

B. General standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § **770-11**, Special land uses; permit procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § **770-12**, Site plan review, along with documentation that:

(a) The petitioner has prequalification status for an applicable license with the State of Michigan; and

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter **435**, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter **435**, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter **607**, Signs, with a maximum area not to exceed 50 square feet or 5% of the building facade area, whichever is less. All other signs, including, but not limited to, freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting, shall be prohibited as permanent architectural details or enhancements on any building facade or the exterior of any structure, including, but not limited to, windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § **770-30**, General building design and project compatibility, shall be prohibited.

(10) Security devices, such as security curtains, steel bars, metal gates, and similar apparatus, shall be prohibited on the exterior of a building. Security devices may be permitted inside a building, provided that the device is:

(a) Retractable so it is not visible from the sidewalk or public right-of-way during regular business hours; and

(b) Equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater runoff and/or the need for stormwater detention, such as, but not limited to, rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards as it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT B

FILED Received for Filing Oakland County Clerk 8/31/2022 6:21 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

JSG

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC.,
a Michigan limited liability company,
Plaintiff,
-vs-
CITY OF ROYAL OAK, a Michigan municipal corporation,
Defendant,
-and-
PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,
Intervening Defendant.

Consolidated Number:
Case No. 2022-192288-CZ
HON. RAE LEE CHABOT

BRIAN E. ETZEL (P54905)
Attorney for Plaintiff

ANNE McCLOREY McLAUGHLIN (P40455)
Attorney for Defendant

DAVID E. SCHLACKMAN (P58894)
Attorney for Intervening Defendant

REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Plaintiff Quality Roots (Quality) argues that Defendant's dispositive motion is moot due to the Court's order granting leave to Quality to file an amended complaint. However, Quality has not withdrawn the allegations in the original Complaint; it has simply elaborated on many of those claims based upon discovery and added a claim that the Royal Oak ordinance is void for vagueness. Otherwise, the claims are largely the same. It would be most appropriate for the court to treat the motion as a motion for partial summary disposition as to the allegations in the original Complaint, in order to streamline what remains and allow the parties to tailor the remaining discovery in this case, if there is any to be had. The City has produced nearly 2,200 pages of documents and produced five (5) city officials for depositions. As the allegations in this case surround *the City's application and decision process*, what further discovery is necessary is a question Plaintiff has not answered.

Quality also refutes the City's motion by arguing what has been learned in discovery, despite that the motion was brought under MCR 2.116(C)(8) in lieu of an answer to the complaint, save the allegations related to the Open Meetings Act (OMA). Discovery is irrelevant to whether a party has stated a claim upon which relief can be granted. *Pinebrook Warren LLC v City of Warren*, ___Mich

RECEIVED by MSC 12/10/2025 3:03:01 PM

App___ (August 25, 2021) Ex 1, sl op at p 30. Moreover, with respect to the OMA claims, Plaintiffs have deposed the city manager (at length) and the principal officials and personnel he consulted in making his decision. Generally, summary disposition granted before discovery on a disputed issue is complete is considered premature. *Caron v Cranbrook Ed Community*, 298 Mich App 629, 645 (2012), citing *Prsyak v RL Polk Co*, 193 Mich App 1, 11 (1992). However, summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion. *Id.* Quality does not identify what disputed issues require further discovery except to repeat that further discovery is necessary.

In *Pinebrook Warren, supra,* the Court of Appeals reiterated that a person or body is subject to the Open Meetings Act *only if it is exercising authority of another public body*. *Pinebrook Warren LLC, supra,* Ex 1, pp 18-22. Quality argues that Mr. Brake was exercising the authority of the City Commission because the City Commission is the legislative body of the City. The *Pinebrook Warren* court expressly rejected this argument out of hand:

> In this case, the City—through its City Council—enacted the Marijuana Ordinance that created the Review Committee. As a home rule city, the City had the authority to enact ordinances as a valid exercise of its police power so long as the ordinance did not conflict with the constitution or general law. See *Rental Prop Owners Ass'n of Kent Co v Grand Rapids,* 455 Mich 246, 253-254; 566 NW2d 514 (1997).
>
> [T]he Marijuana Ordinance established the Review Committee and delineated the nature and extent of its role in the application review process. *Accordingly, this case does not involve the type of delegated authority that was at issue in Booth.* To the contrary, the Review Committee had *independent authority to act as provided under the Marijuana Ordinance*. See *Herald,* 463 Mich 134-135. Moreover, *it does not matter that the Marijuana Ordinance was enacted by a public body*. Ex 1, sl op p 20.

City manager Brake did not exercise the authority of another public body; he exercised the broad, independent and discretionary authority that the ordinance conferred upon him (§ 435-2) by seeking input from other officials. Nor did the so-called "ranking committee" exercise *any* authority, much less the authority of *another public body*. Other personnel simply gave Mr. Brake advice in reaching his decision. Even if they helped him make the decision, that is not a violation of the OMA. *Id.; Herald, supra.* As Mr. Brake stated in his deposition, he used a collaborative process to help him make his

RECEIVED by MSC 12/10/2025 3:03:01 PM

decision, but it was he who made the decision. Ex 2, Brake dep, 263:1 to 263:5: "But anyways, getting back to your question of how we went about this. … It was carefully reviewing the materials and the application, … and *coming up with the final decision that came from me.*" And 252:13 to 252:16: "As I answered earlier that there were others that were involved in evaluating the applications, *but when it came to the final decision that -- that came from me.*" (Emphasis added.) That Mr. Brake relied upon the input of other department heads and personnel in reaching his decision does not change this result or transform him from a public official into a public body subject to OMA.

The canon of statutory construction, "*expressio unius est exclusion alterius*," the express mention in a statute of one thing implies the exclusion of other similar things, especially applies here. *Bronner v City of Detroit*, 507 Mich 158, 173 (2021). The OMA defines a "public body" as "a board, commission, committee, subcommittee, authority, or council." A city manager is none of those things. *Herald v Bay City*, 463 Mich 111 (2000).

As for the constitutional claims, Quality tries to thread a minuscule eye of a needle based upon *Cary Investments, Inc v City of Mt Pleasant*, ___Mich App___ (July 14, 2022) attempting to save its due process claims. The *Cary* Court did not disregard the necessity for a constitutionally protected interest; it said that it would analyze the defendant-city's conduct in that case *despite* lack of a protected property or liberty interest. ("*Even if plaintiff had a property interest sufficient to trigger the protections of due process* in its endeavor to obtain a license, neither the complaint nor the record before the trial court hints at conduct by the City amounting to a deprivation of due process.") Sl op at 6 (emphasis added). The rights of which Quality seeks to avail itself do not apply here. The Court of Appeals only bolstered that conclusion in *Pinebrook Warren, supra*, sl op pp 27-30. Even claims of arbitrary and capricious conduct require a protected property interest that Quality lacks. As the *Pinebrook* court stated, "*Picking winners and losers, although it might seem unfair, does not amount to irrational conduct or oppression; and does not shock the conscience.* Even a violation of state law by the governmental actor will not, absent more, cause the act to meet the shocks-the-conscience standard." *Id.*, sl op p 30 (citation omitted)(emphasis added).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Since the City denied Quality's application, it withdrew its ripeness challenge. However, Defendant should point out that any claim that Quality is entitled to a license is now moot.

> Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case. See *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy. *Id. Pinebrook Warren*, sl op p 26.

The Royal Oak marijuana ordinance permits issuance of two, and only two, retailer licenses. Those licenses are presently exhausted, and there is no mechanism for the city manager to issue more licenses. Therefore, there is no relief that the court here could grant to Quality. The claim is moot and "ripe" for summary disposition.

With respect to alleged violation of the MRTMA, the Detroit federal court decided against co-Plaintiff Lume related to a similar municipal ordinance in *Attitude Wellness, LLC v Village of Pinckney,* Case No. 21-cv-12021 (ED Mich 4/7/22)(Drain, J) (Ex 3 Opinion and Order). In its opinion denying Lume's request for preliminary injunction and granting a motion to dismiss, the court recognized the broad powers conferred to home rule cities in Michigan specifically as they apply to the MRTMA:

> *Courts afford substantial deference to Michigan's local governments when construing municipal ordinances.* Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed. Michigan municipalities enjoy significant autonomy over local government functions. The Michigan Supreme Court has emphasized how municipalities maintain great[] latitude to conduct their business such that Michigan's towns enjoy not only those powers specifically granted, but they may also exercise *all powers not expressly denied.*
>
> *Nothing in the MRTMA's plain language signals the legislature's intent to cabin municipal discretion. Indeed, the statute explicitly instructs municipalities to decide who is best suited to operate a lawful cannabis business in their communities.* MICH. COMP. LAWS § 333.27959(4). If Michigan's legislature wanted to identify specific factors for localities to consider when companies are "best suited" to receive cannabis licenses, it could have defined criteria in the MRTMA. But the legislature did not do so. Instead, Michigan's legislature empowered local governments to choose criteria identifying companies best suited to join their communities. *Id.*, pp 16-17 (citations and quotation marks omitted) (emphasis added).

This reasoning comports with 1963 Const, art 7, §34. "The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor." The MRTMA and the ordinance here must be construed liberally in favor of the City of Royal Oak, which

RECEIVED by MSC 12/10/2025 3:03:01 PM

had the broad discretion to adopt an ordinance that does not conflict with the Act.

Quality also takes issue with the ordinance as allegedly violative of MRTMA because the criteria were not "objective," and therefore, not "competitive". In fact, a review of the majority of the criteria in § 435-4(C)(4)(a)-(j) (*e.g.,* whether an applicant had unpaid taxes or water bills or a history of same, or a prohibited criminal conviction) are easily determined as "objective." What Plaintiff is really complaining of is that there is no scoring system where each factor on an application is assessed a specific number of points, and then the total points are used to rank the applicants. But nowhere in the MRTMA is such a point or scoring system required, nor is there even a requirement that the competitive criteria be "objective." Furthermore, any sort of judgment used to assess an applicant's score for an individual criterion is likewise "subjective" and does not make such a system more "objective" than Royal Oak's process. Quality decries that the ordinance leaves the ultimate determination to the discretion of the city manager, pursuant to Ord § 435-2. But this is entirely within the City's province and comports with the MRTMA.

In the City's zoning ordinance, the City Commission reserved to itself the right to grant deviations from the 1,000-foot setback requirement to apply on a case-by-case basis. For the extensive pages that Quality devoted to this subject in its response, the MRTMA says that "*the department shall approve a state license application and issue a state license if* [the property is not within 1,000 feet of a pre-existing public or private school … unless a municipality adopts an ordinance that reduces this distance requirement[.]" MCL 333.27959(3)(c). By its very terms, § 9 imposes a duty upon *the "department," i.e.*, the Marijuana Regulatory Agency, *not on local municipalities*. In fact, it gives local governments the *discretion* to adopt ordinances with reduced distance requirements, which Royal Oak has done. Defendant's motion should be granted.

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

BY: /s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant

RECEIVED by MSC 12/10/2025 3:03:01 PM

PROOF OF SERVICE

I certify that on August 31, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 1

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

COURT OF APPEALS

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWKSI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

FOR PUBLICATION
August 25, 2022
9:25 a.m.

No. 355989
Macomb Circuit Court
LC No. 2019-004059-CZ

Defendant,

and

LIVWELL MICHIGAN, LLC, LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

SOZO HEALTH, INC.,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 355994
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 355995
Macomb Circuit Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, and VENDCO MICHIGAN, INC.,

Intervening Defendants/Cross-Plaintiffs,

and

LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellants/Cross-Appellees,

and

MDMS GROUP, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants

v

No. 356005
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants,

and

MDMS GROUP, LLC,

Intervening Defendant-Appellant/Cross-Appellee.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC.,

No. 356011
Macomb Circuit Court
LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, INC., DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 356017
Macomb Circuit Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON,

Defendants/Cross-Defendants-Appellants/Cross-Appellees,

and

ROBERT BOCCOMINO, KEITH SADOWSKI, and CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendants-Appellants/Cross-Appellees,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants,

and

JOHN LAYTON.

LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

PINEBROOK WARREN, LLC, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 356023
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

RECEIVED by MSC 12/10/2025 3:03:01 PM

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, and VENDCO MICHIGAN, INC.,

Intervening Defendants/Cross-Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 359269
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON, ROBERT BOCCOMINO, and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, 989 VENTURES, LLC, doing business as NORTHERN ROOTS, AE&K, LLC, BDECO I, INC., DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellants,

and

BDECO II, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC,

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 359285
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON, ROBERT BOCCOMINO, KEITH SADOWSKI, and CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendants-Appellants,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, 989 VENTURES, LLC, doing business as NORTHERN ROOTS, AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

Before: SAWYER, P.J., and SHAPIRO and REDFORD, JJ.

REDFORD, J.

These consolidated appeals and cross-appeals arise from a dispute over the City of Warren's (the City) selection of the entities that it licensed to sell medical marijuana.[1] The trial court ultimately determined that defendants, the City, and the members of the City's Medical Marihuana Review Committee (the Review Committee)—Cecil St. Pierre, Ronald Papandrea,

[1] By convention, this Court uses the spelling "marijuana" rather than "marihuana." See *People v Carruthers*, 301 Mich App 590, 593 n 1; 837 NW2d 16 (2013).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Steven Warner, and Richard Sabaugh—violated the Open Meetings Act (OMA), see MCL 15.261 *et seq*., in relation to selecting applicants for issuing licenses to sell medical marijuana in the City.

For the reasons we set forth below, we conclude that the Review Committee was not a public body subject to the OMA. We also conclude that plaintiffs' due-process claims lacked merit and were properly dismissed by the trial court. Therefore, we reverse the trial court's granting of summary disposition to plaintiffs and the setting aside of the licenses issued to intervening plaintiffs by the City of Warren, and affirm the trial court's denial of plaintiffs' due-process claims and grant of summary disposition in favor of defendants on such claims, and grant such other relief as is indicated herein.

I. OVERVIEW OF CASES

A. THE CITY OF WARREN MEDICAL MARIHUANA REGULATORY ORDINANCE

In January 2019, the Warren City Council adopted a " 'medical marihuana regulatory ordinance' " (the Marijuana Ordinance), Warren Code, § 19.5-1 *et seq*.[2] The Marijuana Ordinance sought to implement the local provisions governing the sale of marijuana consistent with then-governing state law. See Warren Code, § 19.5-3. The Marijuana Ordinance allowed, in relevant part, for the licensing of provisioning centers, which were defined to be licensees who were authorized to purchase marijuana from a grower or processor and sell it to registered qualifying patients. See Warren Code, § 19.5-6.

In the ordinance, the City created the Review Committee to review applications for provisioning center licenses. See Warren Code, § 19.5-13(4). The Review Committee was made up of the "City Attorney, or his designee, the Director of the Public Service Department, or his designee, and the members of the Medical Marihuana Committee or alternates of the City Council, as appointed by City Council." Warren Code, § 19.5-13(4). The Review Committee was required to consider applications for licenses and score 17 factors with a score from 0 to 10. See Warren Code, § 19.5-13(4)(b). The Review Committee did this over a period of serval months and eventually evaluated and scored 65 license applicants. At the completion of their review, pursuant to the ordinance, the Review Committee forwarded all 65 applications together with their scores and recommendations to the City Council. The Review Committee did not approve or disapprove a single applicant; only the City Council could approve the issuance of a license. See Warren Code, § 19.5-14(1). The ordinance originally allowed for the issuance of 10 licenses and this number was eventually changed to 15 licenses. See Warren Code, § 19.5-7(3); see also Warren City Ordinance No. 80-778. If there were more applicants than available licenses, the City Council had to rank the applicants; in setting the rank, the City Council had to consider the factors stated

[2] The City has significantly amended the ordinance since the inception of this litigation. Therefore, all citations are to the version of the ordinance then in force. Warren City Ordinance No. 80-772. That ordinance may be viewed online through the municipal code website at: Municode, *Code of Ordinances of the City of Warren, Michigan* https://library.municode.com/mi/warren/ordinances/code_of_ordinances?nodeId=960256

(accessed June 23, 2022).

RECEIVED by MSC 12/10/2025 3:03:01 PM

under Warren Code, § 19.5-13(4)(b), in addition to factors related to the plan for the provisioning center. See Warren Code, § 19.5-14(2). An applicant also had the right to appeal the decision to deny a license to the circuit court. See Warren Code, § 19.5-17(2).

B. THE LITIGATION IN THE TRIAL COURTS

Certain applicants sought and obtained at least partial relief in the trial courts of Macomb County challenging the work of the Review Committee. The challenges alleged violations of the OMA, denial of due process, and other theories which eventually resulted in the trial court granting summary disposition in favor of plaintiffs, Pinebrook Warren, LLC; Greenhouse Farms Warren, LLC; Happy Trails Group, Inc.; Aubrey Ventures, LLC; Blue Spruce Ventures; Emerald Business Park, PC, LLC; DKB2, LLC; MPM-R Warren, LLC; HRS Retail, LLC; Alternative Rx, LLC; HCM Warren, LLC; JAR Capital of Warren, LLC; Pure Green Warren, LLC; Pure Warren, LLC; Kapp Walled Lake, LLC; and Pure Roots, LLC, which were all entities that had applied for and been denied licenses. That order also invalidated the licenses to sell marijuana that had been issued to the intervening defendants, Livwell Michigan, LLC; LE Battle Creek, Inc.; Weisberger Ventures II, LLC; VendCo Michigan, Inc.; Level Up Garden, LLC; 8th Street Wellness, PC, LLC; Sozo Health, Inc.; 989 Ventures, LLC, which did business as Northern Roots; AE&K, LLC; BDECo Inc.; DNVK 4, LLC; MDMS Group, LLC; Warren Capital Holdings, LLC; West Fort Holdings, LLC; and Frazho Provisioning, LLC. The trial court also dismissed the due-process claims that plaintiffs had asserted against the City.

C. THE APPEALS RAISED

In the appeals in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, and 356023, the primary issue raised by defendants and intervening defendants is whether the trial court erred when it determined that the City violated the OMA and—on that basis—invalidated the City Council's decision to issue licenses. For the various cross-appeals in those cases, the primary issue is whether the trial court erred when it dismissed plaintiffs' claims against the City for violations of substantive and procedural due process.

In Docket Nos. 359269 and 359285, intervening defendants in the underlying case appeal by leave granted the trial court's order invalidating the City's decision to reissue licenses to them as part of a settlement agreement entered into by the City and intervening defendants in a different case. Intervening defendants argue that the trial court lacked the authority to invalidate the licenses that had been issued under the agreement.

D. SUMMARY OF THIS COURT'S DECISION

For the reasons explained in this opinion, we conclude that defendants and intervening defendants have identified errors respecting the trial court's resolution of the OMA claims warranting appellate relief. We conclude that plaintiffs have not identified any errors warranting relief in the trial court's resolution of their claims involving due process. Accordingly, in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, and 356023, we reverse and vacate the trial court's opinion and order, entered April 14, 2020 (April 2020 Opinion and Order), and its order denying reconsideration, which it entered on December 22, 2020. For the claims in Docket Nos. 359269 and 359285, we vacate the trial court's order of October 26, 2021, because it based

RECEIVED by MSC 12/10/2025 3:03:01 PM

its ruling and order on the erroneous April 2020 Opinion and Order, and the appellate relief granted regarding the OMA claims renders the trial court's October 26, 2021 order void.

II. APPEALS INVOLVING THE OMA CLAIMS

A. STANDARD OF REVIEW

Appellants and cross-appellants have raised various claims of error involving the trial court's decision to grant summary disposition in favor of plaintiffs on the OMA claims.[3] We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). We also review de novo whether the trial court properly interpreted and applied the relevant statutes and ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). We review for an abuse of discretion a trial court's decision to invalidate a decision under the OMA and its decision to grant equitable relief under the OMA. *Citizens For A Better Algonac Community Sch v Algonac Community Sch*, 317 Mich App 171, 177; 894 NW2d 645 (2016). We also review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Woods v SLB Prop Management, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). A trial court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes, or when it premises its decision on a misunderstanding of controlling legal principles. *Davis v Detroit Fin Review Team*, 296 Mich App 568, 612-613; 821 NW2d 896 (2012).

B. ANALYSIS

In January 2020, Happy Trails moved for partial summary disposition under MCR 2.116(C)(10). It argued that the undisputed evidence showed that the Review Committee violated the OMA by holding closed meetings that were required to be open to the public and did not otherwise comply with the requirements of the OMA. It further argued that the Review Committee had not rectified its error by reenacting its decisions. Because the City Council adopted the Review Committee's decision made contrary to the OMA (and its own ordinances), Happy Trails asked the trial court to invalidate the decisions premised on violations of the OMA. It maintained that the only proper remedy required invalidating the decisions because then the City would have the obligation to "redo the process properly in accordance with the requirements of the [Marijuana] Ordinance and applicable law."

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The moving party is entitled to relief when, except for the amount of damages, "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

As the moving party, Happy Trails had the initial burden to identify the issues about which it claimed there were no genuine issues as to any material fact, and to support its motion by citation

[3] For the sake of brevity, we will not summarize the arguments by each party to these appeals except where necessary for clarity.

RECEIVED by MSC 12/10/2025 3:03:01 PM

to evidence. See *Barnard Mfg*, 285 Mich App at 369-370. Happy Trails asserted that no factual dispute existed that the Review Committee was subject to the OMA, violated the OMA, and, as a result, the trial court had the discretion to invalidate the Review Committee's decisions as a matter of law. Therefore, Happy Trails's right to summary disposition depended on whether it established that—given the undisputed facts—the OMA applied to the Review Committee action, whether the Review Committee's decisions were made in violation of the OMA, and finally whether the Review Committee's decisions were subject to invalidation under the OMA.

1. PUBLIC BODY

Under the OMA, the Legislature established rules that apply to public bodies. See MCL 15.263. A public body must hold its meetings open to the public, in a place that is available to the general public, allow the public to record the meeting, MCL 15.263(1), and allow persons who attend the meeting to address the meeting, MCL 15.263(5). A public body must also make its decisions at a meeting that is open to the public, see MCL 15.263(2), and conduct its deliberations in a meeting that is open to the public, see MCL 15.263(3). Notably, the Legislature provided an exception to the open meeting requirements for deliberations; a public body may enter into a closed session to deliberate certain matters as provided under MCL 15.267 and MCL 15.268. See MCL 15.263(3). The Legislature did not provide any exceptions to the requirements that the meetings themselves begin in a session open to the public, that the public be allowed to address the meeting, and that the public body make its decisions while the meeting is open to the public.

Because the OMA only applies to public bodies, the threshold issue for any OMA claim is whether the entity at issue constitutes a public body within the meaning of the OMA. See *Herald Co v Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). The OMA defines a public body, in relevant part, as "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." MCL 15.262(a).

The first inquiry in determining whether an entity is a public body under the OMA is to evaluate whether the entity is a legislative body or a governing body. See *Davis*, 296 Mich App at 591 (noting that, to be a public body, the entity must be a state or local legislative body or governing body). A legislative body is a body that makes or enacts laws or otherwise brings something into or out of existence through the enactment of laws. *Id*. at 592-593. A governing body is a body that makes or administers public policy, or otherwise regulates or controls a political subdivision. *Id*. at 593-594. A body does not have to be the supreme governing body of a political subdivision to be a governing body under the OMA; but it must make or administer public policy for a political unit or make decisions by a determination, action, vote, or disposition for that political subdivision. *Id*. at 597.

If it is determined that a body is a legislative or governing body, the next inquiry is whether it has been empowered by "state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." MCL 15.262(a); see also *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 225; 507 NW2d 422 (1993). A body that can only make recommendations is not a governing body for purposes of the OMA because its authority does not include the power to

RECEIVED by MSC 12/10/2025 3:03:01 PM

effectuate or formulate public policy. See *Davis*, 296 Mich App at 605-606. In addition to these criteria, in *Booth*, our Supreme Court held that a person or other body may be deemed a public body under certain circumstances.

In *Booth*, our Supreme Court considered a situation in which the board of regents for the University of Michigan sought to hire a new president. The evidence showed that the board did not want to hold public meetings during the search, so it delegated its authority to winnow the candidates to a particular regent and to subquorum groups of regents. Over time, the regent and subquorum groups reduced the total number of candidates from 250 candidates to one candidate.

In this process, the board of regents had selected one member of the board to act as a selection committee. In the first phase of review, this member winnowed down the list of 250 candidates to 70 candidates. He made phone calls, had meetings and sought to obtain the sense of the board members and subgroups appointed to assist the board. In that and every phase, any board member could have asked for a candidate who had been removed from consideration to be put back into the pool of actively participating candidates. Next the board member further narrowed the list of candidates from 70 to 30 by rating and receiving ratings of candidates, tallying those scores and discussing the process with each and every member of the board of regents. Next, each of the 30 remaining candidates was contacted and about half of the candidates self-selected out of further participation. Next, small, subquorum groups of regents went to various cities and met with candidates. A closed meeting occurred where no vote was taken but candidates were discussed. Eventually one candidate was recommended and the person's name was forwarded to the entire board which then held a public meeting and voted to hire that candidate. See *Booth*, 444 Mich at 215-220.

Our Supreme Court held that the board was a public body and that the selection of a president for the university was one of the board's most important exercises of governmental authority. *Id*. at 225. The Court recognized that the regent and subquorum groups were the persons who winnowed the total number of candidates, but it rejected the contention that the regent and subquorum groups were not subject to the OMA. It held that the regent and subquorum groups constituted public bodies under the OMA because the board was itself a public body and it delegated its authority to the regent and subquorum groups. *Id*. at 225. The Court rejected the university's attempt to elevate form over substance by asserting that one man could not be a committee. The Court explained that the question was whether the board delegated its authority to choose a president to one or more persons. If it did, then the OMA applied to those persons because the OMA applied to the board. *Id*. at 225-226; see also *Herald*, 463 Mich at 134 (summarizing the decision in *Booth* and stating that the distinguishing feature between the facts of its case and those in *Booth* was that the public body delegated its authority to a regent and subquorum groups that had no independent authority to act); *Davis*, 296 Mich App 588-591 (recognizing that, under the decisions in *Booth* and *Herald*, if a public body delegates its authority to act to a subcommittee, that body will be deemed a public body for purposes of applying the OMA).

Our Supreme Court clarified the delegation exception in *Herald*. Although the Court in *Herald* noted that evidence established that the public body at issue in *Booth* had delegated its authority to a regent and subcommittees to evade the requirements of OMA, the Court did not hold that an intent to evade the requirements of the OMA was the dispositive question. *Herald*, 463

RECEIVED by MSC 12/10/2025 3:03:01 PM

Mich at 134. Rather, the Court held that the relevant inquiry is whether the body had been delegated authority by a public body or whether the body had been granted independent authority to act. See *id*. ("The important distinguishing feature of *Booth* was that the board was clearly a 'public body' that was subject to the OMA, and the various regents and subquorum groups had no *independent* authority to narrow the field, make a recommendation, or select a president.") (emphasis added). If the body did not have the independent authority to act, but instead had to rely on the delegation of authority from the public body, then that body would also be deemed a public body. In *Herald* the Court then explained that, because the city charter gave the city manager independent authority to perform the function at issue, the facts in *Herald* were not analogous to those of *Booth*. *Id*. at 134-135. Accordingly, a public body is either a legislative body or a governing body that has been "empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function," MCL 15.262(a), or a person or body that has been delegated the authority to act by a public body that itself is subject to the OMA, see *Booth*, 444 Mich at 225.

In this case, the City—through its City Council—enacted the Marijuana Ordinance that created the Review Committee. As a home rule city, the City had the authority to enact ordinances as a valid exercise of its police power so long as the ordinance did not conflict with the constitution or general law. See *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 253-254; 566 NW2d 514 (1997).

Happy Trails did not present any evidence that the City Council delegated its own authority to the Review Committee. Rather, the Marijuana Ordinance established the Review Committee and delineated the nature and extent of its role in the application review process. Accordingly, this case does not involve the type of delegated authority that was at issue in *Booth*. To the contrary, the Review Committee had independent authority to act as provided under the Marijuana Ordinance. See *Herald*, 463 Mich 134-135. Moreover, it does not matter that the Marijuana Ordinance was enacted by a public body. In *Davis*, this Court examined whether the financial review team was a public body by reviewing the authority delegated to it under the statutory scheme. If every entity created by statute (or other law) constituted a public body because a legislative body enacted the law, there would have been no need to examine the authority delegated to the financial review team under the statute. Yet this Court determined that whether the financial review team constituted a public body depended solely on the authority independently delegated to the team by statute. See *Davis*, 296 Mich App at 594. Consequently, in this case, whether the Review Committee constituted a public body depended on the extent of the authority granted to the Review Committee under the Marijuana Ordinance, see *Herald*, 463 Mich at 134-135.

Whether a local body is a public body under the OMA must be ascertained by looking at the four corners of the document creating the body—it does not depend on the body's actual exercise of authority. See *Davis*, 296 Mich App at 594. For that reason, plaintiffs' argument that the Review Committee, in effect, selected the entities that received the licenses because the City Council adopted the Review Committee's recommendations, was irrelevant. The key question was not what actions the Review Committee did or did not take, or how the City Council reacted to those decisions; it was whether the Review Committee, in its own right, constituted a legislative body or governing body empowered to exercise governmental or proprietary authority or to perform a governmental or proprietary function. See MCL 15.262(a); *Davis*, 296 Mich App

RECEIVED by MSC 12/10/2025 3:03:01 PM

at 590-591. To make that determination, this Court looks to the four corners of the law establishing the body to determine whether the law created a governing body and authorized it to exercise independent governmental or proprietary authority, or to perform an independent governmental or proprietary function, which amounted to independent decision-making authority to effectuate public policy. See *Davis*, 296 Mich App at 600.

When interpreting an ordinance, this Court must discern and give effect to the intent of the drafter as demonstrated in the language of the ordinance. See *McMillan v Douglas*, 322 Mich App 354, 357; 913 NW2d 336 (2017). This Court construes the ordinance as a whole and affords the words used their plain and ordinary meaning. *Id*. If the language of an ordinance is clear and unambiguous, this Court will enforce it as written. *Id*.

The State Legislature gave municipalities the authority to pass ordinances regulating marijuana facilities. See MCL 333.27205(1). The City Council passed such an ordinance that included extensive requirements for applications for a Medical Marijuana Facilities License, including that applicants had to submit a formal application with a facility and site plan to the City. Marijuana Ordinance, § 19.5-12. The ordinance established an application review process that required applicants to submit all application documents and plans to the City's chief zoning inspector to determine whether the application would "go for review" or had deficiencies warranting notification of denial with the right to appeal to the City Council. Marijuana Ordinance, § 19.5-13(1) - (3).

If the zoning inspector approved an application, it would "go for review" to the Review Committee. Marijuana Ordinance, § 19.5-13(2). The ordinance required that such applications and plans "*shall be transmitted to the Review Committee for approval*." Marijuana Ordinance, § 19.5-13(4)(a). When reviewing "plans and applications" the Review Committee was required to score 17 individual factors from 0 to 10 respecting the degree of compliance with each specific factor. Marijuana Ordinance, § 19.5-13(4)(b). After its completion of that process, the ordinance required that the Review Committee "*shall forward the scores and applications to the City Council with recommendations*." Marijuana Ordinance, § 19.5-14(1).

The ordinance provided that the City Council alone had the authority to approve issuance of provisioning center licenses and further specified how it would make the ultimate selection of the applicants who would be issued licenses:

> Council shall confirm compliance with all requirements and factors in the granting of Licenses. If the number of applicants meeting the requirements herein exceed the number of available licenses, the Council shall rank the applicants in order, considering the factors outlined above and consideration of the Plan proposed for the Provisioning Center; new construction and thereafter reconstruction of buildings shall be ranked equal than those applications proposing existing buildings. The capitalization and improvements to real estate shall be ranked higher than proposed existing buildings. Ranking shall be based upon a 0 to 10 scale for each factor including zoning compliance with a 0 meaning does not comply and a 10 meaning exceeds compliance. [Marijuana Ordinance, § 19.5-14(2).]

RECEIVED by MSC 12/10/2025 3:03:01 PM

Reading the Marijuana Ordinance in context and as a coherent whole, it is evident that the Review Committee did not constitute a governing body authorized by the ordinance to perform a governmental function. See MCL 15.262(a). The ordinance did not grant the Review Committee authority to administer public policy for a political unit or make decisions by a determination, action, vote, or disposition for that political subdivision. The ordinance required the Review Committee to perform an important review function, but the City Council had sole authority to make the ultimate selection of the applicants it deemed worthy of being licensed to own and operate a medical marijuana provisioning center in the City. Determining which persons or entities are to be licensed to conduct business within a locale is a quintessential function of local government. The licensing process itself requires consideration of multiple factors—even in the absence of delineated factors as found in the Marijuana Ordinance. Although the Review Committee played a role in the process, the ordinance plainly required the City Council to make the final assessment of the worthiness of any particular applicant for a license. The ordinance tasked the City Council with effectuating public policy by making the ultimate decision which of the applicants to license. The ordinance granted the Review Committee no authority to reduce the number of applicants following its review, nor did it grant the Review Committee authority to deny any applicant a license.

The City defendants and intervenors argued in the trial court, and continue to argue on appeal, that the Review Committee merely acted as an advisory body that did not have the power to make decisions, so that it was not a governing body as explained by this Court in *Davis*. See *Davis*, 296 Mich App at 601-609. We conclude that the plain unambiguous language of the Marijuana Ordinance supports their contention.

We hold that plain language of the Marijuana Ordinance establishes that the Review Committee is neither a legislative body nor a governing body under the OMA, and the City did not by the ordinance delegate decision-making authority to the Review Committee. Accordingly, the trial court erred when it ruled that the delegation rule stated in *Booth* applied to this case.

That the Marijuana Ordinance § 19.5-13(4)(a) states that applications must be transmitted to the Review Committee "for approval" is not determinative because the ordinance must be read as a whole. Having done so, we conclude that the Marijuana Ordinance did not grant the Review Committee authority to approve applicants but required the City Council to retain and exercise the decision-making authority to approve applications and issue licenses. The ordinance gave the Review Committee no authority to approve or disapprove of applications. The Review Committee scored factors and made recommendations and acted solely as an advisory body. Unlike the regent and subquorum groups in *Booth*, the Review Committee had no power to winnow out applicants from the pool of eligible applicants. A body that can only make recommendations is not a governing body for purposes of the OMA because its authority does not include the power to effectuate or formulate public policy. See *Davis*, 296 Mich App at 605-606.

Notably, the Marijuana Ordinance required the City Council to consider applications and confirm their compliance with all requirements and factors, and if more applicants applied than available licenses, the City Council had to rank the applicants, independently consider the specified factors, and consider the applicant's proposed plans. The ordinance makes clear that the City Council had authority to revisit the rankings made by the Review Committee and had the authority to make its own determination for approving applications.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Under the Marijuana Ordinance, the Review Committee was not granted power to effectuate public policy. It had no authority to disapprove applicants and thereby eliminate them from consideration.

During the application process, pursuant to the ordinance, 65 license applicants submitted their materials to the City. Eventually, the Review Committee received the materials for 65 applicants, interviewed applicants, reviewed the applications, and each Review Committee member individually assigned a score to each applicant for each of the 17 factors. After this was completed, all 65 applications were forwarded to the City Council with the Review Committee's recommendations. Thereafter, the City Council, in an open meeting voted on the applications. In a 5-2 vote, the City Council selected the 15 successful applicants.[4] The Marijuana Ordinance gave the powers to perform governmental or proprietary functions to the City Council alone. Because the Review Committee was not a local governing body that had been empowered by ordinance to exercise a governmental or proprietary function, it did not constitute a public body under OMA. See MCL 15.262(a). The trial court erred by ruling that the Review Committee constituted a public body subject to the OMA which led to its erroneous invalidation of the Review Committee's actions under MCL 15.270. The trial court also erred by denying the intervenors' motions for reconsideration which described how the trial court erred as a matter of law by ruling that the Review Committee constituted a public body subject to the OMA. The trial court's erroneous OMA ruling led to its erroneous ruling respecting the motions for reconsideration. When the trial court denied the motions for reconsideration and lifted the stay on its April 2020 Opinion and Order, the court's order took effect and invalidated the licenses that the City had issued to the 15 intervening defendants. In so doing, the trial court erred as a matter of law. Consequently, we reverse the trial court's grant of summary disposition to plaintiffs and vacate its April 2020 Opinion and Order, reverse the court's decision on the motions for reconsideration, and therefore vacate the court's invalidation of the City Council's initial licensing decisions.

Because of our decision in this regard, it is unnecessary for us to consider the City and intervenors' arguments that the Review Committee's reenactment of its decision at a meeting open to the public cured any OMA violation. Because the Review Committee was not a public body subject to the OMA, it did not violate the OMA, and had no obligation to cure a purported violation. Further, because of our decision, we need not consider defendants' arguments that the trial court should have denied the requested relief on various other grounds. Similarly, we need not address Happy Trails's and Kapp Walled Lake's claims that the trial court erred by ruling that they were not entitled to an award of actual attorney fees for an OMA violation. There being no OMA violation, Happy Trails and Kapp Walled Lake lack entitlement to such. We decline to address Aubrey Ventures's argument that the trial court should have determined that the City was estopped from issuing any licenses without rescoring the factors provided under Marijuana

[4] Five members of the City Council voted for the top 15 rated applicants forwarded from the Review Committee. One council member voted for the applicants ranked 24-38. One council member declined to vote at all.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Ordinance, § 19.5-13(4)(b), because the City had no obligation to do so since the Review Committee had not violated the OMA.

We also need not consider the issues raised pertaining to the trial court's ruling on plaintiffs' motion to enforce the judgment that invalidated the licenses that the City had issued to the 15 intervening defendants. Having determined that the trial court erred as described herein, which requires reversal of the grant of summary disposition to plaintiffs and reversal of its order denying reconsideration, the vacation of the trial court's 2020 Opinion and Order requires reinstatement of the City's initial licensing determinations. The appellate relief granted regarding the OMA claims renders the trial court's 2020 Opinion and Order and later October 26, 2021 order both void and unenforceable. Accordingly, because the trial court's order enforcing its judgment rested on erroneous decisions, we reverse and vacate that order as well but need not address the substantive arguments made by appellants.

2. DUE PROCESS

Some intervening defendants argue that the trial court's decision to invalidate the licenses that were awarded to them deprived them of procedural due process because they did not have an adequate opportunity to defend their interests. Although the intervenors had a property interest in their licenses, the record establishes that the trial court took adequate steps to protect their rights. The trial court rendered erroneous decisions but afforded the intervenors the requisite due process.

Both the United States Constitution and the Michigan Constitution prohibit the government from depriving persons of life, liberty, or property without due process of law. See US Const, Am XIV; Const 1963, art 1, § 17. The protections afforded by these clauses include both a substantive provision, which protects persons from arbitrary acts by the government, and a procedural component, which guarantees constitutionally sufficient procedures for the protection of life, liberty, and property. See *Bonner v City of Brighton*, 495 Mich 209, 223-224; 848 NW2d 380 (2014), see also *Cary Investments, LLC v City of Mount Pleasant*, ___ Mich App ___, ___; ___ NW2d ___ (2022), slip op at 4-5.

Procedural due process requires—at a minimum—that a person whose interests might be affected by government action be given notice and a meaningful opportunity to be heard before the government acts. *Bonner*, 495 Mich at 235. Additionally requirements may be necessary depending on three considerations: the private interest that will be affected, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards. *Id.*

It is true that the trial court ultimately heard Happy Trails's motion for summary disposition and issued its April 2020 Opinion and Order before any intervenors had been permitted to intervene. However, the City moved to add the entities who received licenses as necessary parties under MCR 2.205(A), before the court considered Happy Trails's motion for summary disposition, and the court expressed its concern that the license holders be given an opportunity to participate in the litigation. The trial court proceeded to decide the motion and issue its April 2020 Opinion and Order, but it also stayed the application of that order on the same day the court's clerk entered the order. The court did so because it intended to grant the motions to intervene by the license holders to give them an opportunity to file motions for reconsideration challenging the propriety

RECEIVED by MSC 12/10/2025 3:03:01 PM

of the trial court's application of the law to the undisputed facts, which it specifically allowed. The trial court then provided the intervenors the opportunity to join the litigation, file their motions for reconsideration, and otherwise participate in the proceedings. After considering all the motions for reconsideration and conducting a hearing, the trial court concluded that it correctly applied the law to the facts and determined that Happy Trails had demonstrated its entitlement to relief. Accordingly, in September 2020, it lifted the stay on its April 2020 Opinion and Order, and denied the motions for reconsideration.

The trial court did not act arbitrarily when it granted Happy Trails's motion, it merely erred in its application of the law to the fact. Further, the trial court recognized that due process required that the license holders be brought into the litigation so that they could advocate for their interests. For that reason, it stayed its own order to give the intervenors time and opportunity to identify errors in the trial court's application of the law that might warrant revisiting the court's decision. Moreover, by joining them to the consolidated lawsuits, the trial court protected the intervenors' right to seek appellate review of the trial court's decisions. The trial court also held a lengthy hearing at which it gave the intervenors the opportunity to address issues that had not been identified by the City, and it addressed those issues before determining to uphold its earlier decision. The trial court's efforts to protect the rights of the license holders met the requirements of procedural due process. See *Bonner*, 495 Mich at 235-240.

As explained previously, however, the trial court abused its discretion when it premised its decision on a misunderstanding of controlling legal principles. *Davis*, 296 Mich App at 612-613. And for that reason, the trial court's 2020 Opinion and Order and order denying reconsideration are reversed.

III. PLAINTIFFS' APPEALS INVOLVING THE DUE-PROCESS CLAIMS

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg*, 285 Mich App at 369. We also review de novo the proper application of constitutional law, and the proper interpretation of the relevant ordinance. See *Bonner*, 495 Mich at 221.

B. ANALYSIS

The trial court granted the City's motion for summary disposition of the due-process claims under MCR 2.116(C)(8). The trial court essentially determined that the claims all involved application of the Marijuana Ordinance and, because plaintiffs could not establish that they had a property interest in the outcome of the application of the Marijuana Ordinance, the claims failed as a matter of law.

1. MOOTNESS

As a preliminary matter, several plaintiffs argue that the trial court should not have considered the City's motion to dismiss the due-process claims because it no longer needed to do so given its decision on Happy Trails's motion for partial summary disposition of the OMA claims. More specifically, they argue that the trial court's decision on Happy Trails's motion rendered any decision on the due-process claims moot.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case. See *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy. *Id.*

The trial court's decision on the claims involving the OMA did not render the claims for the violation of due process moot. Plaintiffs' claims under the OMA, not surprisingly, involved whether the OMA applied to the Review Committee and whether any violation of the OMA warranted relief of some kind. Plaintiffs sought a declaration that the OMA applied to the Review Committee and asked the trial court to both invalidate the decisions that the Review Committee made without doing so at meetings open to the public and for the trial court to order the Review Committee to comply with the OMA.

Although the OMA claims indirectly involved the proper scope and application of the Marijuana Ordinance for determining whether the Review Committee was a public body, the OMA claims did not involve claims on which the trial court could have granted relief directly related to the proper application of the Marijuana Ordinance. By contrast, the due-process claims focused on the procedures for licensing medical marijuana facilities under the Marijuana Ordinance. Plaintiffs alleged that they had rights related to the proper application of the Marijuana Ordinance and suffered damages as a result of the City's failure to follow those procedures. They asked the trial court, in part, to order the Review Committee and the City Council to follow the procedures stated in the Marijuana Ordinance. The relief available in the OMA action was limited to injunctive relief regarding OMA, see MCL 15.271, and the invalidation of decisions wrongfully made in violation of the OMA, see MCL 15.270. It did not generally include the authority to order injunctive relief arising from a due-process right to a particular procedure or result under the Marijuana Ordinance. Additionally, a due-process violation of the Marijuana Ordinance—unlike an OMA violation—might support a claim for monetary damages. See *Bauserman v Unemployment Ins Agency*, 330 Mich App 545, 460-465; 950 NW2d 446 (2019). Accordingly, the trial court's decision on the OMA claims did not render any decision on plaintiffs' due-process claims moot. See *Barrow*, 305 Mich App at 659.

2. DUE-PROCESS CLAIMS

The trial court granted the City's motion to dismiss plaintiffs' due-process claims under MCR 2.116(C)(8). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). In reviewing such a motion, the court must accept as true all factual allegations stated in the complaint. *Id.* The trial court should grant a motion under MCR 2.116(C)(8) if, even accepting all the allegations as true, the plaintiff has failed to state a claim upon which relief can be granted. *Id.*

Plaintiffs variously alleged claims involving the violation of the rights afforded by substantive and procedural due process. The touchstone of due process involves the protection of the individual against arbitrary government action. *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5. Due process includes both a substantive component and a procedural component; the "substantive component protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring

RECEIVED by MSC 12/10/2025 3:03:01 PM

constitutionally sufficient procedures for the protection of life, liberty, and property interests." *Bonner*, 495 Mich at 224; see also *Cary Investments*, ___ Mich App at ___; slip op at 4-5. The initial inquiry for both components is to identify the interest allegedly infringed to determine whether it falls within the definition of life, liberty, or property. If the interest at issue does not involve a life, liberty, or property interest, then the Due Process Clause affords no protection and the claim must fail. *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5.

Plaintiffs' due-process claims, though alleged in varying terms, each involved claims that the City violated their right to have the facility licenses issued consistent with the requirements of the Marijuana Ordinance. Stated another way, each of their claims involved whether the City failed to follow its own laws in the issuing of the licenses and violated the due-process protections afforded to applicants for a license. The question, therefore, is whether an applicant's application for a license involves a life, liberty, or property interest for which the Due Process Clause provides protection.

In general terms, a license does not convey property rights under Michigan law. See *Morse v Liquor Control Comm*, 319 Mich 52, 66; 29 NW2d 316 (1947). Our Supreme Court, however, has recognized that once the government issues a license, the holder of a license has a sufficient property interest in the license to invoke the protections of the Due Process Clause. See *Bundo v Walled Lake*, 395 Mich 679, 688-696; 238 NW2d 154 (1976). The Court explained that, although the license holder holds the license by the grace of the government, once issued, the license holder can reasonably assume that the government will renew the license when the renewal procedure provides for renewal as a matter of course. *Id*. at 692, 693, 695. The same is not true for a first-time applicant for a license. This Court has explained that first-time applicants for licenses are not entitled to minimal due process. *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 5. This is because a property right must be premised on more than a "mere unilateral expectation." *Bundo*, 395 Mich at 692. A person must have more than an " 'abstract need or desire' " for a benefit in order to have a property interest in it; he or she must have a " 'legitimate claim of entitlement' " to the benefit. *Id*., quoting *Bd of Regents of State Colleges v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed 2d 548 (1972). Because a first-time applicant for a license cannot show that he or she has an entitlement to the license, a first-time applicant has no property interest in the issuance of the license. See *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 572; 692 NW2d 68 (2004); see also *Wong v City of Riverview*, 126 Mich App 589, 592-593; 337 NW2d 589 (1983); *Barr v Pontiac City Comm*, 90 Mich App 446, 451; 282 NW2d 348 (1979) ("We agree with defendant's contention that there is no protected interest in a mere expectation a new license applicant or transferee might possess.").[5] For that reason, the procedural protections of the Due Process Clause do not apply to the determination whether to issue a license in the first

[5] The parties try to distinguish the liquor license cases to no avail. The general principle from these decisions is that one has no property interest in a license until it has been formally granted to the licensee. An applicant, therefore, cannot complain that the application procedure did not meet minimum due process because he or she has no interest in the license during the initial application process. See *Maxwell*, 264 Mich App at 572; *Wong*, 126 Mich App at 592-593. That is analogous to the events at issue.

RECEIVED by MSC 12/10/2025 3:03:01 PM

instance. This Court's review of a city's decisions regarding first-time applicants is "extremely narrow[,]" . . . "limited only to whether the city has acted arbitrarily and capriciously." *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 5.

In this case, because plaintiffs were first-time applicants for a facilities license, they had no property interest in a license that required the City to provide them procedural due process. *Id.* For that reason, plaintiffs' procedural due-process claims premised on the failure to follow the Marijuana Ordinance or the OMA failed as a matter of law because the City followed the process prescribed by the Marijuana Ordinance, the Review Committee did its part, and the City Council made the ultimate decisions regarding selection of the applicants to receive licenses. As explained in *Cary Investments*, "due process merely ensures a fair procedure, not any particular outcome." *Cary Investments*, ___ Mich App at ___; slip op at 6. "The right to due process guaranteed by the United States Constitution and the Michigan Constitution of 1963 does not empower courts to micromanage the decision-making of governmental entities." *Id.* at ___; slip op at 7.

On appeal, plaintiffs assert that, notwithstanding the law involving first-time applicants for a license, they had an interest in the procedures for obtaining a license for two reasons. They first assert that when the procedures for issuing a license so circumscribe the issuing agency's authority that an applicant has a reasonable expectation of receiving the license, due process protects the applicant's right to have the issuing agency follow the procedures. See, e.g., *Med Corp, Inc v City of Lima*, 296 F3d 404 (CA 6, 2002); *Walz v Town of Smithtown*, 46 F3d 162, 168 (CA 2, 1995); *Yale Auto Parts, Inc v Johnson*, 758 F2d 54, 58-59 (CA 2, 1985) (stating that even a violation of a state's own laws does not give rise to a due-process violation; there must be a very strong likelihood that the application would be granted absent the violation).[6] These authorities recognize that a government can create a property interest in an application process by establishing a rule or policy that circumscribes the authority to deny the benefit to an applicant who meets the requirements of the law or policy. See *Med Corp*, 296 F3d at 409-411; *Walz*, 46 F3d at 168 ("We believe the discretion of the Superintendent of Highways to deny an excavation permit is so circumscribed that the Walzes possessed an entitlement to a permit."). Even if these authorities applied in Michigan, this case does not fall within those rules.

The Marijuana Ordinance includes numerous requirements for the applicant, but it does not guarantee a license to any applicant, even if the applicant submits the required materials and otherwise meets the minimum requirements for a license. Indeed, the Marijuana Ordinance allows the City Council to disapprove applications depending on the scoring of the 17 factors and its further analysis of the applications and the applicants' plans and qualifications. Marijuana Ordinance, § 19.5-14(1) and (2) (giving the City Council the final authority to approve an application and requiring the City Council to confirm compliance and rank applications under certain circumstances, but not requiring the City Council to approve applicants on the basis of rankings). The Marijuana Ordinance provided the City Council with unfettered discretion to approve or disapprove the grant of a license. In fact, the City Council had no obligation to issue any licenses, no matter how qualified the applicants. See Marijuana Ordinance, § 19.5-7(3)

[6] Decisions by lower federal courts are not binding on this Court, but may be persuasive. See *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

(setting the maximum number of provisioning centers and then stating that the City has no obligation to issue licenses and further providing that the City can issue them "whenever they want"). Under these circumstances, it cannot be said that the Marijuana Ordinance contained rules that so limited the discretion of the decision-makers that any applicant had a reasonable expectation that he or she would receive a license if he or she complied with the application process. Indeed, under the plain terms of the Marijuana Ordinance, no applicant can be said to have had a reasonable expectation of receiving a license no matter how qualified.

Plaintiffs also suggest that they had a protected property interest because they expended funds in complying with the application process and purchased interests in real property as part of that process. The fact that plaintiffs spent sums and acquired property in the hope that they would receive a license, however, does not establish that they were entitled to a license. See *Bundo*, 395 Mich at 692. Such expenditures do not give rise to a property interest in a license that has yet to be issued. For these reasons, the trial court did not err when it determined that plaintiffs' claims that the City violated procedural due process failed as a matter of law. No first-time applicant has an interest in the procedures for obtaining a license under the Marijuana Ordinance protected by the Due Process Clause. See *Maxwell*, 264 Mich App at 572; *Wong*, 126 Mich App at 592-593; *Barr*, 90 Mich app at 451.

Plaintiffs also variously asserted that the City violated substantive due process in the manner by which they denied the licenses at issue. The substantive component of due-process protections protects a person from the arbitrary exercise of government power. See *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5. The substantive protections protect a person from both arbitrary laws and the arbitrary exercise of government authority; the distinction depends on whether the plaintiff is attacking the constitutionality of a law or attacking an act by a governmental agent. See *Mettler Walloon LLC v Melrose Twp*, 281 Mich App 184, 198; 761 NW2d 293 (2008). For laws that do not affect a fundamental liberty interest, a plaintiff must demonstrate that the law is not reasonably related to a legitimate governmental interest. See *Bonner*, 495 Mich at 227. If the plaintiff is attacking a governmental action rather than a law, then the plaintiff must show that the governmental actor took action that was so arbitrary as to shock the conscience. *Mettler Walloon*, 281 Mich App at 200; *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 4. But in both instances the plaintiff must still establish that the law or act affected an interest protected by due process. See *Bonner*, 495 Mich at 225 (stating that the first inquiry is whether the plaintiff has identified an interest that has been infringed by the law or act, which comes within the definition of life, liberty, or property). Because plaintiffs failed to identify such an interest, their due-process claims failed as a matter of law. But even if the protections of substantive due process were to apply to any and all acts or laws without regard to whether the law or act infringed an interest protected by due process, plaintiffs did not allege a claim for such a violation.

In this case, plaintiffs did not raise a claim that the Marijuana Ordinance was not reasonably related to a legitimate government interest—that is, they do not challenge the constitutionality of the ordinance. Rather, they alleged that the Review Committee's handling of the applications was so arbitrary that it shocked the conscience. Plaintiffs assert that the Review Committee and City Council did not follow the Marijuana Ordinance and that the individual members of the Review Committee had no legitimate reasons for scoring the factors beyond applying their own personal

RECEIVED by MSC 12/10/2025 3:03:01 PM

preferences. Those allegations, however, were not sufficient to state a violation of substantive due process.

As this Court has noted, substantive due process does not protect persons from every governmental action that infringes liberty or damages property. Rather, the plaintiff must allege facts that—if true—would show that the actor used governmental power to oppress or acted so irrationally that its conduct lacked any legitimate state interest; the key consideration is that the conduct shocks the conscience. See *Mettler Walloon*, 281 Mich App at 202. Picking winners and losers, although it might seem unfair, does not amount to irrational conduct or oppression; and does not shock the conscience. *Id.* Even a violation of state law by the governmental actor will not, absent more, cause the act to meet the shocks-the-conscience standard. *Id.* at 202-203.

Plaintiffs did not allege any acts that were so irrational or so egregious that it could satisfy a shocks-the-conscience standard. They merely alleged that the Review Committee and City Council did not properly follow the law and acted, in their view, arbitrarily when it selected the 15 entities that received licenses. Some argue that the individual members of the Review Committee changed scores to alter which entities would receive a license. A decision to award licenses to a group of preferred entities over a group of entities that were not preferred, even if done selfishly and with complete disregard for the law, does not ordinarily rise to the level of shocking the conscience. *Id.*

Plaintiffs also argue that the trial court's decision to grant summary disposition and dismiss their due-process claims was premature. They maintain that the trial court should have granted them the opportunity to amend their complaints to allege the facts necessary to support a claim premised on substantive due process, and they maintain that the order dismissing their claims was premature because discovery had not been completed.

The trial court had an obligation to give plaintiffs an opportunity to amend their complaints to better state their due-process claims. See MCL 2.116(I)(5). However, the trial court had no obligation to do so if the evidence then before the court showed that amendment would not be justified. *Id.* The trial court stated that, given the absolute discretion provided under the Marijuana Ordinance, no one had the right to expect anything under the ordinance, such that no change in the allegations could establish a due-process violation. The trial court correctly identified the flaw in plaintiffs' claims. Therefore, the trial court did not have to afford plaintiffs an opportunity to amend their complaints before it could grant the City's motion and dismiss the due-process claims under MCR 2.116(C)(8). Moreover, although a motion under MCR 2.116(C)(10) might be premature if done before the close of discovery, *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW2d 801 (2009), a motion under MCR 2.116(C)(8) accepts the facts alleged in the complaint as true. Indeed, a motion under MCR 2.116(C)(8) cannot be opposed or supported with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(2). Accordingly, whether the parties completed discovery lacked relevance to the court's decision regarding if plaintiffs alleged a claim on which relief could be granted. The trial court, therefore, did not err when it dismissed plaintiffs' due-process claims under MCR 2.116(C)(8).

RECEIVED by MSC 12/10/2025 3:03:01 PM

CONCLUSION

For the reasons discussed in this opinion, in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, 356023, we reverse the trial court's grant of summary disposition to plaintiffs on their OMA claims and reverse and vacate the trial court's April 2020 Opinion and Order and its order denying reconsideration of that order. In Docket Nos. 359269 and 359285, we vacate the order dated October 26, 2021. We remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction. We further exercise our discretion under MCR 7.219(A), and order that none of the parties may tax their costs.

/s/ James Robert Redford
/s/ David H. Sawyer

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 2

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC.,
a Michigan Corporation,

Plaintiff,

vs

Case No. 2022-192383-CZ
Hon. Rae Lee Chabot

CITY OR ROYAL OAK, a Michigan
Municipal Corporation,

Defendant,
and

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

CONSOLIDATED WITH:

ATTITUDE WELLNESS, LLC, a Michigan
Municipal Corporation,

Plaintiff,

vs

Case No. 2022-192288-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan
Municipal Corporation,

Defendant,
and

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

RECEIVED by MSC 12/10/2025 3:03:01 PM

BDE WARREN, LLC, a Michigan Limited Liability Company,

Plaintiff,

vs

Case No. 2022-192830-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant,

and

EXCLUSIVE CAPITAL PARTNERS, LLC., a Michigan Limited Liability Company,

Plaintiff,

vs

Case No. 2022-193015-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant.

~~~~~~

VOLUME II

CONTINUATION DEPOSITION OF PAUL BRAKE,

taken on Wednesday, July 27, 2022, at 203 South Troy Street, Royal Oak, Michigan, at 9:00 a.m., pursuant to Notice.

Reported by DEBORAH LINEHAN, CER 7251

RECEIVED by MSC 12/10/2025 3:03:01 PM
~~~~~~

doesn't work that way. But anyways, getting back to your question of how we went about this. I mean, it wasn't a blind draw. It was carefully reviewing the materials and the application, talking about that, and coming up with the final decision that came from me.

BY MR. SENAWI:

Q Okay. I'm going to use analogies a lot. Okay?

A Okay.

Q So when you're boxing and you hit below the belt a couple of times the ref can take a point away, right?

A Yes.

Q Okay. My client BDE -- and we're going to go -- again, we're going to jump into this -- these exhibits in a minute --

A Okay.

Q -- from my understanding is that their location was on Woodward, and there was no -- so what you guys say there was no access from the alleyway. No defined driveway from the alleyway to get into the property, which I disagree with and we're going to go over in a minute. But it seemed as if we -- if we look at the letter, that was the reason why this location wasn't approved. Would you agree with me on that?

MS. MCLAUGHLIN: Objection to the form of the question.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Q Were you of the opinion, sir, that you had absolute discretion in selecting the winning municipal license slots?
A Yes, I did.
Q And were you of the opinion that you yourself would determine the competitive process in selecting those winners?
MS. MCLAUGHLIN: Object to the form of the question. Vague.
BY MR. SENAWI:
Q Do you understand my question because I'd be happy to rephrase it?
A No, I understand the question. As I answered earlier that there were others that were involved in evaluating the applications, but when it came to the final decision that -- that came from me.
Q What's your favorite sport to watch?
A I'm a miserable Tigers fan.
Q Miserable Tigers fan, okay.
A Yeah.
Q At the end of the baseball game who's determined -- how is a winner determined?
A The one that has the highest score.
Q The highest score. So there's points involved, right?
A Yes.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 3

RECEIVED by MSC 12/10/2025 3:03:01 PM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ATTITUDE WELLNESS, LLC,

Plaintiff,

v.

VILLAGE OF PINCKNEY,

Defendant.
_____/

Case No. 21-cv-12021

U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

ORDER AND OPINION DENYING ATTITUDE WELNESS'S MOTION FOR A PRELIMINARY INJUNCTION [#2], GRANTING THE MEANS PROJECT'S MOTION TO DISMISS [#26], AND GRANTING THE MEANS PROJECT'S *EX PARTE* MOTION FOR LEAVE TO FILE EXCESS PAGES [#36]

I. INTRODUCTION

On August 30, 2021, Plaintiff Attitude Wellness, LLC, d/b/a/ Lume Cannabis Company ("Lume") initiated this action against the Village of Pinckney ("the Village") seeking declaratory and injunctive relief. ECF No. 1, PageID.2. Lume argues that the Village's ranking matrix for cannabis retail business licenses violates the dormant Commerce Clause, the Michigan State Constitution, and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). *Id.* at PageID.2.

Presently before the Court is Lume's Motion for a Preliminary Injunction. *See* ECF No. 2. The Village filed its Response opposing the Motion on September

RECEIVED by MSC 12/10/2025 3:03:01 PM

22, 2021. ECF No. 10, PageID.123. Intervening party The Means Project LLC filed its Response on November 19, 2021, after the Court granted its Motion to Intervene. ECF No. 27, PageID.493. Lume submitted its Replies on October 6, 2021, and November 29, 2021, respectively. ECF No. 11, PageID.152; ECF No. 28, PageID.540.

Also before the Court is The Means Project's Motion to Dismiss [#26], filed on November 19, 2021. The Motion is fully briefed, and oral argument will not aid its disposition. *See* ECF Nos. 30, 37. Therefore, the Court elects to resolve the Motion to Dismiss on the briefs. E.D. Mich. L.R. 7.1(f)(2). For the reasons discussed below, the Court will DENY Lume's Motion for a Preliminary Injunction [#2], and GRANT The Means Project's Motion to Dismiss [#26].

II. FACTUAL BACKGROUND

Lume is a cannabis business operating 22 cannabis retailers across Michigan. ECF No. 1, PageID.2. It entered the recreational cannabis industry after Michiganders voted to legalize cannabis for recreational use in the general election on November 6, 2018. MICH. COMP. LAWS § 333.27951. A month later, the state legislature enacted the MRTMA. *Id.* The legislation established a system to license and regulate cannabis businesses. *Id.* The MRTMA allows Michigan municipalities to prohibit or limit the number of cannabis businesses within their

RECEIVED by MSC 12/10/2025 3:03:01 PM

communities. MICH. COMP. LAWS § 333.27956. Municipalities that limit the number of cannabis business licenses must establish "a competitive process" to "select applicants who are best suited to operate [a cannabis business] in compliance with this act within the municipality." MICH. COMP. LAWS § 333.27959(4).

The Village initially prohibited recreational cannabis businesses from operating within its city borders, but reversed course following a local election on November 3, 2020. ECF No. 10, PageID.128–129. The Village council adopted Ordinance 152 twenty days after the local election, which created regulations governing cannabis business licensure in the Village. *See* ECF No. 1-4. The Ordinance authorized six licensed cannabis businesses to operate in the Village. *Id.* at PageID.26. Only one cannabis retailer license was available. *Id.*

Pursuant to the Ordinance and MRTMA, the Village adopted a matrix to rank license applicants ("the Matrix"). ECF No. 1-4, PageID.28. The Matrix ranked applicants based on a perfect score of 85 points. *See* ECF No. 1-4. Businesses needed at least 70 points to become eligible for a license. ECF No. 10, PageID.130. The Matrix assigns points based on an applicant's business history, its business plan, its application's completeness, and its impact on the community. *See* ECF No. 1-5. The impact on the community portion provided five points to businesses "[a]t least 10% … owned by a resident of Livingston County," and

RECEIVED by MSC 12/10/2025 3:03:01 PM

another ten points if "[a]t least 10% of [the business is] owned by a resident of the Village of Pinckney." ECF No. 1-5, PageID.35. Two more points are available to applicants who "commit[] to a net zero impact on the environment" and "provid[e] comprehensive plans to use renewable energy and reduce its environmental impact to zero." *Id.* Applicants could obtain five additional points for operating their business in a commercially vacant building described as "distressed, blighted, or require[s] significant additional investment." *Id.*

On June 29, 2021, Lume's legal counsel emailed the Village clerk expressing concerns about the business license selection process. ECF No. 1-6, PageID.41. Of specific concern to Lume were the residency points and the environmental impact points. *Id.* at 42.

The Village received three applications for its single cannabis retailer license. ECF No. 10, PageID.130. The Means Project received a perfect score under the Matrix, whereas QPS Michigan Holdings LLC obtained 66 points, and Lume scored last with 65 points. *Id.* Lume lost points for not presenting the Village a clean energy plan and choosing not to operate its retail business in a vacant and distressed building. ECF No. 1-5, PageID.39. Neither Lume nor QPS Michigan Holdings received any residency points. *Id.*

On August 24, 2021, the Village clerk notified The Means Project that it won the Village's provisional cannabis retail license. ECF No. 10-2, PageID.146.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The Village council voted unanimously to support the provisional license award. *Id.* Final license approval would come after the State of Michigan issued its operating licenses. *Id.* The Village notified Lume about its retail license decision on August 24, 2021, as well. ECF No. 10-3. PageID.148. Included in its decision letter were instructions on appealing the Village's decision. *Id.* Lume filed the instant action against the Village six days later.

On November 1, 2021, The Means Project filed a Motion to Intervene to protect its property interest in the Village's retail cannabis license. ECF No. 12, PageID.166. The Court set an expedited briefing schedule for the Motion to Intervene and adjourned the Preliminary Injunction hearing. ECF No. 18, PageID.390. On November 18, 2021, the Court granted The Means Project's Motion to Intervene. ECF No. 25, PageID.450. The Intervenor submitted its Response to Lume's Motion for a Preliminary Injunction the very next day. ECF No. 27, PageID.493. After delays related to the COVID-19 pandemic, the Court rescheduled Lume's Preliminary Injunction hearing for March 23, 2022.

III. LAW AND ANALYSIS

A. Preliminary Injunction Legal Standard

Preliminary injunctions are extraordinary remedies reserved only for cases where it is necessary to preserve the status quo. *Enchant Christmas Light Maze &*

RECEIVED by MSC 12/10/2025 3:03:01 PM

Market Ltd. v. Glowco, LLC, 958 F.3d 532, 535 (6th Cir. 2020) (citing *Hall v. Edgewood Partners Ins. Ctr., Inc.*, 878 F.3d 524, 526 (6th Cir. 2017)). A plaintiff seeking preliminary relief must establish a likelihood of success on the merits, that they are likely to suffer irreparable harm absent preliminary relief, that the balance of equities tip in their favor, and that an injunction is in the public interest. *See Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012). The first two factors—likelihood of success and irreparable harm—weigh most heavily on the Court. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

B. Application to Plaintiff's Motion for a Preliminary Injunction

1. Likelihood of Success on the Merits

To obtain preliminary relief, Lume must make "a strong showing that [it] is likely to succeed on the merits" of its claims. *Nken*, 556 U.S. at 434. Lume argues that the Matrix violates the federal and Michigan State constitutions for allocating 15 points based on where a company's owners reside. ECF No. 2, PageID.67. It also claims that the Matrix violates the MRTMA by considering an applicant's environmental impact and an applicant's commitment to revitalizing dilapidated buildings. *Id.* at PageID.68. The Court examines each challenge below.

RECEIVED by MSC 12/10/2025 3:03:01 PM

a. United States Constitution

The Commerce Clause empowers Congress "[t]o regulate Commerce … among the several States." U.S. CONST. ART. I, § 8, cl. 3. "Although the Clause is framed as a positive grant of power to Congress," *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 548 (2015), the Supreme Court has "long held that this Clause also prohibits state laws that unduly restrict interstate commerce." *Tenn. Wine and Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2459 (2019). This restrictive aspect of the Commerce Clause is generally known as the dormant Commerce Clause. *Id*. It is intended "to effectuate the Framers' purpose to prevent a State from retreating into the economic isolation … that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337–38 (2008) (citations and quotations omitted). The dormant Commerce Clause applies in equal force to both state and local laws that "discriminate against out-of-state goods or nonresident economic actors[.]" *Tenn. Wine & Spirits Retailers Ass'n*, 139 S. Ct. at 2461.

The Sixth Circuit "typically emplo[ies] a 'two-tiered analysis'" of dormant Commerce Clause challenges. *Online Merchants Guild v. Cameron*, 995 F.3d 540, 552 (6th Cir. 2021) (quoting *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644 (6th Cir. 2010)). At the first tier, the Court must discern whether the challenged

RECEIVED by MSC 12/10/2025 3:03:01 PM

law facially discriminates against intrastate commerce. *Davis*, 553 U.S. at 338. Facially discriminatory laws are "virtually *per se* invalid," *Id.*, (quoting *Or. Waste Systems, Inc. v. Dep't of Env't Quality of Or.*, 511 U.S. 93, 99 (1994)), only surviving judicial scrutiny if they "advance[] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Or. Waste Systems, Inc.*, 511 U.S. at 101. Non-facially discriminatory laws incidentally burden commerce while appearing neutral. *Pike v. Bruce Church Inc.*, 397, U.S. 137, 142 (1970). Those laws are assessed at the second tier and are "upheld unless the burden imposed on [intrastate] commerce is clearly excessive in relation to the putative local benefits." *Id.*

Courts in this judicial district and elsewhere have found cannabis residency provisions to fall under the first tier of dormant Commerce Clause challenges. *See Lowe v. City of Detroit*, 544 F. Supp. 3d 804, 816 (E.D. Mich. June 17, 2021); *Toigo v. Dep't of Health & Senior Servs.*, 549 F. Supp. 3d 985, 991 (W.D. Mo. June 21, 2021); *NPG, LLC v. City of Portland*, No. 20-cv-00208, 2020 U.S. Dist. LEXIS 146958, at *11 (D. Me. Aug. 14, 2020); *but see Original Invs., LLC v. Okla.*, 542 F. Supp. 3d 1230, 1233 (W.D. Okla. June 4, 2021) (sidestepping the dormant commerce clause analysis to deny preliminary relief on other grounds). The parties here cite both *Lowe* and *NPG* in support of their arguments. The Court will therefore apply the first-tier analysis standard to the present challenge.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Lowe and *NPG* concerned challenges to local cannabis licensing regimes that either conditioned license eligibility on an applicant's durational residency, or gave resident applicants an advantage over non-residents. *See, e.g.*, *Lowe*, 544 F. Supp. 3d at 806 (limiting eligible cannabis business license applicants to Detroit residents of "at least ten years."); *NPG*, 2020 U.S. Dist. LEXIS 146958, at *6–*7 (providing five of 35 points to municipal cannabis license applicants whose business was "[a]t least 51% owned by individuals who have been a Maine resident for at least five years.").

In *Lowe*, a business applicant sought injunctive relief enjoining the City of Detroit from implementing its recreational cannabis licensing ordinance. 544 F. Supp. 3d at 806. The ordinance reserved at least 50 percent of recreational cannabis licenses for Detroit residents of at least ten years and gave those applicants a six-week application window to apply before non-residents. *Id.* at 807–08.

Similarly, the plaintiff in *NPG* moved to enjoin the City of Portland from implementing a cannabis licensing regime that facially discriminated against out-of-state cannabis business license applicants. 2020 U.S. Dist. LEXIS 146958, at *6. The court there agreed that the ranking matrix violated the Constitution. *Id.* at *26 ("I conclude that the City is unlikely to succeed in justifying the residency

RECEIVED by MSC 12/10/2025 3:03:01 PM

preferences in its points matrix.") (citing *Granholm v. Heald*, 544 U.S. 460, 492–93 (2005)).

Lume's dormant Commerce Clause argument traces that made in *NPG*. The Matrix allocates 15 of 85 points to residency, while only reviewing applications that receive at least 70 points. That licensing regime almost requires eligible applicants to have ten percent of owners reside in Livingston County or the Village of Pickney. The Supreme Court has long prohibited economic protectionism of this sort. *See Davis*, 553 U.S. at 337–38.

The Village does not argue that its Matrix is nondiscriminatory. Rather, it contends that non-durational residency requirements deserve different treatment. ECF No. 10, PageID.137. The Village accurately describes the residency requirements in both *Lowe* and *NPG* as durational. *Id.* But the Court is presented no authority demonstrating why a non-durational residency requirement deserves different treatment. "The burden is on the [the Village] to show that the 'discrimination is demonstrably justified.'" *See Granholm*, 554 U.S. at 492 (quoting *Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 344 (1992)). Moreover, most courts agree that any residency considerations for a cannabis license violates the dormant Commerce Clause. *See Northeast Patients Grp. v. Me. Dep't of Admin. and Fin. Servs.*, No. 20-cv-00468, 2021 U.S. Dist. LEXIS 151027, *12 (D. Me. Aug. 11, 2021) (collecting cases); *Lowe*, 544 F. Supp. 3d at

806; *NPG*, 2020 U.S. Dist. LEXIS 146958, at *6. The issue is not whether an economic ordinance discriminates based on durational residency. What matters is that an ordinance's licensing regime discriminates against nonresidents at all. *See Garber v. Mendez*, 888 F.3d 839, 843 (6th Cir. 2018).

The Means Project's argument differs, claiming the dormant Commerce Clause *per se* rule of invalidity is only triggered by interstate commerce, not intrastate commerce. ECF No. 27, PageID.510. Yet the laws in *Lowe* and *NPG* involved intrastate commerce. And in both cases, the virtually *per se* rule of invalidity applied. *See Lowe*, 544 F. Supp. 3d at 816; *NPG*, 2020 U.S. Dist. LEXIS 146958, at *25. The Village therefore bears the burden of demonstrating how the Matrix's discrimination "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *See Davis*, 553 U.S. at 338 (citation and quotation omitted). That burden is not met here.

Neither the Sixth Circuit nor any other circuit court has ruled on the constitutionality of local residency provisions for cannabis licenses. Absent any authority supporting either the Village or The Means Project's argument, this Court finds Lume likely to succeed on its dormant Commerce Clause challenge to the Matrix.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

b. Michigan State Constitution

Next, Lume argues it is likely to succeed on its equal protection challenge brought under the Michigan State constitution. Under Michigan's equal protection clause, businesses can challenge laws "interfer[ing] with economic or business activit[ies]" that serve no legitimate public purpose. *See Murphy-DuBay v. Dep't of Licensing & Regul. Aff.*, 311 Mich. App. 539, 876 N.W.2d 598, 604 (Mich. Ct. App. 2015). Michigan courts engage in a two-step rational basis inquiry when deciding whether an ordinance violates the State's right to engage in business. *See Murphy-DuBay*, 876 N.W.2d at 604 ("[T]here is a two-step inquiry: (1) whether there is a legitimate public purpose and, if so, (2) whether there is a rational relationship between the legislation and the public purpose sought to be achieved."). An ordinance is presumed constitutional, and the challenger has the burden to rebut that presumption. *See Barrow v. City of Detroit Election Comm'n*, 301 Mich. App. 404, 836 N.W.2d 498, 507 (Mich. Ct. App. 2013).

Lume posits that "favor[ing] local merchants" is an illegitimate public purpose. *See Colonial Baking Co. v. Fremont*, 296 Mich. 185, 189–90 (1941). Like the business applicant in *Lowe*, Lume finds the Matrix's residency points are "pure economic protectionism." 544 F. Supp. 3d at 809. The Means Project avers that *Colonial Baking Co.* is bad law, whereas more recent case law suggests

RECEIVED by MSC 12/10/2025 3:03:01 PM

residency requirements do not offend Michigan's constitution. ECF No. 27, PageID.507.

Michigan courts have invalidated durational residency requirements for job applicants under the State constitution before. *See Musto v. Redford Twp.*, 137 Mich. App. 30, 357 N.W.2d 791, 793–74 (Mich. Ct. App. 1984) (finding a one-year durational residency requirement unconstitutional). To survive rational basis review, the Village must show that the residency points are rationally related to a legitimate government purpose. *Akhtar v. Charter Wayne*, No. 233879, 2003 Mich. App. LEXIS 307, at *5 (Mich. Ct. App. 2003). But it is unclear what the Village's legitimate government purpose is here.

One proposition The Means Project presents is that the Matrix's residency points help the Village ensure new businesses are familiar with the community. ECF No. 27, PageID.508. That argument is in tension with a business's right to remain free from protectionist regulations. *See Lowe*, 544 F. Supp. 3d at 815 ("[I]n the State of Michigan, there is a right to be considered for [a cannabis] license 'in a fair, reasonable, and nondiscriminatory manner.'") (quoting *Musto*, 357 N.W.2d at 793). Discrimination based on residency runs afoul to a business's right to fair

RECEIVED by MSC 12/10/2025 3:03:01 PM

consideration in license applications.[1] As such, economic protectionist policies cannot serve a legitimate government purpose and fail under rational basis review.

As the Court explained *supra*, most residency preferences amount to economic protectionism that are repugnant to the federal and Michigan State constitutions. *But see Barrow*, 836 N.W.2d at 511 (recognizing an exception to durational residency requirements for election candidate eligibility). The Village does not argue otherwise, nor did it respond to Lume's equal protection argument. ECF No. 10, PageID.134–138. Accordingly, the Court finds Lume, like the plaintiff in *Lowe*, likely to succeed on its Michigan State constitution claim. 544 F. Supp. 3d at 815.

c. MRTMA

Lume also argues that the Matrix violates the MRTMA because it "awards points for reasons that have nothing to do with MRTMA compliance." ECF No. 2, PageID.68–69. The MRTMA instructs localities to "decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with" the MRTMA "within the municipality."

[1] The parties also debate whether the Ordinance's Matrix violates Michigan's right to travel. If the right to travel is implicated, strict scrutiny is triggered. *See Barrow*, 836 N.W.2d at 511. The Court declines to entertain the right to travel arguments because the residency points contained in the licensing matrix cannot survive rational basis review.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICH. COMP. LAWS § 333.27959(4). Lume contends "a business's environmental practices, and a business's commitment to filling vacant buildings" have nothing to do with MRTMA compliance. ECF No. 2, PageID.68. The Matrix thus conflicts with the MRTMA, Lume states, making it unlawful. The Means finds Lume's construction of the MRTMA too narrow. ECF No. 27, PageID.503–504. Instead of couching municipalities' discretion, The Means Project reads the MRTMA as affording localities broad discretion to design their cannabis licensing regimes. *Id.*

Michigan law guides the Court's statutory construction analysis here. "The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statutes plain language." *Houdek v. Centerville Twp.*, 276 Mich. App. 568, 741 N.W.2d 587, 596 (Mich. Ct. App. 2007). When a statute's meaning "is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* Courts accord every word or phrase in a statute its plain and ordinary meaning, while accounting for the context in which those words are used. *See People v. Pinkney*, 501 Mich. 259, 912 N.W.2d 535, 539 (2018) (quoting *Madugula v. Taub*, 496 Mich. 685, 853 N.W.2d 75, 81 (2014)). The statute at issue here reads in relevant part:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality … the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICH. COMP. LAWS § 333.27959(4). Municipal laws must be "in direct conflict with" the MRTMA for state law preemption to apply. *See Ter Beek v. City of Wyoming*, 495 Mich. 1, 846 N.W.2d 531, 541 (2014). Direct conflicts arise where "the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Id.* (citation omitted).

Courts afford substantial deference to Michigan's local governments when construing municipal ordinances. *See Cady v. City of Detroit*, 289 Mich. 499, 286 N.W. 805, 807 (1939). "Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed." *Guertin v. State*, 912 F.3d 907, 938 (6th Cir. 2019) (quoting *Bivens v. Grand Rapids*, 443 Mich. 391, 505 N.W.2d 239, 243 (1993)) (emphasizing how Michigan "[m]unicipalities enjoy significant autonomy over local government functions."). The Michigan Supreme Court has emphasized how municipalities maintain "great[] latitude to conduct their business[,]" *Associated Builders & Contractors v. City of Lansing*, 499 Mich. 177, 880 N.W.2d 765, 769 (2016), such that Michigan's towns "enjoy not only those powers specifically granted, but they may also exercise *all powers not expressly denied*." *AFSCME v. City of Detroit*, 486 Mich. 388, 662 N.W.2d 695, 707 (2003) (emphasis added) (citation omitted).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Nothing in the MRTMA's plain language signals the legislature's intent to cabin municipal discretion. Indeed, the statute explicitly instructs municipalities to decide who is best suited to operate a lawful cannabis business in their communities. MICH. COMP. LAWS § 333.27959(4). If Michigan's legislature wanted to identify specific factors for localities to consider when companies are "best suited" to receive cannabis licenses, it could have defined criteria in the MRTMA. *Id.* But the legislature did not do so. Instead, Michigan's legislature empowered local governments to choose criteria identifying companies best suited to join their communities.

The Village exercised that discretion here. It ranked cannabis license applicants based on their business plan and impact on the community, which the MRTMA does not expressly prohibit. The MRTMA does not "directly conflict" with municipal officials considering an applicant's environmental footprint or building revitalization efforts. *Ter Beek*, 495 Mich. at 20. Lume argues that the statute constrains municipal discretion to selecting cannabis license applicants based solely on their "suitability to comply with [the] MRTMA" in their communities. ECF No. 28, PageID.545. But that interpretation is incorrect for at least two reasons.

First, the MRTMA provision at issue, MICH. COMP. LAWS § 333.27959(4), does not contain the constraining language Lume professes it does. The Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

should not read language into a statute that is not there. *See Covenant Med. Center, Inc. v. State Farm Mut. Ins. Co.*, 500 Mich. 191, 895 N.W.2d 490, 495 (2017). Lume does not cite MRTMA provisions explicitly prohibiting the Village from considering a cannabis license applicant's environmental impact, or an applicant's commitment to revitalizing debilitated buildings. Unless the Village's practices are contrary to clear constitutional or statutory mandates, its non-residency considerations do not violate the MRTMA.

Second, Michigan Supreme Court precedent runs counter to Lume's reading of the MRTMA as constraining municipal discretion. As a home rule state, Michigan's localities possess tremendous authority over local affairs, such that power not expressly prohibited is presumed provided. *See AFSCME*, 662 N.W.2d at 707. Here, that unprohibited power includes localities considering a cannabis license applicant's environmental impact and building revitalization efforts, since the MRTMA does not bar either factor from consideration. Absent authority suggesting otherwise, the Court will continue respecting the autonomy Michigan municipalities enjoy. Accordingly, the Court does not find Lume likely to succeed on its MRTMA claim.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. Irreparable Harm

Lume next argues that the Matrix caused irreparable harm by preventing Lume from entering the Village's retail cannabis market.[2] ECF No. 2, PageID.71. "When constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama*, 697 F.3d at 436. But plaintiffs seeking a preliminary injunction must establish that without preliminary relief, they are "likely to suffer irreparable harm." *Id.* The unconstitutional conduct must cause the irreparable harm. *Id.* That is not the case here.

Both *Lowe* and *NPG* are instructive on the irreparable harm prong. The business applicant in *Lowe* challenged the Detroit residency preference before it took effect. 544 F. Supp. 3d at 816 ("demonstrat[ing] that [plaintiff] will suffer irreparable injury absent an injunction" because she would "be significantly disadvantaged in applying for a recreational [cannabis] retail license."). The plaintiff in *NPG* argued similarly. *See* 2020 U.S. Dist. LEXIS 146958, at *14 ("assert[ing] that the points matrix creates an injury-in-fact by denying Plaintiffs the opportunity to participate in Portland's licensing process on equal footing with other applicants.") (internal quotations omitted). Plaintiffs in both *Lowe* and *NPG* sought preliminary relief before local governments considered their business

[2] Lume's witness at the Preliminary Injunction hearing testified that its Michigan retail stores each average $400,000 in annual revenue. Although the Village has under 3,000 residents, the witness expects the Village's retail operation to perform similarly.

RECEIVED by MSC 12/10/2025 3:03:01 PM

license applications because the requested relief was equal treatment in the application evaluation process. Timing in both cases proved critical.

The Village draws the Court's attention to the timing distinction between Lume's lawsuit and other cannabis residency challenges. ECF No. 10, PageID.137. Lume sought injunctive relief after the Village denied its business application. The requested relief is an order finding the Ordinance unconstitutional and enjoining the Village from issuing cannabis retailer licenses under it. ECF No. 1, PageID.14–15. But unlike prior cannabis license residency challenges, Lume seeks relief after the residency points are proven immaterial.

As the Village correctly notes, even if the Matrix had no residency points, Lume was not going to win the Village's cannabis retail license. ECF No. 10, PageID.140. Lume lost two points for not presenting "comprehensive plans to use renewable energy and reduce its environmental impact to zero" in its license application. ECF No. 1-5, PageID.39. It lost another three points for choosing not to operate its business in a distressed or blighted commercial structure that is currently vacant. *Id.* Without those points, any harm Lume claims it incurred from the residency points is inconsequential because The Means Project had a perfect score. *Id.* at PageID.34.

Perhaps most fatal to Lume's irreparable harm argument is the Ordinance's severability clause. ECF No. 1-4, PageID.31. Even if Lume succeeds on the

RECEIVED by MSC 12/10/2025 3:03:01 PM

merits of its constitutional challenge to the Matrix, the Ordinance it extends from requires only the unlawful portions be severed. *Id.* That severability would keep the Matrix's lawful portions intact, *i.e.*, green business practices and building revitalization efforts. The status quo will remain unchanged because Lume did not receive as many lawful points as other applicants. The Court therefore finds Lume unlikely to suffer irreparable harm absent preliminary relief.

3. Remaining Preliminary Injunction Factors

Finally, the Court looks at the balance of equities and public interest to determine whether preliminary relief is warranted. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). Here, the Court weighs the balance of hardships to Lume if preliminary relief is not provided, against the hardships to the Village if a preliminary injunction is issued. As discussed above, Lume did not receive enough points to win the cannabis retail license, even without residency being considered. Moreover, the Village's hardships are great. Another court outside this district found delaying a locality's cannabis licensing process harmful to the public. *See NPG*, 2020 U.S. Dist. LEXIS 146958, at *29. The hardships on The Means Project weigh against an injunction as well. The Intervenor invested $2,200,000 in the Village's cannabis operation, including $500,000 in converting a vacant elementary school into a cannabis grower,

RECEIVED by MSC 12/10/2025 3:03:01 PM

processor, and retailer operation. ECF No. 27-2, PageID.522. Any delay in the licensing process can cause the Village and The Means Project to fall behind the rest of Michigan's cannabis markets.

Enjoining the Village's cannabis licensing regime could provide Lume the relief it seeks, but it will likely cause the Village and The Means Project greater hardship. Therefore, the Court finds the balance of equities and public interest to favor the Village. Because Lume does not face irreparable harm, and because the balance of equities and public interest favor Defendant, the Court will DENY Plaintiff's Motion for a Preliminary Injunction [#2].

C. Motion to Dismiss

Next, The Means Project moves to dismiss Lume's action. Dismissal is warranted for at least two reasons, The Means Project states: (1) for lack of standing—subject matter jurisdiction—under 12(b)(1),[3] and (2) Lume's failure to state a claim upon which relief can be granted pursuant to 12(b)(6). The Means Project seeks dismissal under an abstention theory as well.

[3] Intervenor does not bring its standing challenge under Rule 12(b)(1) explicitly, but courts lack subject matter jurisdiction over parties without standing in federal court. *See Lyshe v. Levy*, 854 F.3d 855, 857 (6th Cir. 2017) ("Whether a party has [Article III] standing is an issue of the court's subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)."). This Court therefore construes the challenge for lack of subject matter jurisdiction under Rule 12(b)(1), rather than Rule 12(b)(6).

RECEIVED by MSC 12/10/2025 3:03:01 PM

1. Article III Standing

The Means Project first asserts Lume lacks Article III standing. Standing is the "essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs must meet three requirements to establish standing: (1) an injury that is concrete and particularized, as well as actual or imminent; (2) a causal relationship between the injury and alleged conduct; and (3) a likelihood that the Court can redress the injury. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). At the motion to dismiss stage, "a facial attack on the pleadings for lack of standing" requires courts to "accept the allegations set forth in the complaint as true, drawing all inferences in favor of the plaintiff." *See Mosley v. Kohl's Dep't Stores, Inc.*, 942 F.3d 752, 756 (6th Cir. 2019).

Accepting Lume's allegations as true, it has Article III standing. The Court agrees that Lume sufficiently plead a concrete and particularized injury—discrimination in the Village's license evaluation process—that is traceable to the Village. ECF No. 30, PageID.586. The Court could also redress Lume's injury with a favorable decision. For example, Lume seeks declaratory relief striking the Matrix's allegedly unlawful sections, and an order voiding The Means Project's license. ECF No. 1, PageID.15. That relief would likely afford Lume a fair opportunity to obtain the Village's retail cannabis license. While it remains

RECEIVED by MSC 12/10/2025 3:03:01 PM

speculative whether Lume would win the license, the Court need only consider whether the relief is likely to provide Lume a fair opportunity for consideration. Because this Court can provide such relief, Lume's lawsuit is justiciable.

The Means Project contends Lume cannot satisfy any Article III standing requirement. Lume has no property interest in the retail license because Lume lost its bid, The Means Project states, making any potential harm speculative. The Means Project also argues that Lume cannot win a retail cannabis license because even with the challenged portions of the Matrix struck, Lume could not win more points than The Means Project. But accepting Lume's allegations as true, Lume and The Means Project would tie with 70 points. And because the Matrix's tiebreaker relies on unlawful criteria—residency—Lume could still win the retail license based on its allegations.

The Court could afford relief from the stated harm as well. Again, Lume is not seeking the retail cannabis license as relief. Instead, Lume seeks a nondiscriminatory evaluation process. In Michigan, business license applicants have a right to "fair, reasonable, and nondiscriminatory" consideration of their license applications. *See Lowe*, 544 F. Supp. 3d at 815 (quoting *Musto*, 357 N.W.2d at 793). As such, the Court finds Lume has Article III standing.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. Failure to State a Claim

Next, The Means Project argues dismissal is warranted under Rule 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes the Court to dismiss complaints for "failure to state a claim upon which relief can be granted." To survive a Rule 12(b)(6) motion, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A "claim is facially plausible when the plaintiff 'pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Matthew N. Fulton, DDS, P.C. v. Enclarity, Inc.*, 907 F.3d 948, 951–52 (6th Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678). Determining plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. The complaint must contain "more than labels and conclusions" to survive Rule 12(b)(6) dismissal. *Twombly*, 550 U.S. at 545. Courts must "construe the complaint in the light most favorable to the plaintiff and accept all factual allegations as true." *Laborers' Loc. 265 Pension Fund v. iShares Trust*, 769 F.3d 399, 403 (6th Cir. 2014).

Accepting Lume's Complaint as true, the Court concludes it fails to state a claim upon which relief can be granted. Specifically, the Court finds Lume's

RECEIVED by MSC 12/10/2025 3:03:01 PM

MRTMA arguments conclusory and lacking in factual and legal support. Unlike a Rule 12(b)(1) Article III standing analysis, courts do not accept legal allegations as true under Rule 12(b)(6) scrutiny. *See Iqbal*, 129 S. Ct. at 1949 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). Applied here, Lume's arguments challenging the Village's MRTMA compliance fail to carry their weight.

As discussed above, Lume believes the Village's cannabis licensing scheme violates the MRTMA by providing points to applicants for green business practices and revitalizing dilapidated buildings. Section 333.27959(4)'s "best suited" language constrains municipalities discretion when selecting cannabis license applicants, Lume continues. But nothing in the statute, cannons of statutory construction, or Michigan law, suggests Lume's MRTMA reading is correct. Michigan's localities possess significant governing power over matters the legislature does not expressly prohibit. *Guertin*, 912 F.3d at 938. This Court is unaware of any Michigan statute expressly prohibiting municipalities from considering a cannabis license applicant's green business practices or building revitalization efforts. Indeed, under MICH. COMP. LAWS § 333.27956(2) "municipalit[ies] may adopt other ordinances that are not unreasonably impracticable and" regulate the "place, and manner of operation of [cannabis] establishments[.]" A business applicant's environmental impact and proposed

RECEIVED by MSC 12/10/2025 3:03:01 PM

business site falls under MICH. COMP. LAWS § 333.27956(2)'s grant of authority. Moreover, this Court is unaware of any court adopting Lume's interpretation of MICH. COMP. Laws § 333.27959(4) as law. Absent any authority or factual support, Lume's MRTMA argument is conclusory.

Without a viable MRTMA claim, Lume's case goes up in smoke. It fails to state a claim upon which this Court can grant relief due to the Ordinance's severability clause. No matter how much the Matrix runs afoul to the dormant Commerce Clause, no viable claim exists because Lume failed to obtain enough lawful points under the Matrix. Accordingly, the Court will GRANT The Means Project's Motion to Dismiss [#26] because Lume fails to state a claim upon which relief can be granted.[4]

IV. CONCLUSION

For the reasons discussed herein, the Court will DENY Lume's Motion for a Preliminary Injunction [#2].

The Means Project's Motion to Dismiss [#26] is GRANTED.

The Means Project's *ex parte* Motion for Leave to File Excess Pages [#36] is GRANTED.

[4] The Means Project also argues dismissal is proper because the Court should abstain from matters involving issues of state law. The Court declines to reach this argument because Lume fails to state a claim upon which relief can be granted.

IT IS SO ORDERED.

Dated: April 7, 2022

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 7, 2022, by electronic and/or ordinary mail.
/s/ Teresa McGovern
Case Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT C

RECEIVED by MSC 12/10/2025 3:03:01 PM

2015 WL 1650937
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Shannon BITTERMAN, Plaintiff–Appellant,
v.
Cheryl D. BOLF, Defendant–Appellee.

Docket No. 319663.
|
April 14, 2015.

Saginaw Circuit Court; LC No. 13–019397–CZ.

Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

Opinion

PER CURIAM.

***1** Plaintiff, Shannon Bitterman, appeals as of right the trial court's order granting summary disposition to defendant, Cheryl D. Bolf, under MCR 2.116(C)(10). The trial court concluded that Bolf was not a public official for the purposes of the Open Meetings Act (the Act). We affirm.

I. FACTUAL BACKGROUND

Bolf is a clerk for the Village of Oakley. Bitterman filed a complaint against Bolf, alleging that Bolf falsified minutes from a village council meeting on November 8, 2012. Bolf admitted that she added a paragraph to the public meeting minutes after the council reviewed and approved the minutes in December 2012, but she maintained that she did so in good faith to correct an error.

During a deposition in June 2013, counsel for Bitterman sought to question Bolf about a closed session of the meeting that took place on November 8, 2012. Counsel for Bolf objected on the grounds that discussions in closed council sessions are privileged. Counsel for Bitterman contended that any discussions outside the purpose of the closed meeting were not privileged. Counsel for Bolf instructed Bolf not to answer the questions.

On July 12, 2013, Bitterman filed a motion to compel Bolf to answer the questions, asserting that the answers were not privileged and that counsel for Bolf should not have instructed Bolf not to answer. Bolf responded that her answers were subject to a privilege and that answering them also would have violated the trial court's order in a different lawsuit. On July 22, 2013, the trial court denied Bitterman's motion. It determined that Bolf's answers were subject to a privilege and that permitting Bitterman to depose Bolf on the issue would violate its protective order in another case.

In August 2013, Bitterman moved for summary disposition under MCR 2.116(C)(10). Bitterman alleged that there was no question of fact regarding whether Bolf violated the Act because she admitted that she altered the minutes. In response, Bolf moved for summary disposition under MCR 2.116(C)(10), asserting that a village clerk is not a public official under the Act.

The trial court granted summary disposition to Bolf on the basis that she was not a public official. Relying on this Court's decision in *People v. Whitney,* 228 Mich.App 230; 578 NW2d 329 (1998), the trial court reasoned that Bolf was not a public official because she was not a member of a public body. It also noted that Bolf did not exercise legislative authority.

II. STANDARDS OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition and issues of statutory interpretation. *Herald Co. v. Bay City,* 463 Mich. 111, 117; 614 NW2d 873 (2000). When interpreting a statute, this Court's role is to examine the statute's language to determine the intent of the legislature. *Id* . "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Id.* at 117–118.

***2** We review for an abuse of discretion the trial court's

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 12/10/2025 3:03:01 PM

decision on a discovery motion. *Reed Dairy Farm v. Consumers Power Co.,* 227 Mich.App 614, 616; 576 NW2d 709 (1998). The trial court abuses its discretion when its outcome falls outside the range of principled outcomes. *Maldonado v. Ford Motor Co.,* 476 Mich. 372, 388; 719 NW2d 809 (2006). We review de novo issues of privilege. *In re Costs & Attorney Fees,* 250 Mich.App 89, 98; 645 NW2d 697 (2002).

III. CLOSED MEETING PRIVILEGE

Bitterman contends that the trial court erred by refusing to compel Bolf to answer her questions about the closed session. According to Bitterman, the privilege should not attach because the council discussed topics outside the stated purpose of the meeting. Bolf contends that her attorney properly instructed her not to answer any questions because her answers were subject to a statutory privilege. We conclude that the trial court did not abuse its discretion by denying Bitterman's motion to compel because Bitterman did not follow the proper discovery procedures in light of Bolf's assertion of privilege.

While the Act generally provides that any meeting of a public body should be held in a public place and open to the general public, MCL 15.263(1), it also provides exceptions under which a public body may meet in a closed session. MCL 15.268. Minutes taken at a closed session "are not available to the public, and shall only be disclosed if required by a civil action" filed under the Act. MCL 15.267(2). However, this Court does not allow public bodies to evade the Act's requirements by discussing topics in closed meetings outside of those topics for which the Act provides an exception. *Whitney,* 228 Mich.App at 247.

Michigan follows a policy of open and broad discovery. *Reed Dairy Farm,* 227 Mich.App at 616. Generally, any matter that is relevant to the subject matter of the controversy is subject to discovery. *Id.* Parties may make objections during depositions, and "evidence objected to on grounds *other than privilege,* shall be taken subject to the objections. MCR 2.306(C)(4) (emphasis added). An attorney may instruct a party not to answer a question "when necessary to preserve a privilege or other legal protection...." MCR 2.306(C)(5)(a). "An in camera proceeding is the appropriate vehicle to determine whether information requested in discovery proceedings is protected by a statutory privilege." *LeGendre v. Monroe Co.,* 234 Mich.App 708, 742; 600 NW2d 78 (1999).

In this case, counsel for Bolf asserted that the answer to Bitterman's question was subject to a statutory privilege. At the time Bitterman asked the question, there was no indication that the closed session minutes were required in this action. MCR 2.306(D)(1) allowed Bolf's counsel to instruct her not to answer the question because Bolf was asserting a statutory privilege. The proper method to challenge Bolf's assertion of statutory privilege would have been to seek an in-camera review of the allegedly privileged documents. Instead, Bitterman sought to compel an answer on the basis that counsel for Bolf improperly instructed Bolf not to answer. The trial court properly determined that Bolf's counsel was entitled to instruct her not to answer the question because Bolf was asserting a statutory privilege.

***3** We conclude that the trial court's outcome did not fall outside the range of principled outcomes. We do not consider the trial court's alternative ground for denying Bitterman's motion—that allowing Bitterman access to the closed meeting minutes would violate a protective order in another case—because it is not necessary to our resolution of this issue.

IV. PUBLIC OFFICIAL

Bitterman contends that the trial court improperly granted summary disposition under MCR 2.116(C)(10) because Bolf was a "public official" under the Act. We disagree.

The Act requires that "[e]ach public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose for which a closed session is held." MCL 15.269(1). A public body is "any state or local legislative authority or governing body, including a ... council...." MCL 15.262. The Act provides a remedy against public bodies who do not comply with its provisions:

> If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act

> and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action. [MCL 15.271(4).]

The Act also provides a remedy against public officials who intentionally violate the Act's provisions:

> A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action. [MCL 15.273(1).]

The Act does not define the term "public official." *Wilkins v. Gagliardi,* 219 Mich.App 260, 271; 556 NW2d 171 (1996). When an act does not define a term, this Court may consider a dictionary definition to assist our interpretation. *People v. Morey,* 461 Mich. 325, 330; 603 NW2d 250 (1999). But this Court also must read statutes as a whole and may not read statutory provisions in isolation. *Robinson v. City of Lansing,* 486 Mich. 1, 15; 782 NW2d 171 (2010). We must read cohesive statutory provisions together. *McCahan v. Brennan,* 492 Mich. 730, 739; 822 NW2d 747 (2012).

We conclude that consulting a dictionary is not necessary to assist in determining the meaning of the phrase "public official" because we have already interpreted this phrase in a different section of the statute. In *People v. Whitney,* this Court interpreted the language in MCL 15.272(1), which provides that "[a] public official who intentionally violates this act is guilty of a misdemeanor...." *Whitney,* 228 Mich.App at 253. In interpreting this provision, we determined that the prosecution must show that the defendant was a member of a public body. *Id.* at 253. We also recognized a possible distinction between public officials and nonpublic officials. See *Id.* at 253 n 14.

***4** Though Bitterman contends that our interpretation in *Whitney* was dicta, we disagree. Dictum is a judicial comment that is not necessary to the decision in the case. *Carr v. Lansing,* 259 Mich.App 376, 383–384; 674 NW2d 168 (2003). In *Whitney,* the language of MCL 15.272(1) was at issue as an element of the crimes on appeal. This Court's resolution of what is required for a person to be a "public official who intentionally violates this act" was directly germane to the controversy in that case. We conclude *Whitney's* interpretation is not dicta.

We also conclude that *Whitney's* interpretation of this language is instructive in this case. Both statutory sections are part of the same Act, so we must construe these provisions together. The operative language of MCL 15.272(1) and MCL 15.273(1) are almost identical—both sections refer to "[a] public official who intentionally violates this act[.]" This Court in *Whitney* held that a person is not a public official unless they are a member of a public body. Construing these provisions together, we conclude that a person is only a public official for the purposes of MCL 15.273(1) if they are a member of a public body.

In this case, the public body in question is the village council. "The president and trustees constitute the council." MCL 62.1. There is no indication that a village clerk is part of the counsel. Further, it is clear from the meeting minutes that Bolf did not vote at the meeting. Because Bolf was not a member of the council, she was not a member of a public body and was not a public official under MCL 15.273(1). We conclude that the trial court properly granted summary disposition.

We affirm. As the prevailing party, Bolf may tax costs. MCR 7.219.

All Citations

Not Reported in N.W.2d, 2015 WL 1650937

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT D

Q During the competitive process, did you compare the applications with one another?
A Yes.
Q And with respect to the ranking order of the applications, once two licenses -- license slots had been awarded was there any need to rank the others?
A No.
Q Are you aware that Gatsby Cannabis operates a facility, a marihuana retailer facility, in another location in the state of Michigan?
A I might have saw that in the application now that you mentioned that, but I would have to go back and verify.
Q Are you aware that Gatsby has been awarded licenses in other communities other than Royal Oak?

MR. ETZEL: Objection to foundation.

MS. MCLAUGHLIN: I'm just asking.

THE WITNESS: Yeah. You know, to say quite definitively, but -- but, you know, I could verify that.

BY MS. MCLAUGHLIN:
Q Did the mayor or city commissioners have access to the applications?
A No. No, not at all. Applications meaning the completed forms, not the template.
Q Right. I'm talking about the completed applications

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT E

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan. **[Amended 10-12-2020 by Ord. No. 2020-12]**

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

RECEIVED by MSC 12/10/2025 3:03:01 PM

[1] A description of the type of marihuana establishment proposed and the anticipated or actual number of employees.

[2] A security plan meeting the requirements of § 435-5 of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § 740-7.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § 770-12, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect,

RECEIVED by MSC 12/10/2025 3:03:01 PM

or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § 435-5A(5) of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § 435-4 of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted,

RECEIVED by MSC 12/10/2025 3:03:01 PM

suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment; **[Amended 10-12-2020 by Ord. No. 2020-12]**

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant.

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request an extension up to six months to this time frame, which may be granted by the City Clerk.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their

RECEIVED by MSC 12/10/2025 3:03:01 PM

applications as detailed in § 435-4C, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following:

(a) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § 435-5A(5) of this article.

(b) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

(c) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

(d) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They

RECEIVED by MSC 12/10/2025 3:03:01 PM

will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing

RECEIVED by MSC 12/10/2025 3:03:01 PM

or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § 435-4D(7)(a) will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be

removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT F

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

Consolidated Cases:

ATTITUDE WELLNESS, LLC,
a Michigan limited liability company, — Case No. 2022-192288-CZ

QUALITY ROOTS, INC., a Michigan
corporation, — Case No. 2022-192383-CZ

BDE WARREN, LLC,
a Michigan Limited Liability Company, — Case No. 2022-192830-CZ

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company, — Case No. 2022-193015-CZ

Plaintiffs, — HON RAE LEE CHABOT

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

Defendant's Answers to Plaintiff BDE Warren, LLC's First Interrogatories

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant
(Attitude and Quality cases, only).

KEVIN M. BLAIR (P76927)
KEITH D. UNDERKOFFLER (P84854)
Attorney for Plaintiff ***Attitude Wellness***
kblair@honigman.com
kunderkoffler@honigman.com

BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
bee@wwrplaw.com; wcd@wwrplaw.com

DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
david@senawilaw.com; meredith@senawilaw.com

ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
ab@consultingpllc.com

ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
amclaughlin@rsjalaw.com;
apike@rsjalaw.com
dgordon@rsjalaw.com

ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings***
in Attitude Wellness and Quality Roots cases, only
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

DEFENDANT'S ANSWERS TO FIRST SET OF INTERROGATORIES OF PLAINTIFF, BDE WARREN, LLC

Defendant, CITY OF ROYAL OAK, by and through its Attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., answers the First Set of Interrogatories of Plaintiff, BDE WARREN, LLC, as follows:

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's instructions, definitions and discovery requests to the extent that they purport to impose a duty on Defendant greater or different in kind than that imposed by the Michigan Court Rules.

2. Defendant objects to the Definitions that define specific terms or phrases that contradict the law or make false assumptions of fact.

3. Defendant objects to use of the phrase, "Review Committee," insofar as it falsely defines that anyone other than the city manager made the final determination whether to approve, deny or not select an application for a municipal license slot, and implies a constituted public body with capacity to make official decisions for the City of Royal Oak, capacity to sue or be sued, or any other legal implication pertaining to duties and liability under the Michigan Open Meetings Act, MCL 15.261, *et seq.*, any other state law, or any City of Royal Oak ordinance.

4. Defendant objects to the phrase, "Competitive Scoring Procedure" insofar as it falsely defines that anyone other than the city manager "ultimately decid[ed]" to approve, deny or not select an application for a municipal license slot.

5. Defendant objects to instructions that require Defendant to complete or compile information from sources not presently available to or known by it or its counsel. Defendant will answer any proper discovery requests based solely on information available to and discovered by Defendant at the present time or which can be obtained by Defendant from its present officials, employees, agents, or representatives.

RECEIVED by MSC 12/10/2025 3:03:01 PM

6. Defendant objects to each discovery request that purports to require Defendant to identify all persons, provide all documents, or similarly broad descriptions, because Defendant cannot reasonably know, identify, or provide each person or each document, especially persons or documents outside the possession, custody or control of the Defendant. Defendant's answers do not identify persons who may have personal knowledge but have not communicated that knowledge to Defendant or its counsel.

7. In responding to any discovery requests, Defendant does not concede the relevance or materiality of the subject matter of the discovery request or of the information requested in response to the discovery request. Answers to each discovery request are made expressly subject to, and without waiving the competency, relevancy, privilege or admissibility of the request or the responses provided.

8. Defendant objects to each discovery request that purports to require Defendant to identify all facts, or similarly broad descriptions, because Defendant cannot reasonably be expected to do so based on its own personal knowledge because such a request is inappropriately broad, because any answer in written form would necessarily be incomplete, and because such requests may require Defendant to reveal its trial strategy and/or the work product and thought processes of Defendant and/or its counsel.

9. Defendant objects to instructions requiring supplemental answers to the extent that they purport to impose obligations broader than those imposed by MCR 2.302.

10. Defendant objects to the discovery requests to the extent that they seek information which is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

11. Defendant objects to the discovery requests to the extent that they require the making of judgments of relationship and degree without reference to whether such information is calculated to lead to the discovery of admissible evidence.

RECEIVED by MSC 12/10/2025 3:03:01 PM

12. Defendant objects to each discovery request to the extent that it requests information protected by the attorney-client or work-product privileges.

13. Defendant objects to each discovery request to the extent it requires Defendant to produce any materials that are available to the public in the files of other governmental agencies or to the Plaintiff from its own files, since those materials are equally available to the Plaintiff.

14. Defendant objects to the extent that the discovery requests are overly broad, unduly burdensome, and not likely to disclose admissible evidence but, instead, appear to be designed for the purpose of harassment and to increase the costs and burdens on Defendant in this litigation.

15. Defendant objects to the discovery requests as not relevant to any party's claims or defenses and not proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information.

ANSWERS TO INTERROGATORIES

1. Identify each person who participated in preparing or assisted the person signing the answers to these discovery requests, including those people(s) who have provided information for such answers, stating with specificity the answers involved.

ANSWER: City Manager Paul Brake and defense counsel.

2. Describe, in detail, the processes employed by the City Manager in selecting the Review Committee.

OBJECTION: Defendant objects to use of the term "processes," as that term is vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and General Objection # 3 above and without waiving them, Defendant answers that the city manager requested the assistance of those department heads, officials, and directors within the city administration whose responsibilities and

RECEIVED by MSC 12/10/2025 3:03:01 PM

expertise were relevant to review of the various aspects of the recreational marijuana establishment (RME) license applications based upon the city's RME ordinance and including but not limited to the criteria under RME Ord, § 435-4(C)(4)(a)-(j), the zoning ordinance, and other city ordinances and standards, as applicable.

3. Describe, in detail, the extent of the training, instruction, and/or guidance that the Review Committee received before and/or during its review of the Applications.

ANSWER: Subject to General Objection # 3 above, Defendant answers that the department heads, officials, and directors have had previous education, training, certifications, and/or experience in their job responsibilities and fields of expertise related to their specific area of review of the applications, as well as experience reading and applying city ordinances and state law. Some were involved in the development of the application forms and online application process, which required their understanding of specific requirements of the ordinance. All personnel were required to read the ordinance and become familiar with its requirements.

4. Identify all documents known to the Defendant which relate to, or tend to support or refute, in any manner, any of the allegations, claims or contentions contained in Plaintiff's Complaint, and Defendant's Motion for Summary Disposition. If a privilege of non-disclosure is claimed as to any such documents, list each document to which such privilege is claimed, and describe in detail the legal basis for any such privilege asserted.

OBJECTION: Defendant objects to this interrogatory as vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and without waiving it, Defendant refers to the documents it has produced on April 29, 2022, May 3, 2022, July 12, 2022, and July 21, 2022, Bates numbers CRO 0001-216. See also the documents appended as exhibits to Defendant's Motion for Summary Disposition filed on April 4, 2022. Defendant also relies upon the recreational marijuana establishment (RME) license application submitted by Gatsby Cannabis Co., which will be served in an additional production after entry of the pending protective order, and the application of BDE Warren.

Defendant also relies upon city ordinance and state law, specifically, but not limited to, City of Royal Oak recreational marijuana establishment licensing ordinance, Ord. § 435-1, *et seq.*, the City of Royal Oak zoning ordinance, § 770-1, *et seq.*, the Home Rule City Act, MCL 117.1, *et seq.*, and the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*

RECEIVED by MSC 12/10/2025 3:03:01 PM

5. Describe in detail how each criterion contained in the Competitive Scoring Procedure was weighted and how it affected the Review Committee's and/or the City Manager's overall scoring of an Application.

OBJECTION: Defendant objects to this interrogatory as vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and to General Objection # 4 above and without waiving them, Defendant answers that the 10 criteria identified in the RME ordinance address the minimum standards for consideration for a municipal license slot. Failure to meet certain criteria are themselves disqualifying, such as having unpaid taxes or water bills per Ord. § 435-4(C)(4)(b), as the Home Rule City Act prohibits a city from entering a contract with a party who is in default to the City. MCL 117.5.

The first criterion set forth in Ord. § 435-4(C)(4)(a), review and evaluation of each application itself according to the language of that subsection, was the most significant. The answers to the other criteria in § 435-4(C)(4)(b)-(j), as applicable, enhanced or detracted from the overall evaluation. The city manager otherwise used a comprehensive approach in which he considered each application as a sum of its parts, rather than weighing individual criteria separately and, pursuant to the requirement of a competitive process, compared the applications with one another.

6. Identify the number of times that the Review Committee met to review and discuss Plaintiff's Application that was submitted to the City for a Retailer Municipal License Slot.

ANSWER: Subject to General Objection # 3 above and without waiving it, Defendant answers, upon information and belief, once.

7. Describe in detail how Plaintiff's Application was scored under each of the criterion found in the Competitive Scoring Procedure.

ANSWER: Subject to General Objection # 4 and without waiving it, Defendant answers that neither Plaintiff's application nor that of any other applicant was "scored" in the way Defendant understands Plaintiff to use that term. For further answer, see answer # 8 below.

8. Describe in detail the reason(s) why the Review Committee and/or the City Manager ultimately decided why applicants Royal Treatment and Gatsby were better suited than Plaintiff to operate as a marihuana Retailer in compliance with the MRTMA within the City of Royal Oak.

RECEIVED by MSC 12/10/2025 3:03:01 PM

OBJECTION: Defendant objects to this interrogatory as phrased, as the Review Committee made no decisions about which applicants were best suited for a municipal license slot.

ANSWER: Subject to this objection and General Objection # 3 above and without waiving them, the City Manager decided that Royal Treatment and Gatsby applications were better suited because as a whole, they met and exceeded the criteria established by the ordinance in ways that other applicants did not.

In the judgment of the City Manager, Royal Treatment's and Gatsby's proposed facilities and operations exceeded those of all other applicants. Gatsby's site plan required no substantive corrections, variances, or adjustments. Gatsby's site plan addressed all aspects of the operations to minimize or eliminate noise, odor, and light that would have any external, adverse impacts on surrounding properties. Gatsby's sustainable infrastructure and energy-efficient features and fixtures were superior to those of other applications. Although not required by the application criteria, Gatsby went above and beyond the requirements of the ordinance and the application by including a traffic study to show expected traffic volumes and mitigation of any adverse effects. Gatsby co-located three RME uses at one location, which limits adverse impacts to one location as opposed to separate locations for each of the three uses, and simplifies enforcement to a single location and owner/operator.

Royal Treatment's proposed facility and operation also exceeded all other applicants. Ideally, the City Manager favored locations, such as this one, that complies with the zoning ordinance without the need for variances or additional approvals. This was quite evident as demonstrated through a thorough site plan document. Royal Treatment also included environmental elements promoting sustainability, including pervious pavers, rain barrels, bioswales, rain gardens, planters, and a green roof system. The underground detention system consists of underground pipes on the 1.72 acres site. The application also provided a detailed explanation of energy efficiency using solar panels and wind turbines to lessen the demand for electric need. The applicant also stated the commitment to cease operations if odor becomes an issue until it is resolved. Lastly, because the location of this facility is not a major road, a traffic study would not be necessary.

BDE Warren's application proposed a facility with access to the facility from the rear alley without a defined driveway, which does not comply with the requirements of the City's zoning ordinance. This alley access point is adjacent to residential property, with very little buffer or screening. Increased traffic in this area may cause concerns for the neighbors and odors from any idling vehicles. BDE did not provide sufficient information about expected traffic volumes that would allow the city to determine whether the proposed facility would accommodate traffic as designed or would require additional features or facilities for that purpose. Compared with the green energy features and sustainable infrastructure proposed by Gatsby and Royal Treatment, BDE Warren's were not as extensive.

9. State the ranking order of the Retailer Applications from the highest-ranking application to the lowest.

RECEIVED by MSC 12/10/2025 3:03:01 PM

ANSWER:

- Tier I retailer applicants were granted a municipal license slot – PGSH/Gatsby (RME 000010) and Royal Treatment (RME 000016).

- Tier II retailer applicants were placed on standby, in the event that either Gatsby or Royal Treatment did not complete the licensing process within the time established by the ordinance. Eventually, these applications were formally denied when RME licenses were issued to Gatsby and Royal Treatment. These were:

  RME 000004 and 000005 – Quality Roots, Inc.
  RME 000006 – LG Wellness, Inc.
  RME 000011 – Exclusive Capital Partners, LLC
  RME 000012 – Pincanna, Inc.
  RME 000013 – BDE Warren, LLC
  RME 000014 – Zenyo LLC
  RME 000015 – Main Property Holdings, LLC
  RME 000017 – Green Square Holdings
  RME 000022 – RJB Enterprises LLC
  RME 000023 – Nature's Remedy of Berkley, LLC
  RME 000027 – Green Theory, LLC
  RME 000029 – Leaforic LLC
  RME 000030 – LJA Holdings V, LLC
  RME 000031 – Sterling Heights Technology, LLC
  RME 000032 – WG Products, LLC
  RME 000034 – Attitude Wellness LLC
  RME 000035 – MPM-R West, LLC
  RME 000038 – Canterra LLC

- Tier III retailer applicants were denied after the initial review process as not meeting the minimum criteria for award of a municipal license slot.

  RME 000008 – Exclusive Brands
  RME 000018 – Pure Roots, Inc.
  RME 000019 – Green United, Inc.
  RME 000020 – High Quality Provisioning Center
  RME 000021 – Green Peak Industries
  RME 000027 – Green Theory, LLC
  RME 000028 – J Elias Management LLC
  RME 000033 – Tip Top Crop
  RME 000036 – HH Marshall
  RME 000039 – The Pure Lapeer
  RME 000040 – Seven Point Dispensing

CITY OF ROYAL OAK

By: _____

PAUL J. BRAKE
Its City Manager

Subscribed and sworn to before me
this 25 day of July, 2022

Bonnie Jean Holland
Bonnie Jean Holland Notary Public
Oakland County, Michigan
My Commission Expires: Nov 22, 2023

BONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

As to objections:

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant

The undersigned certifies that the foregoing pleading was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 26, 2022

By: ☐ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight
☐ Certified Mail ☒ Other e-serve

Signature: Sheila Lodinbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN MI Oakland County 6th Circuit Court	PROOF OF ELECTRONIC SERVICE	CASE NO. 2022-192288-CZ

Case title
ATTITUDE WELLNESS vs. ROYAL OAK CITY

1. MiFILE served the following documents on the following persons in accordance with MCR 1.109(G)(6).

Type of document	Title of document
MISCELLANEOUS	7.26.22 Def Answer to BDE Warren Rogs - served

Person served	E-mail address of service	Date and time of service
Kevin M. Blair	kblair@honigman.com	07/26/2022 5:02:15 PM
Keith D. Underkoffler	kunderkoffler@honigman.com	07/26/2022 5:02:15 PM
David Schlackman	dschlackman@carsonfischer.com	07/26/2022 5:02:15 PM
Robert Carson	rcarson@carsonfischer.com	07/26/2022 5:02:15 PM
Jeffrey Miller	jmiller@carsonfischer.com	07/26/2022 5:02:15 PM
Robert Carson	rcarson@carsonfischer.com	07/26/2022 5:02:15 PM
Anthony Bologna	ab@consultingpllc.com	07/26/2022 5:02:15 PM
William DiSessa	wcdisessa@wwrplaw.com	07/26/2022 5:02:15 PM
Brian Etzel	beetzel@wwrplaw.com	07/26/2022 5:02:15 PM
David S Senawi	david@senawilaw.com	07/26/2022 5:02:15 PM

2. I, Sheila Bodenbach, initiated the above MiFILE service transmission.

This proof of electronic service was automatically created, submitted, and signed on my behalf by MiFILE. I declare under the penalties of perjury that this proof of electronic service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

07/26/2022
Date

/s/Sheila Bodenbach
Signature

Rosati, Schultz, Joppich & Amtsbuechler, P.C.
Firm (if applicable)

FILED Received for Filing Oakland County Clerk 10/31/2022 5:25 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

JSG

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

ATTTTUDE WELLNESS, LLC,
a Michigan limited liability company,

QUALITY ROOTS, INC., a Michigan
corporation,

BDE WARREN, LLC,
a Michigan Limited Liability Company,

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

GREEN SQUARE HOLDIGS, LLC,
A Michigan limited liability company,

GREEN THEORY, LLC,
A Michigan limited liability company,

Plaintiffs,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant
(Attitude and Quality cases, only).

Consolidated Under:
Case No. 2022-192288-CZ

Case No. 2022-192383-CZ

Case No. 2022-192830-CZ

Case No. 2022-193015-CZ

Case No. 2022-194223-CZ

Case No. 2022-194753-CZ

HON RAE LEE CHABOT

KEVIN M. BLAIR (P76927)
Attorney for Plaintiff ***Attitude Wellness***
kblair@honigman.com

BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
bee@wwrplaw.com; wcd@wwrplaw.com

DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
david@senawilaw.com;
meredith@senawilaw.com

ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
amclaughlin@rsjalaw.com;
apike@rsjalaw.com;
dgordon@rsjalaw.com

ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings***
in Attitude Wellness and Quality Roots cases, only
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
ab@consultingpllc.com

FRANK M. DeLUCA (P41604)
Attorney for Plaintiff ***Green Square Holdings***
deluca@fyblaw.com

MICHAEL F. JACOBSON (P47059)
JAMES L. KRESTA (P81224)
Attorneys for Plaintiff ***Green Theory, LLC***
mjacobson@jaffelaw.com
jkresta@jaffelaw.com

MICHAEL D. STEIN (P71421)
Co-counsel for Plaintiff ***Green Theory, LLC***
steinlawpllc@gmail.com

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Defendant CITY OF ROYAL OAK's *Motion for Summary Disposition of Plaintiff Exclusive Capital Partners, LLC's Second Amended Complaint* will be brought on for hearing before the Honorable Rae Lee Chabot of the Oakland County Circuit Court on **Wednesday, December 14, 2022 @ 8:30 a.m.**, or as soon thereafter as counsel may be heard.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH
& AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

DATED: October 31, 2022

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

ATTITUDE WELLNESS, LLC, a Michigan limited liability company,	***Consolidated Under:*** Case No. 2022-192288-CZ
QUALITY ROOTS, INC., a Michigan corporation,	Case No. 2022-192383-CZ
BDE WARREN, LLC, a Michigan Limited Liability Company,	Case No. 2022-192830-CZ
EXCLUSIVE CAPITAL PARTNERS, LLC, a Michigan limited liability company,	Case No. 2022-193015-CZ
GREEN SQUARE HOLDIGS, LLC, A Michigan limited liability company,	Case No. 2022-194223-CZ
GREEN THEORY, LLC, A Michigan limited liability company,	Case No. 2022-194753-CZ
Plaintiffs,	HON RAE LEE CHABOT
-vs-	
CITY OF ROYAL OAK, a Michigan municipal corporation,	
Defendant,	
PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,	
Intervening Defendant (Attitude and Quality cases, only).	

KEVIN M. BLAIR (P76927)
Attorney for Plaintiff ***Attitude Wellness***
kblair@honigman.com

BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
bee@wwrplaw.com; wcd@wwrplaw.com

DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
david@senawilaw.com;
meredith@senawilaw.com

ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***

ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
amclaughlin@rsjalaw.com;
apike@rsjalaw.com;
dgordon@rsjalaw.com

ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings*** *in Attitude Wellness and Quality Roots cases, only*
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

ab@consultingpllc.com

FRANK M. DeLUCA (P41604)
Attorney for Plaintiff ***Green Square Holdings***
deluca@fyblaw.com

MICHAEL F. JACOBSON (P47059)
JAMES L. KRESTA (P81224)
Attorneys for Plaintiff ***Green Theory, LLC***
mjacobson@jaffelaw.com
jkresta@jaffelaw.com

MICHAEL D. STEIN (P71421)
Co-counsel for Plaintiff ***Green Theory, LLC***
steinlawpllc@gmail.com

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION OF SECOND AMENDED COMPLAINT OF PLAINTIFF, EXCLUSIVE CAPITAL PARTNERS

Defendant, CITY OF ROYAL OAK, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., moves the Court for summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim upon which relief can be granted, and (C)(10) for lack of a genuine issue of material fact. This motion is more fully supported by the Brief in Support of Defendant's Motion for Summary Disposition and the exhibits appended to it.

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100

BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION OF SECOND AMENDED COMPLAINT

At the time of filing this Motion, the parties have fully briefed the City's first Motion for Summary Disposition (**Ex A**) brought under MCR 2.116(C)(8) and (10) on the original Complaint. The later filed cases of two more plaintiffs, Green Square Holdings, LLC and Green Theory, LLC, have been consolidated by order of the court. The City's dispositive motions as to all six (6) plaintiffs are scheduled to be heard on December 14, 2022.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff Exclusive Capital Partners ("Exclusive") filed its Second Amended Complaint (SAC) on September 23, 2022, reiterating the same claims as its First Amended Complaint filed April 27, 2022, albeit with additional factual allegations and a somewhat different request for relief. At the present time, Defendant City relies upon the factual background, exhibits, and arguments made in its original Motion for Summary Disposition and Reply Brief (**Exs A and B**) and incorporates same by reference. In this motion, the City will not revisit for the sake of brevity all of the arguments in its original dispositive motion, but will focus on the additional claims that were not part of the First Amended Complaint, and on further facts and/or law that has been developed since that time.

Defendant notes that Plaintiff Exclusive included a Count XI in the SAC, asserting a claim against PGSH Holdings, LLC, d/b/a Gatsby Cannabis Co. That claim has since been dismissed by stipulation and order striking count XI entered on October 21, 2022.

LEGAL ARGUMENT

I. PLAINTIFF'S CONSTITUTIONAL DUE PROCESS CHALLENGE MUST BE DISMISSED, AS PLAINTIFF LACKS A PROPERTY INTEREST PROTECTED BY THE CONSTITUTION. FURTHER, ITS CLAIM OF PROCEDURAL DUE PROCESS BASED UPON THE ADMINISTRATIVE APPEAL IS MOOT.

Exclusive has continued to assert constitutional claims under the Michigan and U.S. Constitutions for alleged violation of due process of law. Although this court has not yet ruled on the City's original motion for summary disposition, plaintiff continues these claims despite the more-than-ample authority cited in the City's first Motion for Summary Disposition (**Ex A**, pp 8-12), and the two recent, published cases of the Michigan Court of Appeals expressly holding that first-time applicants for licenses do not have a property interest protected by the Constitution. *Cary Investments v Mt. Pleasant*, ___Mich App___ (July 20, 2022); *Pinebrook Warren LLC v City of Warren,* ___Mich App___ (August 25, 2022).

Exclusive also claims, in Count X that the city manager violated Exclusive's due process rights because the city manager advised that he would not set a hearing on Exclusive's administrative appeal

RECEIVED by MSC 12/10/2025 3:03:01 PM

from the denial of its application for retail license on May 18, 2022. As Exclusive noted in ¶ 293 of the SAC, the city manager removed Exclusive from the "waitlist" and formally denied Exclusive's application on May 18, 2022. As Gatsby and Royal Treatment had received site plan approval and obtained their licenses before that time, Plaintiff requested an appeal on May 23, 2022. SAC, ¶ 294. The City Manager then sent to Exclusive a letter, notifying it that no hearing would be held, as it would be futile.

It is not disputed that the Royal Oak RME ordinance authorizes two licenses for marijuana retailer establishments. Even according to Exclusive's own pleading, the granting of licenses to other applicants rendered Plaintiff's appeal futile and was in part the basis for denial of Exclusive's application. At that point, there were no other licenses that the city manager could award, even if he reconsidered Exclusive's application as a result of the appeal.

Exclusive's administrative appeal is, therefore, moot. "Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case." *Pinebrook Warren*, *supra*, sl op p 26, citing *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). "A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy." *Id.*

The Royal Oak marijuana ordinance permits issuance of two, and only two, retailer licenses. That process is complete and those licenses are exhausted; there is no mechanism for the city manager or this court to issue more licenses. Therefore, there is no relief that the court here could grant, and the claim is moot.

Furthermore, holding a hearing on the appeal, regardless of the outcome, would be an exercise in futility since Exclusive necessarily could not obtain a license as a result of even a reversal of the reasons for denial of its application. The City Manager had already judged the applications on their merits, and those to whom the license slots had been awarded obtained their site plan approvals and

RECEIVED by MSC 12/10/2025 3:03:01 PM

municipal RME licenses from the City. Therefore, holding a hearing on the appeal would have been futile. The law does not require the doing of a futile or useless act. *Cichecki v Hamtramck Police Dep't*, 382 Mich 428, 437; 170 NW2d 58 (1969); *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 669; 66 NW2d 92 (1954); *Miller Bros v Dep't of Natural Resources,* 203 Mich App 674, 681; 513 NW2d 217 (1994). Thus, the administrative appeal is not a justiciable controversy and subject to dismissal. MCR 2.116(C)(10).

II. THE ROYAL OAK CITY MANAGER DID NOT VIOLATE MRTMA OR THE CITY'S ORDINANCE.

The previous argument dovetails into the SAC claim that the City Manager violated the City's RME ordinance by not conducting a competitive process. Although the MRTMA, MCL 333.27956, requires a competitive process where there are more applications for licensure than licenses available, the Act is silent on what that competitive process must look like. By its very nature, a competitive process would necessarily require that the applications be compared with one another. Contrary to Exclusive's claim that there was no comparison done, the City Manager testified at deposition that he compared the applications to one another. **Ex C**, dep Paul Brake 378:1-3. ("Q: During the competitive process, did you compare the applications with one another? A: Yes.") As a result of that process, he decided on the two applicants best suited for municipal licensure.

The SAC also claims that the City Manager did not rank the applicants, allegedly in violation of the City's ordinance. Exclusive apparently construes this to mean assigning an ordinal number (first, second, third, etc.) to every application. The ordinance does not contain a specific definition of "ranking." It merely states that, "The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. *This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled.*" Ord. § 435-4.(C)(4) (emphasis added). The City Manager did rank the applications into three tiers: Tier 1 were the two leading applications that were approved for municipal license slots, and who eventually have obtained

RECEIVED by MSC 12/10/2025 3:03:01 PM

licenses. Tier II were placed on "standby" status, so that if one of the initially successful applicants did not or could not successfully complete the process to full licensure, the vacancy in a license slot would be filled from those on standby status. Tier III were those applications deemed deficient or devoid of substance from the outset. See **Ex A**, Motion for Summary Disposition Ex 2, Affidavit of Paul Brake, ¶¶ 12-15; **Ex D**, Def City's Answers to Interrogatories of Pl, BDE Warren, Interrogatory 9, pp 7-8. Perhaps more importantly, however, once the two license slots were filled, at that juncture, there was no need to rank any of the other applications. **Ex C**, Dep Paul Brake, 378:4-7 ("Q: And with respect to the ranking order of the applications, once two licenses -- license slots had been awarded was there any need to rank the others? A: No.") The law does not require the doing of a futile or useless act. *Cichecki v Hamtramck Police Dep't*, 382 Mich 428, 437; 170 NW2d 58 (1969); *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 669; 66 NW2d 92 (1954); *Miller Bros v Dep't of Natural Resources,* 203 Mich App 674, 681; 513 NW2d 217 (1994).

Exclusive also complains in its pleading that the city manager did not follow the MRTMA, but instead followed the City's ordinance. This argument entirely disregards a significant portion of the ordinance that contains the "completely submitted, detailed application" whose components are set forth in § 435-4.A (**Ex E**). The ordinance actually requires application materials that specifically relate to the MRTMA. Indeed, other than identification of the applicant, the first item required to be submitted to the City is a "prequalification from the state for either a recreational marihuana establishment or a medical marihuana facility." Ord. § 435-4.A.(3)(a). Further application materials require the applicant to demonstrate what steps the applicant proposes in operating a marijuana related business. Ord. § 435-4.A(3)(b), (h)[1]-[6], (j), (k) and (l). **Ex E**.

Notably, Exclusive has never identified any provision of the MRTMA that applied to the competitive process and that the city manager did not consider. Moreover, Exclusive overlooks that the application requirements and review of those requirements in fact deal in detailed fashion with the operation of a marijuana business for compliance with MRTMA. The SAC does not address the city

RECEIVED by MSC 12/10/2025 3:03:01 PM

manager's evaluation of each application and whether it "illustrates likely success as a marijuana business," the first criterion of the competitive process set forth in Ord. § 435-4.C(4)(a).

Plaintiff has also added a claim, Count VIII, that the City has violated the 1,000-foot buffer requirement contained in MCL 333.27959(3), which states in pertinent part:

> 3. Except as otherwise provided in this section, *the department* shall approve a *state license application* and issue a *state license* if:
>
> ***
>
> (c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement[.] (Emphasis added.)

MCL 333.27953(b) defines "the department" as "the department of licensing and regulatory affairs."

As with any other legislation, the words and phrases of MRTMA must be given their plain and ordinary meaning. *Pohutski v City of Allen Park*, 465 Mich 675; 683 NW2d 219 (2002); *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000). Courts may not speculate about an unstated purpose or probable intent of the legislature beyond the language used in the statute. *Pohutski, supra*, at 683. These well-established principles of statutory construction do not require this court to go further than the plain language of MCL 333.27959(3).

The statute itself expressly addresses the obligations of *the State of Michigan* through the *department of licensing and regulatory affairs*. It does not tie the hands of municipalities. Rather, the statute confers local, municipal discretion in adopting an ordinance in which the 1,000-foot buffer is relaxed, but this section of MRTMA does not place any obligations on the local municipality.[1]

To this end, in conjunction with the City's RME licensing ordinance, Royal Oak also adopted amendments to its zoning ordinance under its zoning authority conferred by the Michigan Zoning Enabling Act, MCL 125.3101, *et seq*., allowing marijuana uses in certain zoning districts as a special

[1] Interestingly enough, Oakland Schools Technical Center (OSTC) is glaringly absent from this or the other consolidated cases and is not complaining to this court about the issuance of a license to Gatsby.

RECEIVED by MSC 12/10/2025 3:03:01 PM

land use. Zoning Ordinance (ZO), § 770-52.1(B). **Ex F**. The special land use process requires site plan review and recommendation by the Planning Commission before a final decision by the City Commission. *Id.*

The Royal Oak ordinance does contain the 1,000-foot distancing requirement. ZO, § 770-52.1(B)(3). However, it also bestows discretionary authority to deviate from the strict requirements of the ordinance upon the City Commission: "Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section." ZO, § 770-52.1(B)(14) (emphasis added).

The City Commission, after a public hearing on April 25, 2022, exercised the authority conferred to it by the Zoning Ordinance, approved the location of Gatsby's facility, and granted Gatsby site plan approval.

Plaintiff cites in the SAC *Charter Twp of Northville v Northville Public Schools*, 469 Mich 285, 291; 666 NW2d 213 (2003), in support of its claim that public schools are immune from any application of local zoning ordinances. The relevant statutory section is MCL 380.1263(3), which provides in relevant part, "The superintendent of public instruction has sole and exclusive jurisdiction over the *review and approval of plans and specifications* for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes *and, subject to subsection (4), of site plans for those school buildings*." (Emphasis added.)

In the dispute between the Charter Township of Northville and the Northville Public Schools, the Michigan Supreme Court decided that the above statutory section prevented the Township from enforcing its zoning ordinance provisions as they related to the requirements for site plan approval. The Court expressly stated that, "Thus, *what the state superintendent approves* is immune from the provisions of local zoning ordinances." *Id.*, at 291 (emphasis added). But neither the Supreme Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

nor the statute provides that school property is entirely immune from zoning authority or enforcement. "What the state superintendent approves" is "plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes" and "site plans for those school buildings." *Id.* The Court elaborated that the power of the state superintendent relates to, "for what goes on within the site itself." *Id.*, at 296. This means, then, that the state superintendent's power begins and ends at school property lines.

There is no plausible interpretation of either the foregoing statute or the *Northville* case that allows the state superintendent to dictate to a local municipality what can go on in a zoning district established by a local zoning ordinance beyond the property lines of a school "site itself." Neither Oakland Schools, Royal Oak Schools, or any other school district can ignore a local municipality's authority under the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.*, that affects zoning and building matters outside the boundaries of school property. And the City of Royal Oak has plenary authority to implement the provisions of its zoning ordinance in the zoning district where the Oakland Schools building is located, except only for site plan approval of a school building. A public school must adhere to the zoning ordinance insofar as it governs the zoning district as a whole outside the school's boundaries.

With respect to the allegations in the SAC that City Commissioner Kyle Dubuc had some knowledge of Gatsby's proposal and the location of it on January 27, 2022, when he spoke to Theresa Rich of the Oakland School Board, Plaintiff's attempt to infer some wrongdoing on the part of Commissioner Dubuc is unavailing. Plaintiff claims that at least Commissioner Dubuc violated the City Commission's resolution prohibiting commissioners from any *ex parte* communication with marijuana license applicants during the application process. Plaintiff attempts to infer such contact with Gatsby because Mr. Dubuc expressed to Ms. Rich an opinion about the Gatsby location.

RECEIVED by MSC 12/10/2025 3:03:01 PM

However, by January 27, 2022, Gatsby and Royal Treatment had been awarded license slots. Those slots were awarded on December 15, 2021, when the city manager sent letters to all applicants advising of the decisions on their applications. Moreover, Gatsby had submitted its application for site plan review to the City Planning Commission by that time, as it was on the Planning Commission's agenda for the February 8, 2022 meeting and was a public record. Plaintiff takes a leap of logic in speculating the reason for Commissioner Dubuc's knowledge of Gatsby's location, rather than a legitimate inference.

But the testimony of Theresa Rich, on which Exclusive's allegations rest, removes any doubt about Mr. Dubuc's knowledge of the Gatsby location. Dr. Rich testified that she reached out to Commissioner Dubuc by text message to, in her words, to find out "what's going on." **Ex G**, Rich dep trans, p 47:21. The text message exchange and Dr. Rich's full description of her subsequent phone call are contained in **Ex G**. Specifically, Dr. Rich's text message to Mr. Dubuc specifically referred to "Gatsby Cannabis going in directly across the street from the Oakland Schools Royal Oak Campus." **Ex G**, p 2. It was Dr. Rich who first identified the proposed business as that of "Gatsby Cannabis". Dr. Rich further testified:

> Q: And so what did you ask Mr. DuBuc in that call?
>
> A: I asked him tell me about what's going on.
>
> Q: What did he say?
>
> A: He said that the voters voted overwhelmingly that they wanted marihuana business.· ***We didn't talk about Gatsby in particular;*** **that was the only name I knew based on the call from Mr. Williams [the Oakland Schools President] He [Dubuc] said he was aware that Oakland Schools had problems with it and gave his opinion that that was a really good location for a marihuana business.**
>
> Q: Did he say why he thought that was a good location?
>
> A: I don't remember details of it.
>
> Q: And what did you say in response?
>
> A: I said, "Thank you for your point of view."
>
> Q: Did he offer an opinion as to why -- whether that 1,000-foot buffer applied to the Royal Oak campus or why the City was ignoring the buffer?
>
> A: I don't remember if we discussed that specifically.

RECEIVED by MSC 12/10/2025 3:03:01 PM

> Q: Did you express any concern or reservations with the location of the proposed location of the Gatsby facility?
>
> A: At that point, I didn't know enough, so no, I did not. I was just trying to get an understanding. **Ex G**, pp 47:20-48:17 (emphasis added).

Nowhere in Dr. Rich's deposition testimony are any facts stated from which it can be inferred that Mr. Dubuc had had *ex parte* communication with Gatsby or any marijuana license applicant, or even that he had seen Gatsby's marijuana license application. By January 27, 2022, the city manager had already assigned the license slots and Gatsby had applied to the City Planning Commission (PC) for site plan approval, which would be heard at the PC's February 8, 2022 regular meeting. The location of Gatsby's proposed business was by mid-January 2022 a matter of public record, as reflected in Dr. Rich's text message asking to speak about "Gatsby Cannabis going in directly across the street" from OSTC.

Regardless, Exclusive's inclusion of these allegations in the SAC does not form the basis for a cause of action but is merely an attempt to further impugn the City and its officials because Exclusive lost the competition for a license.

Thus, the City Ordinance does not violate the MRTMA, nor did the City Manager violate MRTMA. Indeed, the City's ordinance specifically adopts criteria for applications that deal directly with the operation of a marijuana business. In this respect, then, Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). There is further no genuine issue of material fact that the City Manager conducted an appropriate, competitive process, that he ranked the applicants, and that he properly exercised his broad discretion under the Ordinance by choosing the applicants for two license slots that were best suited to operate in compliance with MRTMA within the City of Royal Oak. The City of Royal Oak is therefore entitled to summary disposition as a matter of law. MCR 2.116(C)(10).

III. PLAINTIFF'S CLAIM FOR A WRIT OF MANDAMUS IS VAGUE AND MOOT.

Plaintiff's claim for a writ of mandamus likewise must fail here. Count IX of the SAC alleges in part that the City "has a clear legal duty to comply with the City's Ordinances," and that "Plaintiff

RECEIVED by MSC 12/10/2025 3:03:01 PM

has a clear legal right to have Defendant comply with the City's Ordinances." But Plaintiff has failed to allege a ministerial *act* to which it claims it is entitled the City to perform.

For a writ of mandamus to issue, plaintiff must prove it has "a clear legal right to performance of the specific duty sought to be compelled and that the defendant has a clear legal duty to perform such *act*...." *Grabow v Macomb Twp*, 270 Mich App 222, 226; 714 NW2d 674 (2006)(internal quotations and citations omitted)(emphasis added). However, mandamus is an extraordinary remedy and must not be used as an instrument to review or control the discretionary functions vested in a public officer or administrative body. T*uscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994). The act sought to be compelled must be ministerial and involve no exercise of discretion or judgment. *Lickfeldt v Dep't of Corrections,* 247 Mich App 299, 302; 636 NW2d 272 (2001). Plaintiff must also be without any other remedy, legal or equitable, that might achieve the same result. *Id.* Finally, mandamus "may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner." *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 438-439; 722 NW2d 243 (2006), quoting *Teasel v Dep't of Mental Health*, 419 Mich 390, 409–410, 355 NW2d 75 (1984).

Plaintiff has failed to allege facts to show that the City or any official owed *Plaintiff* a clear, legal duty. And the gist of the entire complaint here is the manner in which the City Manager exercised his discretion. Discretionary acts are not within the purview of a writ of mandamus. Further, Plaintiff's relief requested is that the Court compel the City to "comply with the City's ordinances, laws, and MRTMA," "to properly rank applicants and not award a license within 1,000 feet of a school." But none of these constitutes a ministerial *act* for which a writ of mandamus may issue.

To the extent that Plaintiff's writ of mandamus request can be construed to order the City to reverse the determination of the city manager as to the licenses already issued and to issue Plaintiff a marijuana retailer license, that claim is moot. Simply put, Plaintiff has not alleged sufficient facts to demonstrate that a writ of mandamus is facially warranted or even permitted under the applicable standards. Defendant is entitled to summary disposition. MCR 2.116(C)(8) and (10).

RECEIVED by MSC 12/10/2025 3:03:01 PM

WHEREFORE, Defendant, CITY OF ROYAL OAK, respectfully requests that the Court grant it summary disposition, and award to Defendant its costs and attorney fees wrongfully incurred in defense of this action.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant City of Royal Oak
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

PROOF OF SERVICE

I certify that on October 31, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

E□ □ □□ □□ A

□ee Application Exhibit 12, Motion for □ummary Disposition of original Complaint for full Exhibit

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT B

FILED Received for Filing Oakland County Clerk 8/31/2022 8:35 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

JSG

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,
-vs-

CITY OF ROYAL OAK,
a Michigan municipal corporation,

Defendant.

Consolidated Number: 2022-192288-CZ

Case No. 2022-193015-CZ
HON. RAE LEE CHABOT

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C.
ANNE McCLOREY McLAUGHLIN (P40455)
Attorney for Defendant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100

REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Plaintiff Exclusive claims that the City violated its marijuana ordinance because it allegedly did not "rank" the applications. However, the city manager did rank the applications, into three tiers: Tier I were the two applicants selected for license slots; Tier II were on "standby" where if one of the two Tier I applicants failed to obtain a license, that slot would be filled from Tier II; and Tier III applicants were denied at the outset:

> Q And did you, in fact, prepare such a ranking of all 31 applicants or at least those that you determined that were minimally qualified that weren't disqualified?
>
> A So the ranking and some three separate distinctions: Those that were recommended for the license, those that were in standby, and the licenses that were rejected. **Ex 2**, Brake dep., 165:19 to 165:24.

Plaintiff interprets the city ordinance requiring a "ranking" as ascribing an ordinal number (1st, 2nd, 3rd, etc.) to each applicant after evaluation. However, the ordinance does not state that the ranking must be done in that manner. It merely says that the applications shall be "ranked" and the license

RECEIVED by MSC 12/10/2025 3:03:01 PM

slots filled based on that ranking. Once the two license slots were filled by the successful applicants, there was no need to further grade the other applicants. This is especially true now, when the City has issued licenses to the two retailers.

As to the void-for-vagueness argument, all of the cases cited by Plaintiff involve government policies or regulations of *conduct*, and that either impose some type of penalty (Bar or employment discipline, for example) or violate the First Amendment (e.g., overbroad sexual harassment policy infringing on free speech rights). *The Royal Oak marijuana ordinance does not regulate the conduct of license applicants.* There is nothing vague about the licensing application process and its criteria expressly stated in the ordinance, § 435-4(C)(4)(a)-(j). This is not the type of regulation to which the vagueness doctrine applies.

Plaintiff is not complaining that it did not know what it needed to submit with its application so that it could be evaluated in the competitive process. It is complaining that the ordinance gives the city manager discretion to pick winners and losers. That is not a vagueness issue, and the void-for-vagueness doctrine does not apply.

Plaintiff's citation to *Musto v Redford Twp,* 137 Mich App 30 (1984) is also inapposite to the vagueness challenge. That case involved a residency requirement for employment that was struck on constitutional grounds as involving the *fundamental right to travel.* It does not involve the vagueness doctrine, nor did it involve an application for a business license. It does not apply to this case.

With respect to the OMA claim, Exclusive mischaracterizes the facts and the law to try to make this case something it is not. Plaintiff argues that the city manager is a "public body," relying on *Booth v Univ of Mich Bd of Regents*, 444 Mich 211 (1993). In *Booth*, the Board of Regents was hiring a new university president, and *delegated its authority* to one Regent and a sub-quorum subcommittee to review and winnow down 250 applications to evade the requirement of an open meeting. The Supreme Court held that the regent and the committee were exercising authority that belonged to the Board as a

RECEIVED by MSC 12/10/2025 3:03:01 PM

whole. Even though those performing the application evaluations were an individual and a subcommittee, they were exercising power of the Board of Regents, a public body, and their meetings had to be conducted in public. *Id.*, 444 Mich at 228.

In *Herald v Bay City*, 463 Mich 111 (2000), the Court also distinguished that case from *Booth* because the city manager there was exercising authority granted to him by the city charter. In *Pinebrook Warren LLC v City of Warren*, ___Mich App ___ (August 25, 2022), the Court of Appeals held that a committee that is not a governing or legislative body is not a public body if it is not exercising authority *of another public body*. **Ex 1**, pp 18-22. In this case, City Manager Brake did not exercise the authority of another public body; he exercised the broad, independent and discretionary authority that the ordinance conferred upon *him* (§ 435-2) by seeking input from other officials. Nor did the so-called committee exercise the authority of *another public body*; other personnel simply gave Mr. Brake advice in reaching his decision. Even if they helped him make the decision, that is not a violation of the OMA. *Id.; Herald, supra.*

The canon of statutory construction, "*expressio unius est exclusion alterius*," the express mention in a statute of one thing implies the exclusion of other similar things, especially applies here. *Bronner v City of Detroit*, 507 Mich 158, 173 (2021). The OMA defines a "public body" as "a board, commission, committee, subcommittee, authority, or council." A city manager is none of those things. *Herald, supra.* There was no requirement to hold meetings in public, and the OMA did not apply.

Since the City denied Plaintiff Exclusive's application, it withdrew its ripeness challenge. However, any argument about Exclusive obtaining a license or other equitable relief is now moot.

> Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case. See *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy. *Id.*" *Pinebrook Warren*, sl op p 26.

RECEIVED by MSC 12/10/2025 3:03:01 PM

The Royal Oak marijuana ordinance permits issuance of two, and only two, retailer licenses. Those licenses are presently exhausted, and there is no mechanism for the city manager to issue more licenses, even if the reasons for Lume's denial were reversed. Therefore, there is no relief that the court here could grant to Plaintiff on its appeal. The claim is now moot and "ripe" for summary disposition.

Plaintiff further complains that the Royal Oak ordinance violates the MRTMA. The Detroit federal court disagreed with such an argument regarding another municipal ordinance in *Attitude Wellness, LLC v Village of Pinckney,* Case No. 21-cv-12021 (ED Mich (Drain, J) (**Ex 3** Opinion and Order). In its opinion denying Lume's request for preliminary injunction and granting a motion to dismiss, the court recognized the broad powers conferred to home rule cities in Michigan specifically as they apply to the MRTMA:

> *Courts afford substantial deference to Michigan's local governments when construing municipal ordinances. See Cady v. City of Detroit,* 289 Mich. 499, 286 N.W. 805, 807 (1939). "Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed." *Guertin v. State,* 912 F.3d 907, 938 (6th Cir. 2019) (quoting *Bivens v. Grand Rapids,* 443 Mich. 391, 505 N.W.2d 239, 243 (1993)) (emphasizing how Michigan "[m]unicipalities enjoy significant autonomy over local government functions."). The Michigan Supreme Court has emphasized how municipalities maintain "great[] latitude to conduct their business[,]" *Associated Builders & Contractors v. City of Lansing,* 499 Mich. 177, 880 N.W.2d 765, 769 (2016), such that Michigan's towns "enjoy not only those powers specifically granted, but they may also exercise *all powers not expressly denied." AFSCME v. City of Detroit,* 486 Mich. 388, 662 N.W.2d 695, 707 (2003) (emphasis added) (citation omitted).
>
> *Nothing in the MRTMA's plain language signals the legislature's intent to cabin municipal discretion. Indeed, the statute explicitly instructs municipalities to decide who is best suited to operate a lawful cannabis business in their communities.* MICH. COMP. LAWS § 333.27959(4). If Michigan's legislature wanted to identify specific factors for localities to consider when companies are "best suited" to receive cannabis licenses, it could have defined criteria in the MRTMA. *Id.* But the legislature did not do so. *Instead, Michigan's legislature empowered local governments to choose criteria identifying companies best suited to join their communities. Id.*, pp 16-17 (emphasis added).

Judge Drain's reasoning comports with the constitutional right of local governments to have all constitutional provisions construed liberally in **their** favor, 1963 Const, art 7, § 34, is straightforward: "The provisions of this constitution *and law* concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution

RECEIVED by MSC 12/10/2025 3:03:01 PM

and by law shall include those fairly implied and not prohibited by this constitution." (Emphasis added.) The MRTMA must be construed liberally in favor of the City of Royal Oak, which had the broad discretion to adopt an ordinance that does not conflict with the Act.

Exclusive further claims that the ordinance violated MRTMA because the criteria were not "objective," and therefore, not "competitive". In fact, a review of the majority of the criteria in § 435-4(C)(4)(a)-(j) (*e.g.,* whether an applicant had unpaid taxes or water bills or a history of same, or a prohibited criminal conviction) are easily determined as "objective." What Plaintiff is really complaining of is that there is no scoring system where each factor on an application is assessed a specific number of points, and then the total points are used to rank the applicants. But nowhere in the MRTMA is such a point or scoring system required, nor is there even a requirement that the competitive criteria be "objective." Furthermore, any sort of judgment used to assess an applicant's score for an individual criterion is likewise "subjective" and does not make such a system more "objective" than Royal Oak's process. That the ordinance leaves the ultimate determination in the hands of the city manager, pursuant to Ord § 435-2, is entirely within the City's province and comports with the MRTMA. Defendant's motion should be granted.

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

BY: /s/ *Anne McClorey McLaughlin* (P40455)
Attorneys for Defendant

PROOF OF SERVICE

I certify that on August 31, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/ Sheila Bodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 1

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

COURT OF APPEALS

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWKSI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

FOR PUBLICATION
August 25, 2022
9:25 a.m.

No. 355989
Macomb Circuit Court
LC No. 2019-004059-CZ

Defendant,

and

LIVWELL MICHIGAN, LLC, LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

SOZO HEALTH, INC.,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 355994
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 355995
Macomb Circuit Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, and VENDCO MICHIGAN, INC.,

Intervening Defendants/Cross-Plaintiffs,

and

LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellants/Cross-Appellees,

and

MDMS GROUP, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants

v

No. 356005
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants,

and

MDMS GROUP, LLC,

Intervening Defendant-Appellant/Cross-Appellee.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC.,

No. 356011
Macomb Circuit Court
LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, INC., DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 356017
Macomb Circuit Court

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON,

Defendants/Cross-Defendants-Appellants/Cross-Appellees,

and

ROBERT BOCCOMINO, KEITH SADOWSKI, and CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendants-Appellants/Cross-Appellees,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants,

and

JOHN LAYTON.

LC No. 2019-004059-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

PINEBROOK WARREN, LLC, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 356023
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

RECEIVED by MSC 12/10/2025 3:03:01 PM

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, and VENDCO MICHIGAN, INC.,

Intervening Defendants/Cross-Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 359269
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON, ROBERT BOCCOMINO, and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, 989 VENTURES, LLC, doing business as NORTHERN ROOTS, AE&K, LLC, BDECO I, INC., DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellants,

and

BDECO II, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC,

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 359285
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, ETHAN VINSON, ROBERT BOCCOMINO, KEITH SADOWSKI, and CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendants-Appellants,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, 989 VENTURES, LLC, doing business as NORTHERN ROOTS, AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

Before: SAWYER, P.J., and SHAPIRO and REDFORD, JJ.

REDFORD, J.

These consolidated appeals and cross-appeals arise from a dispute over the City of Warren's (the City) selection of the entities that it licensed to sell medical marijuana.[1] The trial court ultimately determined that defendants, the City, and the members of the City's Medical Marihuana Review Committee (the Review Committee)—Cecil St. Pierre, Ronald Papandrea,

[1] By convention, this Court uses the spelling "marijuana" rather than "marihuana." See *People v Carruthers*, 301 Mich App 590, 593 n 1; 837 NW2d 16 (2013).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Steven Warner, and Richard Sabaugh—violated the Open Meetings Act (OMA), see MCL 15.261 *et seq*., in relation to selecting applicants for issuing licenses to sell medical marijuana in the City.

For the reasons we set forth below, we conclude that the Review Committee was not a public body subject to the OMA. We also conclude that plaintiffs' due-process claims lacked merit and were properly dismissed by the trial court. Therefore, we reverse the trial court's granting of summary disposition to plaintiffs and the setting aside of the licenses issued to intervening plaintiffs by the City of Warren, and affirm the trial court's denial of plaintiffs' due-process claims and grant of summary disposition in favor of defendants on such claims, and grant such other relief as is indicated herein.

I. OVERVIEW OF CASES

A. THE CITY OF WARREN MEDICAL MARIHUANA REGULATORY ORDINANCE

In January 2019, the Warren City Council adopted a " 'medical marihuana regulatory ordinance' " (the Marijuana Ordinance), Warren Code, § 19.5-1 *et seq*.[2] The Marijuana Ordinance sought to implement the local provisions governing the sale of marijuana consistent with then-governing state law. See Warren Code, § 19.5-3. The Marijuana Ordinance allowed, in relevant part, for the licensing of provisioning centers, which were defined to be licensees who were authorized to purchase marijuana from a grower or processor and sell it to registered qualifying patients. See Warren Code, § 19.5-6.

In the ordinance, the City created the Review Committee to review applications for provisioning center licenses. See Warren Code, § 19.5-13(4). The Review Committee was made up of the "City Attorney, or his designee, the Director of the Public Service Department, or his designee, and the members of the Medical Marihuana Committee or alternates of the City Council, as appointed by City Council." Warren Code, § 19.5-13(4). The Review Committee was required to consider applications for licenses and score 17 factors with a score from 0 to 10. See Warren Code, § 19.5-13(4)(b). The Review Committee did this over a period of serval months and eventually evaluated and scored 65 license applicants. At the completion of their review, pursuant to the ordinance, the Review Committee forwarded all 65 applications together with their scores and recommendations to the City Council. The Review Committee did not approve or disapprove a single applicant; only the City Council could approve the issuance of a license. See Warren Code, § 19.5-14(1). The ordinance originally allowed for the issuance of 10 licenses and this number was eventually changed to 15 licenses. See Warren Code, § 19.5-7(3); see also Warren City Ordinance No. 80-778. If there were more applicants than available licenses, the City Council had to rank the applicants; in setting the rank, the City Council had to consider the factors stated

[2] The City has significantly amended the ordinance since the inception of this litigation. Therefore, all citations are to the version of the ordinance then in force. Warren City Ordinance No. 80-772. That ordinance may be viewed online through the municipal code website at: Municode, *Code of Ordinances of the City of Warren, Michigan* https://library.municode.com/mi/warren/ordinances/code_of_ordinances?nodeId=960256 (accessed June 23, 2022).

RECEIVED by MSC 12/10/2025 3:03:01 PM

under Warren Code, § 19.5-13(4)(b), in addition to factors related to the plan for the provisioning center. See Warren Code, § 19.5-14(2). An applicant also had the right to appeal the decision to deny a license to the circuit court. See Warren Code, § 19.5-17(2).

B. THE LITIGATION IN THE TRIAL COURTS

Certain applicants sought and obtained at least partial relief in the trial courts of Macomb County challenging the work of the Review Committee. The challenges alleged violations of the OMA, denial of due process, and other theories which eventually resulted in the trial court granting summary disposition in favor of plaintiffs, Pinebrook Warren, LLC; Greenhouse Farms Warren, LLC; Happy Trails Group, Inc.; Aubrey Ventures, LLC; Blue Spruce Ventures; Emerald Business Park, PC, LLC; DKB2, LLC; MPM-R Warren, LLC; HRS Retail, LLC; Alternative Rx, LLC; HCM Warren, LLC; JAR Capital of Warren, LLC; Pure Green Warren, LLC; Pure Warren, LLC; Kapp Walled Lake, LLC; and Pure Roots, LLC, which were all entities that had applied for and been denied licenses. That order also invalidated the licenses to sell marijuana that had been issued to the intervening defendants, Livwell Michigan, LLC; LE Battle Creek, Inc.; Weisberger Ventures II, LLC; VendCo Michigan, Inc.; Level Up Garden, LLC; 8th Street Wellness, PC, LLC; Sozo Health, Inc.; 989 Ventures, LLC, which did business as Northern Roots; AE&K, LLC; BDECo Inc.; DNVK 4, LLC; MDMS Group, LLC; Warren Capital Holdings, LLC; West Fort Holdings, LLC; and Frazho Provisioning, LLC. The trial court also dismissed the due-process claims that plaintiffs had asserted against the City.

C. THE APPEALS RAISED

In the appeals in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, and 356023, the primary issue raised by defendants and intervening defendants is whether the trial court erred when it determined that the City violated the OMA and—on that basis—invalidated the City Council's decision to issue licenses. For the various cross-appeals in those cases, the primary issue is whether the trial court erred when it dismissed plaintiffs' claims against the City for violations of substantive and procedural due process.

In Docket Nos. 359269 and 359285, intervening defendants in the underlying case appeal by leave granted the trial court's order invalidating the City's decision to reissue licenses to them as part of a settlement agreement entered into by the City and intervening defendants in a different case. Intervening defendants argue that the trial court lacked the authority to invalidate the licenses that had been issued under the agreement.

D. SUMMARY OF THIS COURT'S DECISION

For the reasons explained in this opinion, we conclude that defendants and intervening defendants have identified errors respecting the trial court's resolution of the OMA claims warranting appellate relief. We conclude that plaintiffs have not identified any errors warranting relief in the trial court's resolution of their claims involving due process. Accordingly, in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, and 356023, we reverse and vacate the trial court's opinion and order, entered April 14, 2020 (April 2020 Opinion and Order), and its order denying reconsideration, which it entered on December 22, 2020. For the claims in Docket Nos. 359269 and 359285, we vacate the trial court's order of October 26, 2021, because it based

RECEIVED by MSC 12/10/2025 3:03:01 PM

its ruling and order on the erroneous April 2020 Opinion and Order, and the appellate relief granted regarding the OMA claims renders the trial court's October 26, 2021 order void.

II. APPEALS INVOLVING THE OMA CLAIMS

A. STANDARD OF REVIEW

Appellants and cross-appellants have raised various claims of error involving the trial court's decision to grant summary disposition in favor of plaintiffs on the OMA claims.[3] We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). We also review de novo whether the trial court properly interpreted and applied the relevant statutes and ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). We review for an abuse of discretion a trial court's decision to invalidate a decision under the OMA and its decision to grant equitable relief under the OMA. *Citizens For A Better Algonac Community Sch v Algonac Community Sch*, 317 Mich App 171, 177; 894 NW2d 645 (2016). We also review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Woods v SLB Prop Management, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). A trial court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes, or when it premises its decision on a misunderstanding of controlling legal principles. *Davis v Detroit Fin Review Team*, 296 Mich App 568, 612-613; 821 NW2d 896 (2012).

B. ANALYSIS

In January 2020, Happy Trails moved for partial summary disposition under MCR 2.116(C)(10). It argued that the undisputed evidence showed that the Review Committee violated the OMA by holding closed meetings that were required to be open to the public and did not otherwise comply with the requirements of the OMA. It further argued that the Review Committee had not rectified its error by reenacting its decisions. Because the City Council adopted the Review Committee's decision made contrary to the OMA (and its own ordinances), Happy Trails asked the trial court to invalidate the decisions premised on violations of the OMA. It maintained that the only proper remedy required invalidating the decisions because then the City would have the obligation to "redo the process properly in accordance with the requirements of the [Marijuana] Ordinance and applicable law."

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The moving party is entitled to relief when, except for the amount of damages, "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

As the moving party, Happy Trails had the initial burden to identify the issues about which it claimed there were no genuine issues as to any material fact, and to support its motion by citation

[3] For the sake of brevity, we will not summarize the arguments by each party to these appeals except where necessary for clarity.

RECEIVED by MSC 12/10/2025 3:03:01 PM

to evidence. See *Barnard Mfg*, 285 Mich App at 369-370. Happy Trails asserted that no factual dispute existed that the Review Committee was subject to the OMA, violated the OMA, and, as a result, the trial court had the discretion to invalidate the Review Committee's decisions as a matter of law. Therefore, Happy Trails's right to summary disposition depended on whether it established that—given the undisputed facts—the OMA applied to the Review Committee action, whether the Review Committee's decisions were made in violation of the OMA, and finally whether the Review Committee's decisions were subject to invalidation under the OMA.

1. PUBLIC BODY

Under the OMA, the Legislature established rules that apply to public bodies. See MCL 15.263. A public body must hold its meetings open to the public, in a place that is available to the general public, allow the public to record the meeting, MCL 15.263(1), and allow persons who attend the meeting to address the meeting, MCL 15.263(5). A public body must also make its decisions at a meeting that is open to the public, see MCL 15.263(2), and conduct its deliberations in a meeting that is open to the public, see MCL 15.263(3). Notably, the Legislature provided an exception to the open meeting requirements for deliberations; a public body may enter into a closed session to deliberate certain matters as provided under MCL 15.267 and MCL 15.268. See MCL 15.263(3). The Legislature did not provide any exceptions to the requirements that the meetings themselves begin in a session open to the public, that the public be allowed to address the meeting, and that the public body make its decisions while the meeting is open to the public.

Because the OMA only applies to public bodies, the threshold issue for any OMA claim is whether the entity at issue constitutes a public body within the meaning of the OMA. See *Herald Co v Bay City*, 463 Mich 111, 129; 614 NW2d 873 (2000). The OMA defines a public body, in relevant part, as "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." MCL 15.262(a).

The first inquiry in determining whether an entity is a public body under the OMA is to evaluate whether the entity is a legislative body or a governing body. See *Davis*, 296 Mich App at 591 (noting that, to be a public body, the entity must be a state or local legislative body or governing body). A legislative body is a body that makes or enacts laws or otherwise brings something into or out of existence through the enactment of laws. *Id*. at 592-593. A governing body is a body that makes or administers public policy, or otherwise regulates or controls a political subdivision. *Id*. at 593-594. A body does not have to be the supreme governing body of a political subdivision to be a governing body under the OMA; but it must make or administer public policy for a political unit or make decisions by a determination, action, vote, or disposition for that political subdivision. *Id*. at 597.

If it is determined that a body is a legislative or governing body, the next inquiry is whether it has been empowered by "state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." MCL 15.262(a); see also *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 225; 507 NW2d 422 (1993). A body that can only make recommendations is not a governing body for purposes of the OMA because its authority does not include the power to

RECEIVED by MSC 12/10/2025 3:03:01 PM

effectuate or formulate public policy. See *Davis*, 296 Mich App at 605-606. In addition to these criteria, in *Booth*, our Supreme Court held that a person or other body may be deemed a public body under certain circumstances.

In *Booth*, our Supreme Court considered a situation in which the board of regents for the University of Michigan sought to hire a new president. The evidence showed that the board did not want to hold public meetings during the search, so it delegated its authority to winnow the candidates to a particular regent and to subquorum groups of regents. Over time, the regent and subquorum groups reduced the total number of candidates from 250 candidates to one candidate.

In this process, the board of regents had selected one member of the board to act as a selection committee. In the first phase of review, this member winnowed down the list of 250 candidates to 70 candidates. He made phone calls, had meetings and sought to obtain the sense of the board members and subgroups appointed to assist the board. In that and every phase, any board member could have asked for a candidate who had been removed from consideration to be put back into the pool of actively participating candidates. Next the board member further narrowed the list of candidates from 70 to 30 by rating and receiving ratings of candidates, tallying those scores and discussing the process with each and every member of the board of regents. Next, each of the 30 remaining candidates was contacted and about half of the candidates self-selected out of further participation. Next, small, subquorum groups of regents went to various cities and met with candidates. A closed meeting occurred where no vote was taken but candidates were discussed. Eventually one candidate was recommended and the person's name was forwarded to the entire board which then held a public meeting and voted to hire that candidate. See *Booth*, 444 Mich at 215-220.

Our Supreme Court held that the board was a public body and that the selection of a president for the university was one of the board's most important exercises of governmental authority. *Id*. at 225. The Court recognized that the regent and subquorum groups were the persons who winnowed the total number of candidates, but it rejected the contention that the regent and subquorum groups were not subject to the OMA. It held that the regent and subquorum groups constituted public bodies under the OMA because the board was itself a public body and it delegated its authority to the regent and subquorum groups. *Id*. at 225. The Court rejected the university's attempt to elevate form over substance by asserting that one man could not be a committee. The Court explained that the question was whether the board delegated its authority to choose a president to one or more persons. If it did, then the OMA applied to those persons because the OMA applied to the board. *Id*. at 225-226; see also *Herald*, 463 Mich at 134 (summarizing the decision in *Booth* and stating that the distinguishing feature between the facts of its case and those in *Booth* was that the public body delegated its authority to a regent and subquorum groups that had no independent authority to act); *Davis*, 296 Mich App 588-591 (recognizing that, under the decisions in *Booth* and *Herald*, if a public body delegates its authority to act to a subcommittee, that body will be deemed a public body for purposes of applying the OMA).

Our Supreme Court clarified the delegation exception in *Herald*. Although the Court in *Herald* noted that evidence established that the public body at issue in *Booth* had delegated its authority to a regent and subcommittees to evade the requirements of OMA, the Court did not hold that an intent to evade the requirements of the OMA was the dispositive question. *Herald*, 463

RECEIVED by MSC 12/10/2025 3:03:01 PM

Mich at 134. Rather, the Court held that the relevant inquiry is whether the body had been delegated authority by a public body or whether the body had been granted independent authority to act. See *id*. ("The important distinguishing feature of *Booth* was that the board was clearly a 'public body' that was subject to the OMA, and the various regents and subquorum groups had no *independent* authority to narrow the field, make a recommendation, or select a president.") (emphasis added). If the body did not have the independent authority to act, but instead had to rely on the delegation of authority from the public body, then that body would also be deemed a public body. In *Herald* the Court then explained that, because the city charter gave the city manager independent authority to perform the function at issue, the facts in *Herald* were not analogous to those of *Booth*. *Id*. at 134-135. Accordingly, a public body is either a legislative body or a governing body that has been "empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function," MCL 15.262(a), or a person or body that has been delegated the authority to act by a public body that itself is subject to the OMA, see *Booth*, 444 Mich at 225.

In this case, the City—through its City Council—enacted the Marijuana Ordinance that created the Review Committee. As a home rule city, the City had the authority to enact ordinances as a valid exercise of its police power so long as the ordinance did not conflict with the constitution or general law. See *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 253-254; 566 NW2d 514 (1997).

Happy Trails did not present any evidence that the City Council delegated its own authority to the Review Committee. Rather, the Marijuana Ordinance established the Review Committee and delineated the nature and extent of its role in the application review process. Accordingly, this case does not involve the type of delegated authority that was at issue in *Booth*. To the contrary, the Review Committee had independent authority to act as provided under the Marijuana Ordinance. See *Herald*, 463 Mich 134-135. Moreover, it does not matter that the Marijuana Ordinance was enacted by a public body. In *Davis*, this Court examined whether the financial review team was a public body by reviewing the authority delegated to it under the statutory scheme. If every entity created by statute (or other law) constituted a public body because a legislative body enacted the law, there would have been no need to examine the authority delegated to the financial review team under the statute. Yet this Court determined that whether the financial review team constituted a public body depended solely on the authority independently delegated to the team by statute. See *Davis*, 296 Mich App at 594. Consequently, in this case, whether the Review Committee constituted a public body depended on the extent of the authority granted to the Review Committee under the Marijuana Ordinance, see *Herald*, 463 Mich at 134-135.

Whether a local body is a public body under the OMA must be ascertained by looking at the four corners of the document creating the body—it does not depend on the body's actual exercise of authority. See *Davis*, 296 Mich App at 594. For that reason, plaintiffs' argument that the Review Committee, in effect, selected the entities that received the licenses because the City Council adopted the Review Committee's recommendations, was irrelevant. The key question was not what actions the Review Committee did or did not take, or how the City Council reacted to those decisions; it was whether the Review Committee, in its own right, constituted a legislative body or governing body empowered to exercise governmental or proprietary authority or to perform a governmental or proprietary function. See MCL 15.262(a); *Davis*, 296 Mich App

RECEIVED by MSC 12/10/2025 3:03:01 PM

at 590-591. To make that determination, this Court looks to the four corners of the law establishing the body to determine whether the law created a governing body and authorized it to exercise independent governmental or proprietary authority, or to perform an independent governmental or proprietary function, which amounted to independent decision-making authority to effectuate public policy. See *Davis*, 296 Mich App at 600.

When interpreting an ordinance, this Court must discern and give effect to the intent of the drafter as demonstrated in the language of the ordinance. See *McMillan v Douglas*, 322 Mich App 354, 357; 913 NW2d 336 (2017). This Court construes the ordinance as a whole and affords the words used their plain and ordinary meaning. *Id*. If the language of an ordinance is clear and unambiguous, this Court will enforce it as written. *Id*.

The State Legislature gave municipalities the authority to pass ordinances regulating marijuana facilities. See MCL 333.27205(1). The City Council passed such an ordinance that included extensive requirements for applications for a Medical Marijuana Facilities License, including that applicants had to submit a formal application with a facility and site plan to the City. Marijuana Ordinance, § 19.5-12. The ordinance established an application review process that required applicants to submit all application documents and plans to the City's chief zoning inspector to determine whether the application would "go for review" or had deficiencies warranting notification of denial with the right to appeal to the City Council. Marijuana Ordinance, § 19.5-13(1) - (3).

If the zoning inspector approved an application, it would "go for review" to the Review Committee. Marijuana Ordinance, § 19.5-13(2). The ordinance required that such applications and plans "*shall be transmitted to the Review Committee for approval*." Marijuana Ordinance, § 19.5-13(4)(a). When reviewing "plans and applications" the Review Committee was required to score 17 individual factors from 0 to 10 respecting the degree of compliance with each specific factor. Marijuana Ordinance, § 19.5-13(4)(b). After its completion of that process, the ordinance required that the Review Committee "*shall forward the scores and applications to the City Council with recommendations*." Marijuana Ordinance, § 19.5-14(1).

The ordinance provided that the City Council alone had the authority to approve issuance of provisioning center licenses and further specified how it would make the ultimate selection of the applicants who would be issued licenses:

> Council shall confirm compliance with all requirements and factors in the granting of Licenses. If the number of applicants meeting the requirements herein exceed the number of available licenses, the Council shall rank the applicants in order, considering the factors outlined above and consideration of the Plan proposed for the Provisioning Center; new construction and thereafter reconstruction of buildings shall be ranked equal than those applications proposing existing buildings. The capitalization and improvements to real estate shall be ranked higher than proposed existing buildings. Ranking shall be based upon a 0 to 10 scale for each factor including zoning compliance with a 0 meaning does not comply and a 10 meaning exceeds compliance. [Marijuana Ordinance, § 19.5-14(2).]

RECEIVED by MSC 12/10/2025 3:03:01 PM

Reading the Marijuana Ordinance in context and as a coherent whole, it is evident that the Review Committee did not constitute a governing body authorized by the ordinance to perform a governmental function. See MCL 15.262(a). The ordinance did not grant the Review Committee authority to administer public policy for a political unit or make decisions by a determination, action, vote, or disposition for that political subdivision. The ordinance required the Review Committee to perform an important review function, but the City Council had sole authority to make the ultimate selection of the applicants it deemed worthy of being licensed to own and operate a medical marijuana provisioning center in the City. Determining which persons or entities are to be licensed to conduct business within a locale is a quintessential function of local government. The licensing process itself requires consideration of multiple factors—even in the absence of delineated factors as found in the Marijuana Ordinance. Although the Review Committee played a role in the process, the ordinance plainly required the City Council to make the final assessment of the worthiness of any particular applicant for a license. The ordinance tasked the City Council with effectuating public policy by making the ultimate decision which of the applicants to license. The ordinance granted the Review Committee no authority to reduce the number of applicants following its review, nor did it grant the Review Committee authority to deny any applicant a license.

The City defendants and intervenors argued in the trial court, and continue to argue on appeal, that the Review Committee merely acted as an advisory body that did not have the power to make decisions, so that it was not a governing body as explained by this Court in *Davis*. See *Davis*, 296 Mich App at 601-609. We conclude that the plain unambiguous language of the Marijuana Ordinance supports their contention.

We hold that plain language of the Marijuana Ordinance establishes that the Review Committee is neither a legislative body nor a governing body under the OMA, and the City did not by the ordinance delegate decision-making authority to the Review Committee. Accordingly, the trial court erred when it ruled that the delegation rule stated in *Booth* applied to this case.

That the Marijuana Ordinance § 19.5-13(4)(a) states that applications must be transmitted to the Review Committee "for approval" is not determinative because the ordinance must be read as a whole. Having done so, we conclude that the Marijuana Ordinance did not grant the Review Committee authority to approve applicants but required the City Council to retain and exercise the decision-making authority to approve applications and issue licenses. The ordinance gave the Review Committee no authority to approve or disapprove of applications. The Review Committee scored factors and made recommendations and acted solely as an advisory body. Unlike the regent and subquorum groups in *Booth*, the Review Committee had no power to winnow out applicants from the pool of eligible applicants. A body that can only make recommendations is not a governing body for purposes of the OMA because its authority does not include the power to effectuate or formulate public policy. See *Davis*, 296 Mich App at 605-606.

Notably, the Marijuana Ordinance required the City Council to consider applications and confirm their compliance with all requirements and factors, and if more applicants applied than available licenses, the City Council had to rank the applicants, independently consider the specified factors, and consider the applicant's proposed plans. The ordinance makes clear that the City Council had authority to revisit the rankings made by the Review Committee and had the authority to make its own determination for approving applications.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Under the Marijuana Ordinance, the Review Committee was not granted power to effectuate public policy. It had no authority to disapprove applicants and thereby eliminate them from consideration.

During the application process, pursuant to the ordinance, 65 license applicants submitted their materials to the City. Eventually, the Review Committee received the materials for 65 applicants, interviewed applicants, reviewed the applications, and each Review Committee member individually assigned a score to each applicant for each of the 17 factors. After this was completed, all 65 applications were forwarded to the City Council with the Review Committee's recommendations. Thereafter, the City Council, in an open meeting voted on the applications. In a 5-2 vote, the City Council selected the 15 successful applicants.[4] The Marijuana Ordinance gave the powers to perform governmental or proprietary functions to the City Council alone. Because the Review Committee was not a local governing body that had been empowered by ordinance to exercise a governmental or proprietary function, it did not constitute a public body under OMA. See MCL 15.262(a). The trial court erred by ruling that the Review Committee constituted a public body subject to the OMA which led to its erroneous invalidation of the Review Committee's actions under MCL 15.270. The trial court also erred by denying the intervenors' motions for reconsideration which described how the trial court erred as a matter of law by ruling that the Review Committee constituted a public body subject to the OMA. The trial court's erroneous OMA ruling led to its erroneous ruling respecting the motions for reconsideration. When the trial court denied the motions for reconsideration and lifted the stay on its April 2020 Opinion and Order, the court's order took effect and invalidated the licenses that the City had issued to the 15 intervening defendants. In so doing, the trial court erred as a matter of law. Consequently, we reverse the trial court's grant of summary disposition to plaintiffs and vacate its April 2020 Opinion and Order, reverse the court's decision on the motions for reconsideration, and therefore vacate the court's invalidation of the City Council's initial licensing decisions.

Because of our decision in this regard, it is unnecessary for us to consider the City and intervenors' arguments that the Review Committee's reenactment of its decision at a meeting open to the public cured any OMA violation. Because the Review Committee was not a public body subject to the OMA, it did not violate the OMA, and had no obligation to cure a purported violation. Further, because of our decision, we need not consider defendants' arguments that the trial court should have denied the requested relief on various other grounds. Similarly, we need not address Happy Trails's and Kapp Walled Lake's claims that the trial court erred by ruling that they were not entitled to an award of actual attorney fees for an OMA violation. There being no OMA violation, Happy Trails and Kapp Walled Lake lack entitlement to such. We decline to address Aubrey Ventures's argument that the trial court should have determined that the City was estopped from issuing any licenses without rescoring the factors provided under Marijuana

[4] Five members of the City Council voted for the top 15 rated applicants forwarded from the Review Committee. One council member voted for the applicants ranked 24-38. One council member declined to vote at all.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Ordinance, § 19.5-13(4)(b), because the City had no obligation to do so since the Review Committee had not violated the OMA.

We also need not consider the issues raised pertaining to the trial court's ruling on plaintiffs' motion to enforce the judgment that invalidated the licenses that the City had issued to the 15 intervening defendants. Having determined that the trial court erred as described herein, which requires reversal of the grant of summary disposition to plaintiffs and reversal of its order denying reconsideration, the vacation of the trial court's 2020 Opinion and Order requires reinstatement of the City's initial licensing determinations. The appellate relief granted regarding the OMA claims renders the trial court's 2020 Opinion and Order and later October 26, 2021 order both void and unenforceable. Accordingly, because the trial court's order enforcing its judgment rested on erroneous decisions, we reverse and vacate that order as well but need not address the substantive arguments made by appellants.

2. DUE PROCESS

Some intervening defendants argue that the trial court's decision to invalidate the licenses that were awarded to them deprived them of procedural due process because they did not have an adequate opportunity to defend their interests. Although the intervenors had a property interest in their licenses, the record establishes that the trial court took adequate steps to protect their rights. The trial court rendered erroneous decisions but afforded the intervenors the requisite due process.

Both the United States Constitution and the Michigan Constitution prohibit the government from depriving persons of life, liberty, or property without due process of law. See US Const, Am XIV; Const 1963, art 1, § 17. The protections afforded by these clauses include both a substantive provision, which protects persons from arbitrary acts by the government, and a procedural component, which guarantees constitutionally sufficient procedures for the protection of life, liberty, and property. See *Bonner v City of Brighton*, 495 Mich 209, 223-224; 848 NW2d 380 (2014), see also *Cary Investments, LLC v City of Mount Pleasant*, ___ Mich App ___, ___; ___ NW2d ___ (2022), slip op at 4-5.

Procedural due process requires—at a minimum—that a person whose interests might be affected by government action be given notice and a meaningful opportunity to be heard before the government acts. *Bonner*, 495 Mich at 235. Additionally requirements may be necessary depending on three considerations: the private interest that will be affected, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards. *Id.*

It is true that the trial court ultimately heard Happy Trails's motion for summary disposition and issued its April 2020 Opinion and Order before any intervenors had been permitted to intervene. However, the City moved to add the entities who received licenses as necessary parties under MCR 2.205(A), before the court considered Happy Trails's motion for summary disposition, and the court expressed its concern that the license holders be given an opportunity to participate in the litigation. The trial court proceeded to decide the motion and issue its April 2020 Opinion and Order, but it also stayed the application of that order on the same day the court's clerk entered the order. The court did so because it intended to grant the motions to intervene by the license holders to give them an opportunity to file motions for reconsideration challenging the propriety

RECEIVED by MSC 12/10/2025 3:03:01 PM

of the trial court's application of the law to the undisputed facts, which it specifically allowed. The trial court then provided the intervenors the opportunity to join the litigation, file their motions for reconsideration, and otherwise participate in the proceedings. After considering all the motions for reconsideration and conducting a hearing, the trial court concluded that it correctly applied the law to the facts and determined that Happy Trails had demonstrated its entitlement to relief. Accordingly, in September 2020, it lifted the stay on its April 2020 Opinion and Order, and denied the motions for reconsideration.

The trial court did not act arbitrarily when it granted Happy Trails's motion, it merely erred in its application of the law to the fact. Further, the trial court recognized that due process required that the license holders be brought into the litigation so that they could advocate for their interests. For that reason, it stayed its own order to give the intervenors time and opportunity to identify errors in the trial court's application of the law that might warrant revisiting the court's decision. Moreover, by joining them to the consolidated lawsuits, the trial court protected the intervenors' right to seek appellate review of the trial court's decisions. The trial court also held a lengthy hearing at which it gave the intervenors the opportunity to address issues that had not been identified by the City, and it addressed those issues before determining to uphold its earlier decision. The trial court's efforts to protect the rights of the license holders met the requirements of procedural due process. See *Bonner*, 495 Mich at 235-240.

As explained previously, however, the trial court abused its discretion when it premised its decision on a misunderstanding of controlling legal principles. *Davis*, 296 Mich App at 612-613. And for that reason, the trial court's 2020 Opinion and Order and order denying reconsideration are reversed.

III. PLAINTIFFS' APPEALS INVOLVING THE DUE-PROCESS CLAIMS

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg*, 285 Mich App at 369. We also review de novo the proper application of constitutional law, and the proper interpretation of the relevant ordinance. See *Bonner*, 495 Mich at 221.

B. ANALYSIS

The trial court granted the City's motion for summary disposition of the due-process claims under MCR 2.116(C)(8). The trial court essentially determined that the claims all involved application of the Marijuana Ordinance and, because plaintiffs could not establish that they had a property interest in the outcome of the application of the Marijuana Ordinance, the claims failed as a matter of law.

1. MOOTNESS

As a preliminary matter, several plaintiffs argue that the trial court should not have considered the City's motion to dismiss the due-process claims because it no longer needed to do so given its decision on Happy Trails's motion for partial summary disposition of the OMA claims. More specifically, they argue that the trial court's decision on Happy Trails's motion rendered any decision on the due-process claims moot.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Michigan courts generally do not decide moot questions or declare legal principles that can have no legal effect in the case. See *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014). A decision is moot when an event has occurred that makes it impossible for the court to grant any relief on the claim, or when judgment cannot have any practical legal effect on the existing controversy. *Id.*

The trial court's decision on the claims involving the OMA did not render the claims for the violation of due process moot. Plaintiffs' claims under the OMA, not surprisingly, involved whether the OMA applied to the Review Committee and whether any violation of the OMA warranted relief of some kind. Plaintiffs sought a declaration that the OMA applied to the Review Committee and asked the trial court to both invalidate the decisions that the Review Committee made without doing so at meetings open to the public and for the trial court to order the Review Committee to comply with the OMA.

Although the OMA claims indirectly involved the proper scope and application of the Marijuana Ordinance for determining whether the Review Committee was a public body, the OMA claims did not involve claims on which the trial court could have granted relief directly related to the proper application of the Marijuana Ordinance. By contrast, the due-process claims focused on the procedures for licensing medical marijuana facilities under the Marijuana Ordinance. Plaintiffs alleged that they had rights related to the proper application of the Marijuana Ordinance and suffered damages as a result of the City's failure to follow those procedures. They asked the trial court, in part, to order the Review Committee and the City Council to follow the procedures stated in the Marijuana Ordinance. The relief available in the OMA action was limited to injunctive relief regarding OMA, see MCL 15.271, and the invalidation of decisions wrongfully made in violation of the OMA, see MCL 15.270. It did not generally include the authority to order injunctive relief arising from a due-process right to a particular procedure or result under the Marijuana Ordinance. Additionally, a due-process violation of the Marijuana Ordinance—unlike an OMA violation—might support a claim for monetary damages. See *Bauserman v Unemployment Ins Agency*, 330 Mich App 545, 460-465; 950 NW2d 446 (2019). Accordingly, the trial court's decision on the OMA claims did not render any decision on plaintiffs' due-process claims moot. See *Barrow*, 305 Mich App at 659.

2. DUE-PROCESS CLAIMS

The trial court granted the City's motion to dismiss plaintiffs' due-process claims under MCR 2.116(C)(8). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). In reviewing such a motion, the court must accept as true all factual allegations stated in the complaint. *Id.* The trial court should grant a motion under MCR 2.116(C)(8) if, even accepting all the allegations as true, the plaintiff has failed to state a claim upon which relief can be granted. *Id.*

Plaintiffs variously alleged claims involving the violation of the rights afforded by substantive and procedural due process. The touchstone of due process involves the protection of the individual against arbitrary government action. *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5. Due process includes both a substantive component and a procedural component; the "substantive component protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring

RECEIVED by MSC 12/10/2025 3:03:01 PM

constitutionally sufficient procedures for the protection of life, liberty, and property interests." *Bonner*, 495 Mich at 224; see also *Cary Investments*, ___ Mich App at ___; slip op at 4-5. The initial inquiry for both components is to identify the interest allegedly infringed to determine whether it falls within the definition of life, liberty, or property. If the interest at issue does not involve a life, liberty, or property interest, then the Due Process Clause affords no protection and the claim must fail. *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5.

Plaintiffs' due-process claims, though alleged in varying terms, each involved claims that the City violated their right to have the facility licenses issued consistent with the requirements of the Marijuana Ordinance. Stated another way, each of their claims involved whether the City failed to follow its own laws in the issuing of the licenses and violated the due-process protections afforded to applicants for a license. The question, therefore, is whether an applicant's application for a license involves a life, liberty, or property interest for which the Due Process Clause provides protection.

In general terms, a license does not convey property rights under Michigan law. See *Morse v Liquor Control Comm*, 319 Mich 52, 66; 29 NW2d 316 (1947). Our Supreme Court, however, has recognized that once the government issues a license, the holder of a license has a sufficient property interest in the license to invoke the protections of the Due Process Clause. See *Bundo v Walled Lake*, 395 Mich 679, 688-696; 238 NW2d 154 (1976). The Court explained that, although the license holder holds the license by the grace of the government, once issued, the license holder can reasonably assume that the government will renew the license when the renewal procedure provides for renewal as a matter of course. *Id*. at 692, 693, 695. The same is not true for a first-time applicant for a license. This Court has explained that first-time applicants for licenses are not entitled to minimal due process. *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 5. This is because a property right must be premised on more than a "mere unilateral expectation." *Bundo*, 395 Mich at 692. A person must have more than an " 'abstract need or desire' " for a benefit in order to have a property interest in it; he or she must have a " 'legitimate claim of entitlement' " to the benefit. *Id*., quoting *Bd of Regents of State Colleges v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed 2d 548 (1972). Because a first-time applicant for a license cannot show that he or she has an entitlement to the license, a first-time applicant has no property interest in the issuance of the license. See *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 572; 692 NW2d 68 (2004); see also *Wong v City of Riverview*, 126 Mich App 589, 592-593; 337 NW2d 589 (1983); *Barr v Pontiac City Comm*, 90 Mich App 446, 451; 282 NW2d 348 (1979) ("We agree with defendant's contention that there is no protected interest in a mere expectation a new license applicant or transferee might possess.").[5] For that reason, the procedural protections of the Due Process Clause do not apply to the determination whether to issue a license in the first

[5] The parties try to distinguish the liquor license cases to no avail. The general principle from these decisions is that one has no property interest in a license until it has been formally granted to the licensee. An applicant, therefore, cannot complain that the application procedure did not meet minimum due process because he or she has no interest in the license during the initial application process. See *Maxwell*, 264 Mich App at 572; *Wong*, 126 Mich App at 592-593. That is analogous to the events at issue.

RECEIVED by MSC 12/10/2025 3:03:01 PM

instance. This Court's review of a city's decisions regarding first-time applicants is "extremely narrow[,]" . . . "limited only to whether the city has acted arbitrarily and capriciously." *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 5.

In this case, because plaintiffs were first-time applicants for a facilities license, they had no property interest in a license that required the City to provide them procedural due process. *Id.* For that reason, plaintiffs' procedural due-process claims premised on the failure to follow the Marijuana Ordinance or the OMA failed as a matter of law because the City followed the process prescribed by the Marijuana Ordinance, the Review Committee did its part, and the City Council made the ultimate decisions regarding selection of the applicants to receive licenses. As explained in *Cary Investments*, "due process merely ensures a fair procedure, not any particular outcome." *Cary Investments*, ___ Mich App at ___; slip op at 6. "The right to due process guaranteed by the United States Constitution and the Michigan Constitution of 1963 does not empower courts to micromanage the decision-making of governmental entities." *Id.* at ___; slip op at 7.

On appeal, plaintiffs assert that, notwithstanding the law involving first-time applicants for a license, they had an interest in the procedures for obtaining a license for two reasons. They first assert that when the procedures for issuing a license so circumscribe the issuing agency's authority that an applicant has a reasonable expectation of receiving the license, due process protects the applicant's right to have the issuing agency follow the procedures. See, e.g., *Med Corp, Inc v City of Lima*, 296 F3d 404 (CA 6, 2002); *Walz v Town of Smithtown*, 46 F3d 162, 168 (CA 2, 1995); *Yale Auto Parts, Inc v Johnson*, 758 F2d 54, 58-59 (CA 2, 1985) (stating that even a violation of a state's own laws does not give rise to a due-process violation; there must be a very strong likelihood that the application would be granted absent the violation).[6] These authorities recognize that a government can create a property interest in an application process by establishing a rule or policy that circumscribes the authority to deny the benefit to an applicant who meets the requirements of the law or policy. See *Med Corp*, 296 F3d at 409-411; *Walz*, 46 F3d at 168 ("We believe the discretion of the Superintendent of Highways to deny an excavation permit is so circumscribed that the Walzes possessed an entitlement to a permit."). Even if these authorities applied in Michigan, this case does not fall within those rules.

The Marijuana Ordinance includes numerous requirements for the applicant, but it does not guarantee a license to any applicant, even if the applicant submits the required materials and otherwise meets the minimum requirements for a license. Indeed, the Marijuana Ordinance allows the City Council to disapprove applications depending on the scoring of the 17 factors and its further analysis of the applications and the applicants' plans and qualifications. Marijuana Ordinance, § 19.5-14(1) and (2) (giving the City Council the final authority to approve an application and requiring the City Council to confirm compliance and rank applications under certain circumstances, but not requiring the City Council to approve applicants on the basis of rankings). The Marijuana Ordinance provided the City Council with unfettered discretion to approve or disapprove the grant of a license. In fact, the City Council had no obligation to issue any licenses, no matter how qualified the applicants. See Marijuana Ordinance, § 19.5-7(3)

[6] Decisions by lower federal courts are not binding on this Court, but may be persuasive. See *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

RECEIVED by MSC 12/10/2025 3:03:01 PM

(setting the maximum number of provisioning centers and then stating that the City has no obligation to issue licenses and further providing that the City can issue them "whenever they want"). Under these circumstances, it cannot be said that the Marijuana Ordinance contained rules that so limited the discretion of the decision-makers that any applicant had a reasonable expectation that he or she would receive a license if he or she complied with the application process. Indeed, under the plain terms of the Marijuana Ordinance, no applicant can be said to have had a reasonable expectation of receiving a license no matter how qualified.

Plaintiffs also suggest that they had a protected property interest because they expended funds in complying with the application process and purchased interests in real property as part of that process. The fact that plaintiffs spent sums and acquired property in the hope that they would receive a license, however, does not establish that they were entitled to a license. See *Bundo*, 395 Mich at 692. Such expenditures do not give rise to a property interest in a license that has yet to be issued. For these reasons, the trial court did not err when it determined that plaintiffs' claims that the City violated procedural due process failed as a matter of law. No first-time applicant has an interest in the procedures for obtaining a license under the Marijuana Ordinance protected by the Due Process Clause. See *Maxwell*, 264 Mich App at 572; *Wong*, 126 Mich App at 592-593; *Barr*, 90 Mich app at 451.

Plaintiffs also variously asserted that the City violated substantive due process in the manner by which they denied the licenses at issue. The substantive component of due-process protections protects a person from the arbitrary exercise of government power. See *Bonner*, 495 Mich at 224; *Cary Investments*, ___ Mich App at ___; slip op at 4-5. The substantive protections protect a person from both arbitrary laws and the arbitrary exercise of government authority; the distinction depends on whether the plaintiff is attacking the constitutionality of a law or attacking an act by a governmental agent. See *Mettler Walloon LLC v Melrose Twp*, 281 Mich App 184, 198; 761 NW2d 293 (2008). For laws that do not affect a fundamental liberty interest, a plaintiff must demonstrate that the law is not reasonably related to a legitimate governmental interest. See *Bonner*, 495 Mich at 227. If the plaintiff is attacking a governmental action rather than a law, then the plaintiff must show that the governmental actor took action that was so arbitrary as to shock the conscience. *Mettler Walloon*, 281 Mich App at 200; *Cary Investments*, ___ Mich App at ___ (citation omitted); slip op at 4. But in both instances the plaintiff must still establish that the law or act affected an interest protected by due process. See *Bonner*, 495 Mich at 225 (stating that the first inquiry is whether the plaintiff has identified an interest that has been infringed by the law or act, which comes within the definition of life, liberty, or property). Because plaintiffs failed to identify such an interest, their due-process claims failed as a matter of law. But even if the protections of substantive due process were to apply to any and all acts or laws without regard to whether the law or act infringed an interest protected by due process, plaintiffs did not allege a claim for such a violation.

In this case, plaintiffs did not raise a claim that the Marijuana Ordinance was not reasonably related to a legitimate government interest—that is, they do not challenge the constitutionality of the ordinance. Rather, they alleged that the Review Committee's handling of the applications was so arbitrary that it shocked the conscience. Plaintiffs assert that the Review Committee and City Council did not follow the Marijuana Ordinance and that the individual members of the Review Committee had no legitimate reasons for scoring the factors beyond applying their own personal

RECEIVED by MSC 12/10/2025 3:03:01 PM

preferences. Those allegations, however, were not sufficient to state a violation of substantive due process.

As this Court has noted, substantive due process does not protect persons from every governmental action that infringes liberty or damages property. Rather, the plaintiff must allege facts that—if true—would show that the actor used governmental power to oppress or acted so irrationally that its conduct lacked any legitimate state interest; the key consideration is that the conduct shocks the conscience. See *Mettler Walloon*, 281 Mich App at 202. Picking winners and losers, although it might seem unfair, does not amount to irrational conduct or oppression; and does not shock the conscience. *Id.* Even a violation of state law by the governmental actor will not, absent more, cause the act to meet the shocks-the-conscience standard. *Id.* at 202-203.

Plaintiffs did not allege any acts that were so irrational or so egregious that it could satisfy a shocks-the-conscience standard. They merely alleged that the Review Committee and City Council did not properly follow the law and acted, in their view, arbitrarily when it selected the 15 entities that received licenses. Some argue that the individual members of the Review Committee changed scores to alter which entities would receive a license. A decision to award licenses to a group of preferred entities over a group of entities that were not preferred, even if done selfishly and with complete disregard for the law, does not ordinarily rise to the level of shocking the conscience. *Id.*

Plaintiffs also argue that the trial court's decision to grant summary disposition and dismiss their due-process claims was premature. They maintain that the trial court should have granted them the opportunity to amend their complaints to allege the facts necessary to support a claim premised on substantive due process, and they maintain that the order dismissing their claims was premature because discovery had not been completed.

The trial court had an obligation to give plaintiffs an opportunity to amend their complaints to better state their due-process claims. See MCL 2.116(I)(5). However, the trial court had no obligation to do so if the evidence then before the court showed that amendment would not be justified. *Id.* The trial court stated that, given the absolute discretion provided under the Marijuana Ordinance, no one had the right to expect anything under the ordinance, such that no change in the allegations could establish a due-process violation. The trial court correctly identified the flaw in plaintiffs' claims. Therefore, the trial court did not have to afford plaintiffs an opportunity to amend their complaints before it could grant the City's motion and dismiss the due-process claims under MCR 2.116(C)(8). Moreover, although a motion under MCR 2.116(C)(10) might be premature if done before the close of discovery, *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW2d 801 (2009), a motion under MCR 2.116(C)(8) accepts the facts alleged in the complaint as true. Indeed, a motion under MCR 2.116(C)(8) cannot be opposed or supported with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(2). Accordingly, whether the parties completed discovery lacked relevance to the court's decision regarding if plaintiffs alleged a claim on which relief could be granted. The trial court, therefore, did not err when it dismissed plaintiffs' due-process claims under MCR 2.116(C)(8).

RECEIVED by MSC 12/10/2025 3:03:01 PM

CONCLUSION

For the reasons discussed in this opinion, in Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, 356023, we reverse the trial court's grant of summary disposition to plaintiffs on their OMA claims and reverse and vacate the trial court's April 2020 Opinion and Order and its order denying reconsideration of that order. In Docket Nos. 359269 and 359285, we vacate the order dated October 26, 2021. We remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction. We further exercise our discretion under MCR 7.219(A), and order that none of the parties may tax their costs.

/s/ James Robert Redford
/s/ David H. Sawyer

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 2

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC.,
a Michigan Corporation,

Plaintiff,

vs

Case No. 2022-192383-CZ
Hon. Rae Lee Chabot

CITY OR ROYAL OAK, a Michigan
Municipal Corporation,

Defendant,
and

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

CONSOLIDATED WITH:

ATTITUDE WELLNESS, LLC, a Michigan
Municipal Corporation,

Plaintiff,

vs

Case No. 2022-192288-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan
Municipal Corporation,

Defendant,
and

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant.

RECEIVED by MSC 12/10/2025 3:03:01 PM

BDE WARREN, LLC, a Michigan Limited Liability Company,

Plaintiff,

vs

Case No. 2022-192830-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant,

and

EXCLUSIVE CAPITAL PARTNERS, LLC., a Michigan Limited Liability Company,

Plaintiff,

vs

Case No. 2022-193015-CZ
Hon. Rae Lee Chabot

CITY OF ROYAL OAK, a Michigan Municipal Corporation,

Defendant.

~~~~~~

VOLUME I

DEPOSITION OF PAUL BRAKE,

taken on Wednesday, June 8, 2022, at 203 South Troy Street, Royal Oak, Michigan, at 9:45 a.m., pursuant to Notice.

Reported by DEBORAH LINEHAN, CER 7251

RECEIVED by MSC 12/10/2025 3:03:01 PM
~~~~~~

Q I'll grant you that, there is no such thing as a perfect location. My only question is, if there are multiple communications from a school within 88 feet of Gatsby's location, a steady drumbeat of opposition leading up to your decision, would you still consider Gatsby's proposed location to be in harmony with the surrounding properties?

MS. MCLAUGHLIN: Objection to the form of the question.

THE WITNESS: Again, I keep coming back to speculation.

BY MR. ETZEL:

Q Okay. Speaking of rankings, as we read before in the ordinance it does call out that there be a ranking of the applicants in terms of those most suited to comply with MRTMA within the City of Royal Oak; is that correct?

A Yes.

Q And did you, in fact, prepare such a ranking of all 31 applicants or at least those that you determined that were minimally qualified that weren't disqualified?

A So the ranking and some three separate distinctions: Those that were recommended for the license, those that were in standby, and the licenses that were rejected.

Q Okay. So you did not have like a ranking that would --

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT 3

RECEIVED by MSC 12/10/2025 3:03:01 PM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ATTITUDE WELLNESS, LLC,

Plaintiff,

v.

VILLAGE OF PINCKNEY,

Defendant.
_____/

Case No. 21-cv-12021

U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

ORDER AND OPINION DENYING ATTITUDE WELNESS'S MOTION FOR A PRELIMINARY INJUNCTION [#2], GRANTING THE MEANS PROJECT'S MOTION TO DISMISS [#26], AND GRANTING THE MEANS PROJECT'S *EX PARTE* MOTION FOR LEAVE TO FILE EXCESS PAGES [#36]

I. INTRODUCTION

On August 30, 2021, Plaintiff Attitude Wellness, LLC, d/b/a/ Lume Cannabis Company ("Lume") initiated this action against the Village of Pinckney ("the Village") seeking declaratory and injunctive relief. ECF No. 1, PageID.2. Lume argues that the Village's ranking matrix for cannabis retail business licenses violates the dormant Commerce Clause, the Michigan State Constitution, and the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). *Id.* at PageID.2.

Presently before the Court is Lume's Motion for a Preliminary Injunction. *See* ECF No. 2. The Village filed its Response opposing the Motion on September

RECEIVED by MSC 12/10/2025 3:03:01 PM

22, 2021. ECF No. 10, PageID.123. Intervening party The Means Project LLC filed its Response on November 19, 2021, after the Court granted its Motion to Intervene. ECF No. 27, PageID.493. Lume submitted its Replies on October 6, 2021, and November 29, 2021, respectively. ECF No. 11, PageID.152; ECF No. 28, PageID.540.

Also before the Court is The Means Project's Motion to Dismiss [#26], filed on November 19, 2021. The Motion is fully briefed, and oral argument will not aid its disposition. *See* ECF Nos. 30, 37. Therefore, the Court elects to resolve the Motion to Dismiss on the briefs. E.D. Mich. L.R. 7.1(f)(2). For the reasons discussed below, the Court will DENY Lume's Motion for a Preliminary Injunction [#2], and GRANT The Means Project's Motion to Dismiss [#26].

II. FACTUAL BACKGROUND

Lume is a cannabis business operating 22 cannabis retailers across Michigan. ECF No. 1, PageID.2. It entered the recreational cannabis industry after Michiganders voted to legalize cannabis for recreational use in the general election on November 6, 2018. MICH. COMP. LAWS § 333.27951. A month later, the state legislature enacted the MRTMA. *Id.* The legislation established a system to license and regulate cannabis businesses. *Id.* The MRTMA allows Michigan municipalities to prohibit or limit the number of cannabis businesses within their

RECEIVED by MSC 12/10/2025 3:03:01 PM

communities. MICH. COMP. LAWS § 333.27956. Municipalities that limit the number of cannabis business licenses must establish "a competitive process" to "select applicants who are best suited to operate [a cannabis business] in compliance with this act within the municipality." MICH. COMP. LAWS § 333.27959(4).

The Village initially prohibited recreational cannabis businesses from operating within its city borders, but reversed course following a local election on November 3, 2020. ECF No. 10, PageID.128–129. The Village council adopted Ordinance 152 twenty days after the local election, which created regulations governing cannabis business licensure in the Village. *See* ECF No. 1-4. The Ordinance authorized six licensed cannabis businesses to operate in the Village. *Id.* at PageID.26. Only one cannabis retailer license was available. *Id.*

Pursuant to the Ordinance and MRTMA, the Village adopted a matrix to rank license applicants ("the Matrix"). ECF No. 1-4, PageID.28. The Matrix ranked applicants based on a perfect score of 85 points. *See* ECF No. 1-4. Businesses needed at least 70 points to become eligible for a license. ECF No. 10, PageID.130. The Matrix assigns points based on an applicant's business history, its business plan, its application's completeness, and its impact on the community. *See* ECF No. 1-5. The impact on the community portion provided five points to businesses "[a]t least 10% … owned by a resident of Livingston County," and

another ten points if "[a]t least 10% of [the business is] owned by a resident of the Village of Pinckney." ECF No. 1-5, PageID.35. Two more points are available to applicants who "commit[] to a net zero impact on the environment" and "provid[e] comprehensive plans to use renewable energy and reduce its environmental impact to zero." *Id.* Applicants could obtain five additional points for operating their business in a commercially vacant building described as "distressed, blighted, or require[s] significant additional investment." *Id.*

On June 29, 2021, Lume's legal counsel emailed the Village clerk expressing concerns about the business license selection process. ECF No. 1-6, PageID.41. Of specific concern to Lume were the residency points and the environmental impact points. *Id.* at 42.

The Village received three applications for its single cannabis retailer license. ECF No. 10, PageID.130. The Means Project received a perfect score under the Matrix, whereas QPS Michigan Holdings LLC obtained 66 points, and Lume scored last with 65 points. *Id.* Lume lost points for not presenting the Village a clean energy plan and choosing not to operate its retail business in a vacant and distressed building. ECF No. 1-5, PageID.39. Neither Lume nor QPS Michigan Holdings received any residency points. *Id.*

On August 24, 2021, the Village clerk notified The Means Project that it won the Village's provisional cannabis retail license. ECF No. 10-2, PageID.146.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

The Village council voted unanimously to support the provisional license award. *Id.* Final license approval would come after the State of Michigan issued its operating licenses. *Id.* The Village notified Lume about its retail license decision on August 24, 2021, as well. ECF No. 10-3. PageID.148. Included in its decision letter were instructions on appealing the Village's decision. *Id.* Lume filed the instant action against the Village six days later.

On November 1, 2021, The Means Project filed a Motion to Intervene to protect its property interest in the Village's retail cannabis license. ECF No. 12, PageID.166. The Court set an expedited briefing schedule for the Motion to Intervene and adjourned the Preliminary Injunction hearing. ECF No. 18, PageID.390. On November 18, 2021, the Court granted The Means Project's Motion to Intervene. ECF No. 25, PageID.450. The Intervenor submitted its Response to Lume's Motion for a Preliminary Injunction the very next day. ECF No. 27, PageID.493. After delays related to the COVID-19 pandemic, the Court rescheduled Lume's Preliminary Injunction hearing for March 23, 2022.

III. LAW AND ANALYSIS

A. Preliminary Injunction Legal Standard

Preliminary injunctions are extraordinary remedies reserved only for cases where it is necessary to preserve the status quo. *Enchant Christmas Light Maze &*

RECEIVED by MSC 12/10/2025 3:03:01 PM

Market Ltd. v. Glowco, LLC, 958 F.3d 532, 535 (6th Cir. 2020) (citing *Hall v. Edgewood Partners Ins. Ctr., Inc.*, 878 F.3d 524, 526 (6th Cir. 2017)). A plaintiff seeking preliminary relief must establish a likelihood of success on the merits, that they are likely to suffer irreparable harm absent preliminary relief, that the balance of equities tip in their favor, and that an injunction is in the public interest. *See Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012). The first two factors—likelihood of success and irreparable harm—weigh most heavily on the Court. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

B. Application to Plaintiff's Motion for a Preliminary Injunction

1. Likelihood of Success on the Merits

To obtain preliminary relief, Lume must make "a strong showing that [it] is likely to succeed on the merits" of its claims. *Nken*, 556 U.S. at 434. Lume argues that the Matrix violates the federal and Michigan State constitutions for allocating 15 points based on where a company's owners reside. ECF No. 2, PageID.67. It also claims that the Matrix violates the MRTMA by considering an applicant's environmental impact and an applicant's commitment to revitalizing dilapidated buildings. *Id.* at PageID.68. The Court examines each challenge below.

RECEIVED by MSC 12/10/2025 3:03:01 PM

a. United States Constitution

The Commerce Clause empowers Congress "[t]o regulate Commerce … among the several States." U.S. CONST. ART. I, § 8, cl. 3. "Although the Clause is framed as a positive grant of power to Congress," *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 548 (2015), the Supreme Court has "long held that this Clause also prohibits state laws that unduly restrict interstate commerce." *Tenn. Wine and Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2459 (2019). This restrictive aspect of the Commerce Clause is generally known as the dormant Commerce Clause. *Id*. It is intended "to effectuate the Framers' purpose to prevent a State from retreating into the economic isolation … that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337–38 (2008) (citations and quotations omitted). The dormant Commerce Clause applies in equal force to both state and local laws that "discriminate against out-of-state goods or nonresident economic actors[.]" *Tenn. Wine & Spirits Retailers Ass'n*, 139 S. Ct. at 2461.

The Sixth Circuit "typically emplo[ies] a 'two-tiered analysis'" of dormant Commerce Clause challenges. *Online Merchants Guild v. Cameron*, 995 F.3d 540, 552 (6th Cir. 2021) (quoting *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644 (6th Cir. 2010)). At the first tier, the Court must discern whether the challenged

RECEIVED by MSC 12/10/2025 3:03:01 PM

law facially discriminates against intrastate commerce. *Davis*, 553 U.S. at 338. Facially discriminatory laws are "virtually *per se* invalid," *Id.*, (quoting *Or. Waste Systems, Inc. v. Dep't of Env't Quality of Or.*, 511 U.S. 93, 99 (1994)), only surviving judicial scrutiny if they "advance[] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Or. Waste Systems, Inc.*, 511 U.S. at 101. Non-facially discriminatory laws incidentally burden commerce while appearing neutral. *Pike v. Bruce Church Inc.*, 397, U.S. 137, 142 (1970). Those laws are assessed at the second tier and are "upheld unless the burden imposed on [intrastate] commerce is clearly excessive in relation to the putative local benefits." *Id.*

Courts in this judicial district and elsewhere have found cannabis residency provisions to fall under the first tier of dormant Commerce Clause challenges. *See Lowe v. City of Detroit*, 544 F. Supp. 3d 804, 816 (E.D. Mich. June 17, 2021); *Toigo v. Dep't of Health & Senior Servs.*, 549 F. Supp. 3d 985, 991 (W.D. Mo. June 21, 2021); *NPG, LLC v. City of Portland*, No. 20-cv-00208, 2020 U.S. Dist. LEXIS 146958, at *11 (D. Me. Aug. 14, 2020); *but see Original Invs., LLC v. Okla.*, 542 F. Supp. 3d 1230, 1233 (W.D. Okla. June 4, 2021) (sidestepping the dormant commerce clause analysis to deny preliminary relief on other grounds). The parties here cite both *Lowe* and *NPG* in support of their arguments. The Court will therefore apply the first-tier analysis standard to the present challenge.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Lowe and *NPG* concerned challenges to local cannabis licensing regimes that either conditioned license eligibility on an applicant's durational residency, or gave resident applicants an advantage over non-residents. *See, e.g.*, *Lowe*, 544 F. Supp. 3d at 806 (limiting eligible cannabis business license applicants to Detroit residents of "at least ten years."); *NPG*, 2020 U.S. Dist. LEXIS 146958, at *6–*7 (providing five of 35 points to municipal cannabis license applicants whose business was "[a]t least 51% owned by individuals who have been a Maine resident for at least five years.").

In *Lowe*, a business applicant sought injunctive relief enjoining the City of Detroit from implementing its recreational cannabis licensing ordinance. 544 F. Supp. 3d at 806. The ordinance reserved at least 50 percent of recreational cannabis licenses for Detroit residents of at least ten years and gave those applicants a six-week application window to apply before non-residents. *Id.* at 807–08.

Similarly, the plaintiff in *NPG* moved to enjoin the City of Portland from implementing a cannabis licensing regime that facially discriminated against out-of-state cannabis business license applicants. 2020 U.S. Dist. LEXIS 146958, at *6. The court there agreed that the ranking matrix violated the Constitution. *Id.* at *26 ("I conclude that the City is unlikely to succeed in justifying the residency

RECEIVED by MSC 12/10/2025 3:03:01 PM

preferences in its points matrix.") (citing *Granholm v. Heald*, 544 U.S. 460, 492–93 (2005)).

Lume's dormant Commerce Clause argument traces that made in *NPG*. The Matrix allocates 15 of 85 points to residency, while only reviewing applications that receive at least 70 points. That licensing regime almost requires eligible applicants to have ten percent of owners reside in Livingston County or the Village of Pickney. The Supreme Court has long prohibited economic protectionism of this sort. *See Davis*, 553 U.S. at 337–38.

The Village does not argue that its Matrix is nondiscriminatory. Rather, it contends that non-durational residency requirements deserve different treatment. ECF No. 10, PageID.137. The Village accurately describes the residency requirements in both *Lowe* and *NPG* as durational. *Id.* But the Court is presented no authority demonstrating why a non-durational residency requirement deserves different treatment. "The burden is on the [the Village] to show that the 'discrimination is demonstrably justified.'" *See Granholm*, 554 U.S. at 492 (quoting *Chemical Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 344 (1992)). Moreover, most courts agree that any residency considerations for a cannabis license violates the dormant Commerce Clause. *See Northeast Patients Grp. v. Me. Dep't of Admin. and Fin. Servs.*, No. 20-cv-00468, 2021 U.S. Dist. LEXIS 151027, *12 (D. Me. Aug. 11, 2021) (collecting cases); *Lowe*, 544 F. Supp. 3d at

806; *NPG*, 2020 U.S. Dist. LEXIS 146958, at *6. The issue is not whether an economic ordinance discriminates based on durational residency. What matters is that an ordinance's licensing regime discriminates against nonresidents at all. *See Garber v. Mendez*, 888 F.3d 839, 843 (6th Cir. 2018).

The Means Project's argument differs, claiming the dormant Commerce Clause *per se* rule of invalidity is only triggered by interstate commerce, not intrastate commerce. ECF No. 27, PageID.510. Yet the laws in *Lowe* and *NPG* involved intrastate commerce. And in both cases, the virtually *per se* rule of invalidity applied. *See Lowe*, 544 F. Supp. 3d at 816; *NPG*, 2020 U.S. Dist. LEXIS 146958, at *25. The Village therefore bears the burden of demonstrating how the Matrix's discrimination "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *See Davis*, 553 U.S. at 338 (citation and quotation omitted). That burden is not met here.

Neither the Sixth Circuit nor any other circuit court has ruled on the constitutionality of local residency provisions for cannabis licenses. Absent any authority supporting either the Village or The Means Project's argument, this Court finds Lume likely to succeed on its dormant Commerce Clause challenge to the Matrix.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

b. Michigan State Constitution

Next, Lume argues it is likely to succeed on its equal protection challenge brought under the Michigan State constitution. Under Michigan's equal protection clause, businesses can challenge laws "interfer[ing] with economic or business activit[ies]" that serve no legitimate public purpose. *See Murphy-DuBay v. Dep't of Licensing & Regul. Aff.*, 311 Mich. App. 539, 876 N.W.2d 598, 604 (Mich. Ct. App. 2015). Michigan courts engage in a two-step rational basis inquiry when deciding whether an ordinance violates the State's right to engage in business. *See Murphy-DuBay*, 876 N.W.2d at 604 ("[T]here is a two-step inquiry: (1) whether there is a legitimate public purpose and, if so, (2) whether there is a rational relationship between the legislation and the public purpose sought to be achieved."). An ordinance is presumed constitutional, and the challenger has the burden to rebut that presumption. *See Barrow v. City of Detroit Election Comm'n*, 301 Mich. App. 404, 836 N.W.2d 498, 507 (Mich. Ct. App. 2013).

Lume posits that "favor[ing] local merchants" is an illegitimate public purpose. *See Colonial Baking Co. v. Fremont*, 296 Mich. 185, 189–90 (1941). Like the business applicant in *Lowe*, Lume finds the Matrix's residency points are "pure economic protectionism." 544 F. Supp. 3d at 809. The Means Project avers that *Colonial Baking Co.* is bad law, whereas more recent case law suggests

RECEIVED by MSC 12/10/2025 3:03:01 PM

residency requirements do not offend Michigan's constitution. ECF No. 27, PageID.507.

Michigan courts have invalidated durational residency requirements for job applicants under the State constitution before. *See Musto v. Redford Twp.*, 137 Mich. App. 30, 357 N.W.2d 791, 793–74 (Mich. Ct. App. 1984) (finding a one-year durational residency requirement unconstitutional). To survive rational basis review, the Village must show that the residency points are rationally related to a legitimate government purpose. *Akhtar v. Charter Wayne*, No. 233879, 2003 Mich. App. LEXIS 307, at *5 (Mich. Ct. App. 2003). But it is unclear what the Village's legitimate government purpose is here.

One proposition The Means Project presents is that the Matrix's residency points help the Village ensure new businesses are familiar with the community. ECF No. 27, PageID.508. That argument is in tension with a business's right to remain free from protectionist regulations. *See Lowe*, 544 F. Supp. 3d at 815 ("[I]n the State of Michigan, there is a right to be considered for [a cannabis] license 'in a fair, reasonable, and nondiscriminatory manner.'") (quoting *Musto*, 357 N.W.2d at 793). Discrimination based on residency runs afoul to a business's right to fair

RECEIVED by MSC 12/10/2025 3:03:01 PM

consideration in license applications.[1] As such, economic protectionist policies cannot serve a legitimate government purpose and fail under rational basis review.

As the Court explained *supra*, most residency preferences amount to economic protectionism that are repugnant to the federal and Michigan State constitutions. *But see Barrow*, 836 N.W.2d at 511 (recognizing an exception to durational residency requirements for election candidate eligibility). The Village does not argue otherwise, nor did it respond to Lume's equal protection argument. ECF No. 10, PageID.134–138. Accordingly, the Court finds Lume, like the plaintiff in *Lowe*, likely to succeed on its Michigan State constitution claim. 544 F. Supp. 3d at 815.

c. MRTMA

Lume also argues that the Matrix violates the MRTMA because it "awards points for reasons that have nothing to do with MRTMA compliance." ECF No. 2, PageID.68–69. The MRTMA instructs localities to "decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with" the MRTMA "within the municipality."

[1] The parties also debate whether the Ordinance's Matrix violates Michigan's right to travel. If the right to travel is implicated, strict scrutiny is triggered. *See Barrow*, 836 N.W.2d at 511. The Court declines to entertain the right to travel arguments because the residency points contained in the licensing matrix cannot survive rational basis review.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICH. COMP. LAWS § 333.27959(4). Lume contends "a business's environmental practices, and a business's commitment to filling vacant buildings" have nothing to do with MRTMA compliance. ECF No. 2, PageID.68. The Matrix thus conflicts with the MRTMA, Lume states, making it unlawful. The Means finds Lume's construction of the MRTMA too narrow. ECF No. 27, PageID.503–504. Instead of couching municipalities' discretion, The Means Project reads the MRTMA as affording localities broad discretion to design their cannabis licensing regimes. *Id.*

Michigan law guides the Court's statutory construction analysis here. "The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statutes plain language." *Houdek v. Centerville Twp.*, 276 Mich. App. 568, 741 N.W.2d 587, 596 (Mich. Ct. App. 2007). When a statute's meaning "is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* Courts accord every word or phrase in a statute its plain and ordinary meaning, while accounting for the context in which those words are used. *See People v. Pinkney*, 501 Mich. 259, 912 N.W.2d 535, 539 (2018) (quoting *Madugula v. Taub*, 496 Mich. 685, 853 N.W.2d 75, 81 (2014)). The statute at issue here reads in relevant part:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality … the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MICH. COMP. LAWS § 333.27959(4). Municipal laws must be "in direct conflict with" the MRTMA for state law preemption to apply. *See Ter Beek v. City of Wyoming*, 495 Mich. 1, 846 N.W.2d 531, 541 (2014). Direct conflicts arise where "the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Id.* (citation omitted).

Courts afford substantial deference to Michigan's local governments when construing municipal ordinances. *See Cady v. City of Detroit*, 289 Mich. 499, 286 N.W. 805, 807 (1939). "Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed." *Guertin v. State*, 912 F.3d 907, 938 (6th Cir. 2019) (quoting *Bivens v. Grand Rapids*, 443 Mich. 391, 505 N.W.2d 239, 243 (1993)) (emphasizing how Michigan "[m]unicipalities enjoy significant autonomy over local government functions."). The Michigan Supreme Court has emphasized how municipalities maintain "great[] latitude to conduct their business[,]" *Associated Builders & Contractors v. City of Lansing*, 499 Mich. 177, 880 N.W.2d 765, 769 (2016), such that Michigan's towns "enjoy not only those powers specifically granted, but they may also exercise *all powers not expressly denied*." *AFSCME v. City of Detroit*, 486 Mich. 388, 662 N.W.2d 695, 707 (2003) (emphasis added) (citation omitted).

RECEIVED by MSC 12/10/2025 3:03:01 PM

Nothing in the MRTMA's plain language signals the legislature's intent to cabin municipal discretion. Indeed, the statute explicitly instructs municipalities to decide who is best suited to operate a lawful cannabis business in their communities. MICH. COMP. LAWS § 333.27959(4). If Michigan's legislature wanted to identify specific factors for localities to consider when companies are "best suited" to receive cannabis licenses, it could have defined criteria in the MRTMA. *Id.* But the legislature did not do so. Instead, Michigan's legislature empowered local governments to choose criteria identifying companies best suited to join their communities.

The Village exercised that discretion here. It ranked cannabis license applicants based on their business plan and impact on the community, which the MRTMA does not expressly prohibit. The MRTMA does not "directly conflict" with municipal officials considering an applicant's environmental footprint or building revitalization efforts. *Ter Beek*, 495 Mich. at 20. Lume argues that the statute constrains municipal discretion to selecting cannabis license applicants based solely on their "suitability to comply with [the] MRTMA" in their communities. ECF No. 28, PageID.545. But that interpretation is incorrect for at least two reasons.

First, the MRTMA provision at issue, MICH. COMP. LAWS § 333.27959(4), does not contain the constraining language Lume professes it does. The Court

RECEIVED by MSC 12/10/2025 3:03:01 PM

should not read language into a statute that is not there. *See Covenant Med. Center, Inc. v. State Farm Mut. Ins. Co.*, 500 Mich. 191, 895 N.W.2d 490, 495 (2017). Lume does not cite MRTMA provisions explicitly prohibiting the Village from considering a cannabis license applicant's environmental impact, or an applicant's commitment to revitalizing debilitated buildings. Unless the Village's practices are contrary to clear constitutional or statutory mandates, its non-residency considerations do not violate the MRTMA.

Second, Michigan Supreme Court precedent runs counter to Lume's reading of the MRTMA as constraining municipal discretion. As a home rule state, Michigan's localities possess tremendous authority over local affairs, such that power not expressly prohibited is presumed provided. *See AFSCME*, 662 N.W.2d at 707. Here, that unprohibited power includes localities considering a cannabis license applicant's environmental impact and building revitalization efforts, since the MRTMA does not bar either factor from consideration. Absent authority suggesting otherwise, the Court will continue respecting the autonomy Michigan municipalities enjoy. Accordingly, the Court does not find Lume likely to succeed on its MRTMA claim.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. Irreparable Harm

Lume next argues that the Matrix caused irreparable harm by preventing Lume from entering the Village's retail cannabis market.[2] ECF No. 2, PageID.71. "When constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama*, 697 F.3d at 436. But plaintiffs seeking a preliminary injunction must establish that without preliminary relief, they are "likely to suffer irreparable harm." *Id.* The unconstitutional conduct must cause the irreparable harm. *Id.* That is not the case here.

Both *Lowe* and *NPG* are instructive on the irreparable harm prong. The business applicant in *Lowe* challenged the Detroit residency preference before it took effect. 544 F. Supp. 3d at 816 ("demonstrat[ing] that [plaintiff] will suffer irreparable injury absent an injunction" because she would "be significantly disadvantaged in applying for a recreational [cannabis] retail license."). The plaintiff in *NPG* argued similarly. *See* 2020 U.S. Dist. LEXIS 146958, at *14 ("assert[ing] that the points matrix creates an injury-in-fact by denying Plaintiffs the opportunity to participate in Portland's licensing process on equal footing with other applicants.") (internal quotations omitted). Plaintiffs in both *Lowe* and *NPG* sought preliminary relief before local governments considered their business

[2] Lume's witness at the Preliminary Injunction hearing testified that its Michigan retail stores each average $400,000 in annual revenue. Although the Village has under 3,000 residents, the witness expects the Village's retail operation to perform similarly.

RECEIVED by MSC 12/10/2025 3:03:01 PM

license applications because the requested relief was equal treatment in the application evaluation process. Timing in both cases proved critical.

The Village draws the Court's attention to the timing distinction between Lume's lawsuit and other cannabis residency challenges. ECF No. 10, PageID.137. Lume sought injunctive relief after the Village denied its business application. The requested relief is an order finding the Ordinance unconstitutional and enjoining the Village from issuing cannabis retailer licenses under it. ECF No. 1, PageID.14–15. But unlike prior cannabis license residency challenges, Lume seeks relief after the residency points are proven immaterial.

As the Village correctly notes, even if the Matrix had no residency points, Lume was not going to win the Village's cannabis retail license. ECF No. 10, PageID.140. Lume lost two points for not presenting "comprehensive plans to use renewable energy and reduce its environmental impact to zero" in its license application. ECF No. 1-5, PageID.39. It lost another three points for choosing not to operate its business in a distressed or blighted commercial structure that is currently vacant. *Id.* Without those points, any harm Lume claims it incurred from the residency points is inconsequential because The Means Project had a perfect score. *Id.* at PageID.34.

Perhaps most fatal to Lume's irreparable harm argument is the Ordinance's severability clause. ECF No. 1-4, PageID.31. Even if Lume succeeds on the

RECEIVED by MSC 12/10/2025 3:03:01 PM

merits of its constitutional challenge to the Matrix, the Ordinance it extends from requires only the unlawful portions be severed. *Id.* That severability would keep the Matrix's lawful portions intact, *i.e.*, green business practices and building revitalization efforts. The status quo will remain unchanged because Lume did not receive as many lawful points as other applicants. The Court therefore finds Lume unlikely to suffer irreparable harm absent preliminary relief.

3. Remaining Preliminary Injunction Factors

Finally, the Court looks at the balance of equities and public interest to determine whether preliminary relief is warranted. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). Here, the Court weighs the balance of hardships to Lume if preliminary relief is not provided, against the hardships to the Village if a preliminary injunction is issued. As discussed above, Lume did not receive enough points to win the cannabis retail license, even without residency being considered. Moreover, the Village's hardships are great. Another court outside this district found delaying a locality's cannabis licensing process harmful to the public. *See NPG*, 2020 U.S. Dist. LEXIS 146958, at *29. The hardships on The Means Project weigh against an injunction as well. The Intervenor invested $2,200,000 in the Village's cannabis operation, including $500,000 in converting a vacant elementary school into a cannabis grower,

RECEIVED by MSC 12/10/2025 3:03:01 PM

processor, and retailer operation. ECF No. 27-2, PageID.522. Any delay in the licensing process can cause the Village and The Means Project to fall behind the rest of Michigan's cannabis markets.

Enjoining the Village's cannabis licensing regime could provide Lume the relief it seeks, but it will likely cause the Village and The Means Project greater hardship. Therefore, the Court finds the balance of equities and public interest to favor the Village. Because Lume does not face irreparable harm, and because the balance of equities and public interest favor Defendant, the Court will DENY Plaintiff's Motion for a Preliminary Injunction [#2].

C. Motion to Dismiss

Next, The Means Project moves to dismiss Lume's action. Dismissal is warranted for at least two reasons, The Means Project states: (1) for lack of standing—subject matter jurisdiction—under 12(b)(1),[3] and (2) Lume's failure to state a claim upon which relief can be granted pursuant to 12(b)(6). The Means Project seeks dismissal under an abstention theory as well.

[3] Intervenor does not bring its standing challenge under Rule 12(b)(1) explicitly, but courts lack subject matter jurisdiction over parties without standing in federal court. *See Lyshe v. Levy*, 854 F.3d 855, 857 (6th Cir. 2017) ("Whether a party has [Article III] standing is an issue of the court's subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)."). This Court therefore construes the challenge for lack of subject matter jurisdiction under Rule 12(b)(1), rather than Rule 12(b)(6).

RECEIVED by MSC 12/10/2025 3:03:01 PM

1. Article III Standing

The Means Project first asserts Lume lacks Article III standing. Standing is the "essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs must meet three requirements to establish standing: (1) an injury that is concrete and particularized, as well as actual or imminent; (2) a causal relationship between the injury and alleged conduct; and (3) a likelihood that the Court can redress the injury. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). At the motion to dismiss stage, "a facial attack on the pleadings for lack of standing" requires courts to "accept the allegations set forth in the complaint as true, drawing all inferences in favor of the plaintiff." *See Mosley v. Kohl's Dep't Stores, Inc.*, 942 F.3d 752, 756 (6th Cir. 2019).

Accepting Lume's allegations as true, it has Article III standing. The Court agrees that Lume sufficiently plead a concrete and particularized injury—discrimination in the Village's license evaluation process—that is traceable to the Village. ECF No. 30, PageID.586. The Court could also redress Lume's injury with a favorable decision. For example, Lume seeks declaratory relief striking the Matrix's allegedly unlawful sections, and an order voiding The Means Project's license. ECF No. 1, PageID.15. That relief would likely afford Lume a fair opportunity to obtain the Village's retail cannabis license. While it remains

RECEIVED by MSC 12/10/2025 3:03:01 PM

speculative whether Lume would win the license, the Court need only consider whether the relief is likely to provide Lume a fair opportunity for consideration. Because this Court can provide such relief, Lume's lawsuit is justiciable.

The Means Project contends Lume cannot satisfy any Article III standing requirement. Lume has no property interest in the retail license because Lume lost its bid, The Means Project states, making any potential harm speculative. The Means Project also argues that Lume cannot win a retail cannabis license because even with the challenged portions of the Matrix struck, Lume could not win more points than The Means Project. But accepting Lume's allegations as true, Lume and The Means Project would tie with 70 points. And because the Matrix's tiebreaker relies on unlawful criteria—residency—Lume could still win the retail license based on its allegations.

The Court could afford relief from the stated harm as well. Again, Lume is not seeking the retail cannabis license as relief. Instead, Lume seeks a nondiscriminatory evaluation process. In Michigan, business license applicants have a right to "fair, reasonable, and nondiscriminatory" consideration of their license applications. *See Lowe*, 544 F. Supp. 3d at 815 (quoting *Musto*, 357 N.W.2d at 793). As such, the Court finds Lume has Article III standing.

RECEIVED by MSC 12/10/2025 3:03:01 PM

2. Failure to State a Claim

Next, The Means Project argues dismissal is warranted under Rule 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes the Court to dismiss complaints for "failure to state a claim upon which relief can be granted." To survive a Rule 12(b)(6) motion, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A "claim is facially plausible when the plaintiff 'pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Matthew N. Fulton, DDS, P.C. v. Enclarity, Inc.*, 907 F.3d 948, 951–52 (6th Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678). Determining plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. The complaint must contain "more than labels and conclusions" to survive Rule 12(b)(6) dismissal. *Twombly*, 550 U.S. at 545. Courts must "construe the complaint in the light most favorable to the plaintiff and accept all factual allegations as true." *Laborers' Loc. 265 Pension Fund v. iShares Trust*, 769 F.3d 399, 403 (6th Cir. 2014).

Accepting Lume's Complaint as true, the Court concludes it fails to state a claim upon which relief can be granted. Specifically, the Court finds Lume's

RECEIVED by MSC 12/10/2025 3:03:01 PM

MRTMA arguments conclusory and lacking in factual and legal support. Unlike a Rule 12(b)(1) Article III standing analysis, courts do not accept legal allegations as true under Rule 12(b)(6) scrutiny. *See Iqbal*, 129 S. Ct. at 1949 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). Applied here, Lume's arguments challenging the Village's MRTMA compliance fail to carry their weight.

As discussed above, Lume believes the Village's cannabis licensing scheme violates the MRTMA by providing points to applicants for green business practices and revitalizing dilapidated buildings. Section 333.27959(4)'s "best suited" language constrains municipalities discretion when selecting cannabis license applicants, Lume continues. But nothing in the statute, cannons of statutory construction, or Michigan law, suggests Lume's MRTMA reading is correct. Michigan's localities possess significant governing power over matters the legislature does not expressly prohibit. *Guertin*, 912 F.3d at 938. This Court is unaware of any Michigan statute expressly prohibiting municipalities from considering a cannabis license applicant's green business practices or building revitalization efforts. Indeed, under MICH. COMP. LAWS § 333.27956(2) "municipalit[ies] may adopt other ordinances that are not unreasonably impracticable and" regulate the "place, and manner of operation of [cannabis] establishments[.]" A business applicant's environmental impact and proposed

RECEIVED by MSC 12/10/2025 3:03:01 PM

business site falls under MICH. COMP. LAWS § 333.27956(2)'s grant of authority. Moreover, this Court is unaware of any court adopting Lume's interpretation of MICH. COMP. Laws § 333.27959(4) as law. Absent any authority or factual support, Lume's MRTMA argument is conclusory.

Without a viable MRTMA claim, Lume's case goes up in smoke. It fails to state a claim upon which this Court can grant relief due to the Ordinance's severability clause. No matter how much the Matrix runs afoul to the dormant Commerce Clause, no viable claim exists because Lume failed to obtain enough lawful points under the Matrix. Accordingly, the Court will GRANT The Means Project's Motion to Dismiss [#26] because Lume fails to state a claim upon which relief can be granted.[4]

IV. CONCLUSION

For the reasons discussed herein, the Court will DENY Lume's Motion for a Preliminary Injunction [#2].

The Means Project's Motion to Dismiss [#26] is GRANTED.

The Means Project's *ex parte* Motion for Leave to File Excess Pages [#36] is GRANTED.

[4] The Means Project also argues dismissal is proper because the Court should abstain from matters involving issues of state law. The Court declines to reach this argument because Lume fails to state a claim upon which relief can be granted.

IT IS SO ORDERED.

Dated: April 7, 2022

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 7, 2022, by electronic and/or ordinary mail.
/s/ Teresa McGovern
Case Manager

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT C

Q During the competitive process, did you compare the applications with one another?
A Yes.
Q And with respect to the ranking order of the applications, once two licenses -- license slots had been awarded was there any need to rank the others?
A No.
Q Are you aware that Gatsby Cannabis operates a facility, a marihuana retailer facility, in another location in the state of Michigan?
A I might have saw that in the application now that you mentioned that, but I would have to go back and verify.
Q Are you aware that Gatsby has been awarded licenses in other communities other than Royal Oak?

MR. ETZEL: Objection to foundation.

MS. MCLAUGHLIN: I'm just asking.

THE WITNESS: Yeah. You know, to say quite definitively, but -- but, you know, I could verify that.

BY MS. MCLAUGHLIN:
Q Did the mayor or city commissioners have access to the applications?
A No. No, not at all. Applications meaning the completed forms, not the template.
Q Right. I'm talking about the completed applications

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT D

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

Consolidated Cases:

ATTITUDE WELLNESS, LLC,
a Michigan limited liability company, — Case No. 2022-192288-CZ

QUALITY ROOTS, INC., a Michigan
corporation, — Case No. 2022-192383-CZ

BDE WARREN, LLC,
a Michigan Limited Liability Company, — Case No. 2022-192830-CZ

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company, — Case No. 2022-193015-CZ

Plaintiffs, — HON RAE LEE CHABOT

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

Defendant's Answers to Plaintiff BDE Warren, LLC's First Interrogatories

PGSH HOLDINGS, LLC, a Michigan
Limited Liability Company,

Intervening Defendant
(Attitude and Quality cases, only).

KEVIN M. BLAIR (P76927)
KEITH D. UNDERKOFFLER (P84854)
Attorney for Plaintiff ***Attitude Wellness***
kblair@honigman.com
kunderkoffler@honigman.com

BRIAN E. ETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff ***Quality Roots***
bee@wwrplaw.com; wcd@wwrplaw.com

DAVID S. SENAWI (P71000)
MEREDITH C. BANKS (P84647)
Attorneys for Plaintiff ***BDE Warren, LLC***
david@senawilaw.com; meredith@senawilaw.com

ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff ***Exclusive Capital***
ab@consultingpllc.com

ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant ***City of Royal Oak***
amclaughlin@rsjalaw.com;
apike@rsjalaw.com
dgordon@rsjalaw.com

ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
JEFFREY B. MILLER (P62993)
Attorneys for Intervening Defendant ***PGSH Holdings***
in Attitude Wellness and Quality Roots cases, only
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

RECEIVED by MSC 12/10/2025 3:03:01 PM

DEFENDANT'S ANSWERS TO FIRST SET OF INTERROGATORIES OF PLAINTIFF, BDE WARREN, LLC

Defendant, CITY OF ROYAL OAK, by and through its Attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., answers the First Set of Interrogatories of Plaintiff, BDE WARREN, LLC, as follows:

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's instructions, definitions and discovery requests to the extent that they purport to impose a duty on Defendant greater or different in kind than that imposed by the Michigan Court Rules.

2. Defendant objects to the Definitions that define specific terms or phrases that contradict the law or make false assumptions of fact.

3. Defendant objects to use of the phrase, "Review Committee," insofar as it falsely defines that anyone other than the city manager made the final determination whether to approve, deny or not select an application for a municipal license slot, and implies a constituted public body with capacity to make official decisions for the City of Royal Oak, capacity to sue or be sued, or any other legal implication pertaining to duties and liability under the Michigan Open Meetings Act, MCL 15.261, *et seq.*, any other state law, or any City of Royal Oak ordinance.

4. Defendant objects to the phrase, "Competitive Scoring Procedure" insofar as it falsely defines that anyone other than the city manager "ultimately decid[ed]" to approve, deny or not select an application for a municipal license slot.

5. Defendant objects to instructions that require Defendant to complete or compile information from sources not presently available to or known by it or its counsel. Defendant will answer any proper discovery requests based solely on information available to and discovered by Defendant at the present time or which can be obtained by Defendant from its present officials, employees, agents, or representatives.

RECEIVED by MSC 12/10/2025 3:03:01 PM

6. Defendant objects to each discovery request that purports to require Defendant to identify all persons, provide all documents, or similarly broad descriptions, because Defendant cannot reasonably know, identify, or provide each person or each document, especially persons or documents outside the possession, custody or control of the Defendant. Defendant's answers do not identify persons who may have personal knowledge but have not communicated that knowledge to Defendant or its counsel.

7. In responding to any discovery requests, Defendant does not concede the relevance or materiality of the subject matter of the discovery request or of the information requested in response to the discovery request. Answers to each discovery request are made expressly subject to, and without waiving the competency, relevancy, privilege or admissibility of the request or the responses provided.

8. Defendant objects to each discovery request that purports to require Defendant to identify all facts, or similarly broad descriptions, because Defendant cannot reasonably be expected to do so based on its own personal knowledge because such a request is inappropriately broad, because any answer in written form would necessarily be incomplete, and because such requests may require Defendant to reveal its trial strategy and/or the work product and thought processes of Defendant and/or its counsel.

9. Defendant objects to instructions requiring supplemental answers to the extent that they purport to impose obligations broader than those imposed by MCR 2.302.

10. Defendant objects to the discovery requests to the extent that they seek information which is neither relevant to the claims or defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

11. Defendant objects to the discovery requests to the extent that they require the making of judgments of relationship and degree without reference to whether such information is calculated to lead to the discovery of admissible evidence.

RECEIVED by MSC 12/10/2025 3:03:01 PM

12. Defendant objects to each discovery request to the extent that it requests information protected by the attorney-client or work-product privileges.

13. Defendant objects to each discovery request to the extent it requires Defendant to produce any materials that are available to the public in the files of other governmental agencies or to the Plaintiff from its own files, since those materials are equally available to the Plaintiff.

14. Defendant objects to the extent that the discovery requests are overly broad, unduly burdensome, and not likely to disclose admissible evidence but, instead, appear to be designed for the purpose of harassment and to increase the costs and burdens on Defendant in this litigation.

15. Defendant objects to the discovery requests as not relevant to any party's claims or defenses and not proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information.

ANSWERS TO INTERROGATORIES

1. Identify each person who participated in preparing or assisted the person signing the answers to these discovery requests, including those people(s) who have provided information for such answers, stating with specificity the answers involved.

ANSWER: City Manager Paul Brake and defense counsel.

2. Describe, in detail, the processes employed by the City Manager in selecting the Review Committee.

OBJECTION: Defendant objects to use of the term "processes," as that term is vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and General Objection # 3 above and without waiving them, Defendant answers that the city manager requested the assistance of those department heads, officials, and directors within the city administration whose responsibilities and

RECEIVED by MSC 12/10/2025 3:03:01 PM

expertise were relevant to review of the various aspects of the recreational marijuana establishment (RME) license applications based upon the city's RME ordinance and including but not limited to the criteria under RME Ord, § 435-4(C)(4)(a)-(j), the zoning ordinance, and other city ordinances and standards, as applicable.

3. Describe, in detail, the extent of the training, instruction, and/or guidance that the Review Committee received before and/or during its review of the Applications.

ANSWER: Subject to General Objection # 3 above, Defendant answers that the department heads, officials, and directors have had previous education, training, certifications, and/or experience in their job responsibilities and fields of expertise related to their specific area of review of the applications, as well as experience reading and applying city ordinances and state law. Some were involved in the development of the application forms and online application process, which required their understanding of specific requirements of the ordinance. All personnel were required to read the ordinance and become familiar with its requirements.

4. Identify all documents known to the Defendant which relate to, or tend to support or refute, in any manner, any of the allegations, claims or contentions contained in Plaintiff's Complaint, and Defendant's Motion for Summary Disposition. If a privilege of non-disclosure is claimed as to any such documents, list each document to which such privilege is claimed, and describe in detail the legal basis for any such privilege asserted.

OBJECTION: Defendant objects to this interrogatory as vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and without waiving it, Defendant refers to the documents it has produced on April 29, 2022, May 3, 2022, July 12, 2022, and July 21, 2022, Bates numbers CRO 0001-216. See also the documents appended as exhibits to Defendant's Motion for Summary Disposition filed on April 4, 2022. Defendant also relies upon the recreational marijuana establishment (RME) license application submitted by Gatsby Cannabis Co., which will be served in an additional production after entry of the pending protective order, and the application of BDE Warren.

Defendant also relies upon city ordinance and state law, specifically, but not limited to, City of Royal Oak recreational marijuana establishment licensing ordinance, Ord. § 435-1, *et seq.*, the City of Royal Oak zoning ordinance, § 770-1, *et seq.*, the Home Rule City Act, MCL 117.1, *et seq.*, and the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, *et seq.*

RECEIVED by MSC 12/10/2025 3:03:01 PM

5. Describe in detail how each criterion contained in the Competitive Scoring Procedure was weighted and how it affected the Review Committee's and/or the City Manager's overall scoring of an Application.

OBJECTION: Defendant objects to this interrogatory as vague, ambiguous, and subject to differing interpretations.

ANSWER: Subject to this objection and to General Objection # 4 above and without waiving them, Defendant answers that the 10 criteria identified in the RME ordinance address the minimum standards for consideration for a municipal license slot. Failure to meet certain criteria are themselves disqualifying, such as having unpaid taxes or water bills per Ord. § 435-4(C)(4)(b), as the Home Rule City Act prohibits a city from entering a contract with a party who is in default to the City. MCL 117.5.

The first criterion set forth in Ord. § 435-4(C)(4)(a), review and evaluation of each application itself according to the language of that subsection, was the most significant. The answers to the other criteria in § 435-4(C)(4)(b)-(j), as applicable, enhanced or detracted from the overall evaluation. The city manager otherwise used a comprehensive approach in which he considered each application as a sum of its parts, rather than weighing individual criteria separately and, pursuant to the requirement of a competitive process, compared the applications with one another.

6. Identify the number of times that the Review Committee met to review and discuss Plaintiff's Application that was submitted to the City for a Retailer Municipal License Slot.

ANSWER: Subject to General Objection # 3 above and without waiving it, Defendant answers, upon information and belief, once.

7. Describe in detail how Plaintiff's Application was scored under each of the criterion found in the Competitive Scoring Procedure.

ANSWER: Subject to General Objection # 4 and without waiving it, Defendant answers that neither Plaintiff's application nor that of any other applicant was "scored" in the way Defendant understands Plaintiff to use that term. For further answer, see answer # 8 below.

8. Describe in detail the reason(s) why the Review Committee and/or the City Manager ultimately decided why applicants Royal Treatment and Gatsby were better suited than Plaintiff to operate as a marihuana Retailer in compliance with the MRTMA within the City of Royal Oak.

RECEIVED by MSC 12/10/2025 3:03:01 PM

OBJECTION: Defendant objects to this interrogatory as phrased, as the Review Committee made no decisions about which applicants were best suited for a municipal license slot.

ANSWER: Subject to this objection and General Objection # 3 above and without waiving them, the City Manager decided that Royal Treatment and Gatsby applications were better suited because as a whole, they met and exceeded the criteria established by the ordinance in ways that other applicants did not.

In the judgment of the City Manager, Royal Treatment's and Gatsby's proposed facilities and operations exceeded those of all other applicants. Gatsby's site plan required no substantive corrections, variances, or adjustments. Gatsby's site plan addressed all aspects of the operations to minimize or eliminate noise, odor, and light that would have any external, adverse impacts on surrounding properties. Gatsby's sustainable infrastructure and energy-efficient features and fixtures were superior to those of other applications. Although not required by the application criteria, Gatsby went above and beyond the requirements of the ordinance and the application by including a traffic study to show expected traffic volumes and mitigation of any adverse effects. Gatsby co-located three RME uses at one location, which limits adverse impacts to one location as opposed to separate locations for each of the three uses, and simplifies enforcement to a single location and owner/operator.

Royal Treatment's proposed facility and operation also exceeded all other applicants. Ideally, the City Manager favored locations, such as this one, that complies with the zoning ordinance without the need for variances or additional approvals. This was quite evident as demonstrated through a thorough site plan document. Royal Treatment also included environmental elements promoting sustainability, including pervious pavers, rain barrels, bioswales, rain gardens, planters, and a green roof system. The underground detention system consists of underground pipes on the 1.72 acres site. The application also provided a detailed explanation of energy efficiency using solar panels and wind turbines to lessen the demand for electric need. The applicant also stated the commitment to cease operations if odor becomes an issue until it is resolved. Lastly, because the location of this facility is not a major road, a traffic study would not be necessary.

BDE Warren's application proposed a facility with access to the facility from the rear alley without a defined driveway, which does not comply with the requirements of the City's zoning ordinance. This alley access point is adjacent to residential property, with very little buffer or screening. Increased traffic in this area may cause concerns for the neighbors and odors from any idling vehicles. BDE did not provide sufficient information about expected traffic volumes that would allow the city to determine whether the proposed facility would accommodate traffic as designed or would require additional features or facilities for that purpose. Compared with the green energy features and sustainable infrastructure proposed by Gatsby and Royal Treatment, BDE Warren's were not as extensive.

9. State the ranking order of the Retailer Applications from the highest-ranking application to the lowest.

RECEIVED by MSC 12/10/2025 3:03:01 PM

ANSWER:

- Tier I retailer applicants were granted a municipal license slot – PGSH/Gatsby (RME 000010) and Royal Treatment (RME 000016).

- Tier II retailer applicants were placed on standby, in the event that either Gatsby or Royal Treatment did not complete the licensing process within the time established by the ordinance. Eventually, these applications were formally denied when RME licenses were issued to Gatsby and Royal Treatment. These were:

  RME 000004 and 000005 – Quality Roots, Inc.
  RME 000006 – LG Wellness, Inc.
  RME 000011 – Exclusive Capital Partners, LLC
  RME 000012 – Pincanna, Inc.
  RME 000013 – BDE Warren, LLC
  RME 000014 – Zenyo LLC
  RME 000015 – Main Property Holdings, LLC
  RME 000017 – Green Square Holdings
  RME 000022 – RJB Enterprises LLC
  RME 000023 – Nature's Remedy of Berkley, LLC
  RME 000027 – Green Theory, LLC
  RME 000029 – Leaforic LLC
  RME 000030 – LJA Holdings V, LLC
  RME 000031 – Sterling Heights Technology, LLC
  RME 000032 – WG Products, LLC
  RME 000034 – Attitude Wellness LLC
  RME 000035 – MPM-R West, LLC
  RME 000038 – Canterra LLC

- Tier III retailer applicants were denied after the initial review process as not meeting the minimum criteria for award of a municipal license slot.

  RME 000008 – Exclusive Brands
  RME 000018 – Pure Roots, Inc.
  RME 000019 – Green United, Inc.
  RME 000020 – High Quality Provisioning Center
  RME 000021 – Green Peak Industries
  RME 000027 – Green Theory, LLC
  RME 000028 – J Elias Management LLC
  RME 000033 – Tip Top Crop
  RME 000036 – HH Marshall
  RME 000039 – The Pure Lapeer
  RME 000040 – Seven Point Dispensing

CITY OF ROYAL OAK

By: _____

PAUL J. BRAKE
Its City Manager

Subscribed and sworn to before me
this 25 day of July, 2022

_____
Bonnie Jean Holland Notary Public
Oakland County, Michigan
My Commission Expires: Nov 22, 2023

BONNIE JEAN HOLLAND
Notary Public - State of Michigan
County of Oakland
My Commission Expires Nov 22, 2023
Acting in the County of Oakland

As to objections:

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant

The undersigned certifies that the foregoing pleading was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 26, 2022

By: ☐ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight
☐ Certified Mail ☒ Other e-serve

Signature: Sheila Lodenbach

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN MI Oakland County 6th Circuit Court	PROOF OF ELECTRONIC SERVICE	CASE NO. 2022-192288-CZ

Case title
ATTITUDE WELLNESS vs. ROYAL OAK CITY

1. MiFILE served the following documents on the following persons in accordance with MCR 1.109(G)(6).

Type of document	Title of document
MISCELLANEOUS	7.26.22 Def Answer to BDE Warren Rogs - served

Person served	E-mail address of service	Date and time of service
Kevin M. Blair	kblair@honigman.com	07/26/2022 5:02:15 PM
Keith D. Underkoffler	kunderkoffler@honigman.com	07/26/2022 5:02:15 PM
David Schlackman	dschlackman@carsonfischer.com	07/26/2022 5:02:15 PM
Robert Carson	rcarson@carsonfischer.com	07/26/2022 5:02:15 PM
Jeffrey Miller	jmiller@carsonfischer.com	07/26/2022 5:02:15 PM
Robert Carson	rcarson@carsonfischer.com	07/26/2022 5:02:15 PM
Anthony Bologna	ab@consultingpllc.com	07/26/2022 5:02:15 PM
William DiSessa	wcdisessa@wwrplaw.com	07/26/2022 5:02:15 PM
Brian Etzel	beetzel@wwrplaw.com	07/26/2022 5:02:15 PM
David S Senawi	david@senawilaw.com	07/26/2022 5:02:15 PM

2. I, Sheila Bodenbach, initiated the above MiFILE service transmission.

This proof of electronic service was automatically created, submitted, and signed on my behalf by MiFILE. I declare under the penalties of perjury that this proof of electronic service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

07/26/2022
Date

/s/Sheila Bodenbach
Signature

Rosati, Schultz, Joppich & Amtsbuechler, P.C.
Firm (if applicable)

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT E

RECEIVED by MSC 12/10/2025 3:03:01 PM

§ 435-4. Application for and renewal of municipal license.

A. Application documents. Application documents for a municipal license for a marihuana establishment shall be submitted to the City Clerk and on or after the effective date of this article shall contain the following information. Information obtained from the applicant is exempt from public disclosure under state law. Upon receipt, review, and approval as outlined in this article of all application documents by City staff, the documents will be considered a complete application.

(1) The name, address, phone number and email address of the applicant and the proposed marihuana establishment.

(2) The names, home addresses and personal phone numbers for all applicants and the marihuana establishment.

(3) One copy of the following:

(a) Prequalification for a recreational marihuana establishment license or a medical marihuana facility license by the State of Michigan. **[Amended 10-12-2020 by Ord. No. 2020-12]**

(b) For Class A, B, or C growers or processors or microbusinesses, documentary evidence by a licensed engineer demonstrating the electric system's ability to deliver the estimated peak capacity (kW) and energy (kWh) of the marihuana establishment.

(c) All documentation of the applicant's valid tenancy, ownership, or other legal interest in the proposed municipally licensed property and municipally licensed premises. If the applicant is not the owner of the proposed municipally licensed property and municipally licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana establishment.

(d) If the applicant is a corporation, nonprofit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

(e) A valid, unexpired driver's license or state-issued ID for all applicants for the proposed marihuana establishment.

(f) Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.

(g) Nonrefundable marihuana establishment application document review fee.

(h) Business and operations plan, showing in detail the marihuana establishment's proposed plan of operation, including, without limitation, the following:

RECEIVED by MSC 12/10/2025 3:03:01 PM

[1] A description of the type of marihuana establishment proposed and the anticipated or actual number of employees.

[2] A security plan meeting the requirements of § 435-5 of this article.

[3] A description by category of all products to be sold.

[4] An affidavit indicating the applicant will, prior to applying for a building permit:

[a] Submit a list of material safety data sheets for all nutrients, pesticides, and other chemicals proposed for use in the marihuana establishment.

[b] Submit a comprehensive report identifying all hazardous materials and processes that will be utilized by the marihuana establishment. This list must include all cleaning supplies, as well as chemicals used and/or produced either as products or as waste products in the processes at the establishment. The report shall determine the acceptability of technologies, processes, products, facilities, materials and uses attending the design, operation, or use of a building or premises. All hazardous materials and chemicals must be listed as to how to handle the disposal of these materials. The opinion and report shall be prepared by a qualified third person, firm or corporation approved by the City.

[c] Obtain a wastewater discharge permit before connecting to or contributing to the publicly owned treatment works (POTW). Refer to City of Royal Oak Code of Ordinances § 740-7.

[5] A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the municipally licensed premises.

[6] A plan for the disposal of marihuana and related by-products that will be used at the marihuana establishment.

(i) Whether any applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan 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.

(j) A site plan of the municipally licensed premises and the municipally licensed property prepared in accordance with § 770-12, Site plan review, of the City Zoning Ordinance, signed and sealed by a registered architect,

RECEIVED by MSC 12/10/2025 3:03:01 PM

or professional engineer site plan must include the distance between the municipally licensed premises and all applicable buffered uses identified in § 435-5A(5) of this article, unless those uses are greater than 1,500 feet from the municipally licensed premises.

(k) The amount of water usage estimated for the facility, including the estimated average gallons per day and peak gallons per minute as well as estimated needs for fire suppression, if applicable.

(l) Information regarding any other marihuana establishment or medical marihuana facility that the applicant or any of the applicant's owners, directors, officers or managers is authorized to operate in any other jurisdiction within the state, or another state, and their involvement in each marihuana establishment or medical marihuana facility.

(4) Any other information reasonably requested by the City to be relevant to the processing or consideration of the application.

B. Review of application documents. Applications must be complete and shall be considered on a competitive basis as required and set forth by MCLA 333.27959.4, as may be amended. All application documents submitted by a potential applicant will be reviewed by City staff for completeness with the requirements of § 435-4 of this article before being considered a complete application. All application documents will be stamped or otherwise identified by City staff at the date and time they are submitted by a potential applicant.

(1) City staff has a reasonable amount of time to review the application documents and determine if they are complete.

(2) Complete application documents will be accepted as an application under this article and processed. A determination of a complete application shall not prohibit the City from requiring supplemental information at any time during the application process.

(3) If application documents are found to be incomplete, the prospective applicant will be notified in writing of the deficiencies and given 10 business days to correct those deficiencies.

(a) If the deficiencies are corrected within the 10 business days, the application documents will be considered complete and accepted as an application under this article.

(b) If deficiencies are not corrected within the 10 business days, the application documents will be returned to the prospective applicant. If the prospective applicant wishes to resubmit application documents, they must be resubmitted in their entirety with a new application document review fee. This resubmission will be considered a new set of application documents and will be newly date and time stamped.

C. Competitive process per MCLA 333.27959.4, as may be amended.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(1) If a marihuana establishment type has a limited number of municipal licenses available to be issued due to a cap imposed herein, the City Manager shall open a window. The timing and duration of the window shall be determined by the City Manager. If a municipal license is available for a marihuana establishment type limited by cap, the City Manager must open a window at least once per calendar year.

(2) At the end of a window, if the number of applications for a marihuana establishment municipal license exceeds the number of available municipal licenses, the City shall decide among applications by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the Act within the City.

(3) Applications to be included in the competitive process include all those whose application documents were date and time stamped as submitted prior to the end of the window and which were able to be considered complete and accepted as an application.

(4) The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:

(a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;

(b) Whether the applicant is currently in default/arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1(c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted,

RECEIVED by MSC 12/10/2025 3:03:01 PM

suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is planned future outreach on behalf of the proposed business and whether the applicant has made, or plans to make, significant physical improvements to the building housing the marihuana establishment; **[Amended 10-12-2020 by Ord. No. 2020-12]**

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures.

D. Processing and review of applications.

(1) An application will be held until a window is established to select the applications to fill an available municipal license slot.

(2) An application will be considered for a municipal license slot through the competitive process as specified in this article. When an applicant is awarded the municipal license slot through the competitive process, the applicant will be notified and will be given five business days to pay the marihuana establishment application fee. If an applicant does not pay the fee within the time allotted, the next application as ranked by the competitive process during the applicable window will be issued the municipal license slot.

(3) Upon payment of the marihuana establishment application fee by an applicant, the City Clerk shall refer a copy of the application to the department head or designated staff person of the following for their review and approval: the Police Department, the Fire Department, the Community Development Department (Building Division, Engineering Division and Planning Division) and any other applicable departments.

(4) In order for a marihuana establishment application to be approved and a municipal license to be issued, all of the following conditions must be met:

(a) The applicant has passed a criminal background check conducted by the City of Royal Oak Police Department.

(b) The Engineering Division will complete a preliminary review of the wastewater plan submitted.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(c) The Engineering Division will confirm that the necessary amount of water for the marihuana establishment is available and complete preliminary review of the plan submitted that includes the requested water pressure and fire flow protections.

(d) The Community Development Department will review all provided plans to ensure conformity with their previously supplied determination on the ability to supply electricity to the proposed marihuana establishment and general site requirements.

(e) The Planning Division has confirmed that the proposed location complies with the buffer requirements, and a preliminary review of the plan submitted.

(f) A special land use permit and site plan application has been submitted, permit fees have been paid, and the special land use permit and site plan has been approved by the City Commission after recommendation from the Planning Commission.

(g) The applicant must not have a conviction of or release from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or conviction of a controlled-substance-related felony within the past 10 years, except that, consistent with MCLA 333.27958.1(c), as may be amended, a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

(h) Other than as set forth in MCLA 333.27958.1(c), as may be amended, within the past five years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or having been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state.

(i) The applicant has not knowingly submitted an application for a license that contains false, misleading, or fraudulent information, or has not intentionally omitted pertinent information on the application for a municipal license.

(5) Following review by City departments and prior to approval of a special land use permit and site plan, if deficiencies are found in the application, the applicant is notified in writing of the areas of deficiency and given 30 days to correct those deficiencies. If the deficiencies are considered by City staff to be corrected, the applicant's special land use permit and site plan will be considered by the Planning Commission. If the deficiencies are not considered to be corrected within the thirty-day time period, the application will be deemed incomplete and denied. Another application will then fill the municipal license slot.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(6) All inspections, review and processing of the application shall be completed within 90 days of payment of the marihuana establishment application fee or within 120 days if the location of the municipally licensed premises is proposed to be amended from an existing municipally licensed location. The processing time may be extended upon written notice by the City for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the municipal license.

(7) If all conditions of this article have been met, the City Clerk shall issue the municipal license to the applicant.

(a) All municipal licenses issued have the following stipulations:

[1] Issuance of license qualification by the State of Michigan for the municipal license holder under state law and the City of Royal Oak receiving a copy of that license qualification prior to occupancy.

[2] Issuance of final certificate of occupancy for the municipally licensed premises by the Community Development Department. All construction must be in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules, or regulations.

[3] For processors and Class A, B, and C growers and microbusinesses proposing to connect to or to contribute to the POTW, a wastewater discharge permit.

[4] Issuance of final approval by the State of Michigan and the City of Royal Oak receiving a copy of the final approval prior to the business opening.

(b) A municipal license holder has one year from the date of issuance to meet all stipulations of the municipal license. If all stipulations are not met in this time frame, the municipal license is revoked and considered denied. A municipal license holder may request an extension up to six months to this time frame, which may be granted by the City Clerk.

(8) If a municipal license is denied, the denial must be in writing and must state the reason(s) for denial.

(a) Applications which are denied will not be refunded the marihuana establishment application fee.

(b) If the applicant of a denied application chooses to resubmit, this resubmission will be considered a new set of application documents and will be date and time stamped at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

(9) Upon denial, withdrawal, or failure for any reason of an application within six months of a competitive process being used to rank applicants and their

RECEIVED by MSC 12/10/2025 3:03:01 PM

applications as detailed in § 435-4C, the available municipal license slot will be awarded to the next best suited applicant and application as determined in that process. However, if more than six months have passed since the last competitive process, a new window must be opened to fill the municipal license slot and all applications will be treated as new submissions.

(10) Denial of an application or nonrenewal of a municipal license may be appealed to the City Manager, who will set a date and time within 10 business days to conduct a hearing where the applicant can be heard. The City Manager may uphold the denial, reverse the denial, or take such other action deemed appropriate. Appeals from the final determination of the City may be taken to a court of competent jurisdiction; during appeal, another applicant for a municipal license slot may be considered by the City.

E. Renewal application. Renewal applications shall require City approval.

(1) Renewal applications for a marihuana establishment maintaining the location of the municipally licensed premises shall be received by the City Clerk not less than 90 days prior to the expiration of the annual municipal license. Renewal applications for a marihuana establishment requesting a change in the location of the municipally licensed premises shall be submitted and received not less than 120 days prior to the expiration of the municipal license.

(2) A renewal application must follow the same approval process as all new applications with the exception of the following:

(a) A municipal license holder that submits an application for a renewal municipal license at a previously municipally licensed premises shall be deemed in compliance with the spacing requirements set forth in § 435-5A(5) of this article.

(b) For any information required as part of the application process that has not changed, the municipal license holder may submit an affidavit of no changes in place of the information when submitting a renewal application. If any of the items requested in the application process has changed, such items must be submitted as required in this article.

(c) A municipal license holder, as a stipulation of a renewal municipal license issued by the City, must provide proof of having submitted a license renewal application no later than 30 days after expiration of their state license. Once a renewed state license has been granted, a copy must be provided to the City of Royal Oak.

(d) A renewal municipal license issued by the City takes effect on the date of expiration of the original municipal license issued, and the municipal license holder has one year from that date until renewal is again required.

(3) A municipal license holder whose municipal license expires and for which a complete renewal application has not been received by the expiration date shall be deemed to have forfeited the municipal license under this article. They

RECEIVED by MSC 12/10/2025 3:03:01 PM

will be considered denied. The City will not accept renewal applications after the expiration date of the municipal license.

(4) A municipal license holder issued a renewal municipal license by the City that is either denied a renewal license by the State of Michigan or that does not meet all stipulations within six months of the renewal municipal license being issued will have their municipal license revoked and considered denied.

F. Changes to application or municipal license.

(1) If, at any time before or after a municipal license is issued pursuant to this article, any information required in the municipal license application, the MMFLA, MRTMA, or any rule of regulation promulgated thereunder, changes in any way from that which is stated in the application, the applicant or municipal license holder shall supplement such information in writing within 10 days from the date upon which such change occurs.

(a) Changes to a new application will be considered a minor or major change as determined by the City Clerk.

[1] Minor changes include a change to person or persons associated with the applicant entity, additional MSDS pages being provided, updating power, water or wastewater calculations or other similar information. Minor changes will be accepted as part of the application.

[2] Major changes include changing the location of the marihuana establishment, whether it be to a different site or changing the size of any new buildings, a change of marihuana establishment type, a change of applicant entity, or other similar changes. A major change will result in the application being returned to the applicant. If the applicant wishes to resubmit, the resubmission will be considered a new set of application documents and will be date and time stamped for processing at the date and time they are resubmitted. Any fees will not be waived.

(2) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, of a felony or other offense involving a crime of moral turpitude by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(3) An applicant or municipal license holder has a duty to notify the City in writing of any pending criminal charge, and any criminal conviction, whether a felony, misdemeanor, petty offense, or any violation of a local law related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the MMMA, the MMFLA, the MRTMA, any building, fire, health or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing

RECEIVED by MSC 12/10/2025 3:03:01 PM

or consumption of any form of marihuana by the applicant, any owner, principal officer, director, manager, or employee within 10 days of the event.

(4) A municipal license may be assigned or transferred only if all of the following are true:

(a) A municipal license has been issued and all stipulations for that license have been met including written final approval by the State of Michigan for state licensure.

(b) All current municipal license holders submit an affidavit approving the transfer.

(c) The person(s) or entity proposed to receive the transferred municipal license submit application documents and are issued a municipal license transfer approval. Issuance of a municipal license transfer approval includes the following:

[1] Certification of a completed application per the process of this article. The applicant may submit an affidavit of no change to the municipally licensed premises to forego the application requirements as they pertain to the municipally licensed premises if no physical changes will be completed as part of the assignment or transfer.

[2] Payment of a license transfer review fee as set by the City Commission.

[3] Review of the application per § 435-4D(4)(c)-(f). If an affidavit of no change to the municipally licensed premises is submitted, review of corresponding information and the requirement for a special land use permit and site plan approval would be considered satisfied.

[4] Issuance or denial of the municipal license transfer approval will be completed per § 435-4D(4)(g)-(i). Stipulations of § 435-4D(7)(a) will be considered met when the applicant has all required licenses or permits in their name. Where an affidavit of no change to the municipally licensed premises has been filed, the stipulation for a required proof of final occupancy will be waived.

[5] Until the municipal license transfer approval is issued, the existing municipal license will remain with the current municipal licensee holder. Transfer of the municipal license will not change its date of expiration.

G. Expiration of application. If an application has been held waiting for a municipal license window to open for one year, the City will contact the applicant and request, in writing, confirmation that the application is accurate and that the application should be kept on file. If the applicant asks the application to be removed, or if confirmation in writing is not received in 10 business days, the application will be

removed from the list of applications and a letter sent to the applicant. If the applicant wishes to resubmit after this point, this resubmission will be considered a new set of application documents and will be date and time stamped for processing order at the date and time they are resubmitted. A new marihuana establishment application fee will be required.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT F

RECEIVED by MSC 12/10/2025 3:03:01 PM

City of Royal Oak, MI
Friday, March 11, 2022

Chapter 770. Zoning

Article V. Special Provisions

§ 770-52.1. Marihuana establishments.

[Added 7-27-2020 by Ord. No. 2020-07]

A. Purpose and intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCLA 333.26421 et seq.), as amended.

B. General standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § **770-11**, Special land uses; permit procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § **770-12**, Site plan review, along with documentation that:

(a) The petitioner has prequalification status for an applicable license with the State of Michigan; and

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter **435**, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

RECEIVED by MSC 12/10/2025 3:03:01 PM

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter **435**, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter **607**, Signs, with a maximum area not to exceed 50 square feet or 5% of the building facade area, whichever is less. All other signs, including, but not limited to, freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting, shall be prohibited as permanent architectural details or enhancements on any building facade or the exterior of any structure, including, but not limited to, windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § **770-30**, General building design and project compatibility, shall be prohibited.

(10) Security devices, such as security curtains, steel bars, metal gates, and similar apparatus, shall be prohibited on the exterior of a building. Security devices may be permitted inside a building, provided that the device is:

(a) Retractable so it is not visible from the sidewalk or public right-of-way during regular business hours; and

(b) Equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater runoff and/or the need for stormwater detention, such as, but not limited to, rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards as it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

EXHIBIT G

RECEIVED by MSC 12/10/2025 3:03:01 PM

Page 46

Q How long have you been on the Executive Board for Oakland County Democratic Party?
A I don't know; four years maybe.
Q So Exhibit 21 is a -- do you recognize Exhibit 21?
A Yes.
Q What is that?
A It's a text message where -- it's a text message that I sent to Kyle.
Q So the green, the text that has the green background, that would be from you?
A Yes.
Q So you reached out to Mr. DuBuc --
A Yes.
Q -- about Gatsby Cannabis. What prompted you to reach out to Mr. DuBuc on Thursday, January 27th, at 3:44 p.m.?
A I had just received the call from Mr. Williams.
Q Okay.
A And I wanted to hear Kyle's point of view.
Q Okay. Did Mr. Williams ask you to reach out to Commissioner DuBuc?
A No.
Q Why did you -- well, you've already answered why you did that.
So how long did you speak with Mr. DuBuc about this

Page 47

issue?
A My guess is maybe five, seven minutes.
Q And had you --
A Wait, wait. That's how long the phone call was.
Q Right.
A Most of it was talking about being in Hawaii, but that's how long the phone call was.
Q Okay. Prior to this exchange here on January 27th, had you ever spoken with Mr. DuBuc about the Royal Oak marihuana ordinance or application process in any way, shape or form?
A No.
Q Prior to this text exchange, had you talked with anyone at the City of Royal Oak about its ordinance?
A No.
Q And I think you testified earlier, but it was that phone call from School Board President Williams that was your first sort of introduction to this issue?
A Correct.
Q And so what did you ask Mr. DuBuc in that call?
A I asked him tell me about what's going on.
Q What did he say?
A He said that the voters voted overwhelmingly that they wanted marihuana business. We didn't talk about Gatsby in particular; that was the only name I knew based on

Page 48

the call from Mr. Williams. He said he was aware that Oakland Schools had problems with it and gave his opinion that that was a really good location for a marihuana business.
Q Did he say why he thought that was a good location?
A I don't remember details of it.
Q And what did you say in response?
A I said, "Thank you for your point of view."
Q Did he offer an opinion as to why -- whether that 1,000-foot buffer applied to the Royal Oak campus or why the City was ignoring the buffer?
A I don't remember if we discussed that specifically.
Q Did you express any concern or reservations with the location of the proposed location of the Gatsby facility?
A At that point, I didn't know enough, so no, I did not. I was just trying to get an understanding.
Q So once you gained that understanding, did you then talk to anyone at Oakland Schools about what you learned in that phone call?
A I don't recall.
Q So you were still in Hawaii at this time?
A Correct.
Q Did you check for any communications you may have had with President Williams subsequent to this phone call

Page 49

where you gained an understanding of the issue?
A I don't know that I had communications with Mr. Williams. I did not see anything in a text message or -- and he doesn't do other social media, so no.
Q Did you have any subsequent discussions with Mr. DuBuc about this issue?
A None.
Q And that's true up to this present date?
A Correct.
Q Did he give any indication, Mr. DuBuc on that call, why the -- that he didn't feel -- or that the school -- the City didn't feel that the 1,000-foot buffer applied to the school?
A I don't recall discussing the 1,000-foot buffer.
Q Were you aware at that time during that call that the proposed location was only going to be 88 feet or thereabouts from the Royal Oak campus?
A I do not believe I was aware of that.
Q So since this text exchange, have you had -- I take it you've had interactions with Mr. DuBuc irrespective of whether they were at all related to this issue, but you have had, given that he's a social friend and the like, I take it you've had interactions with him?
A I do not believe I've seen him since this time.
Q Or talked to him?

RECEIVED by MSC 12/10/2025 3:03:01 PM

1:49

49



Dubuc

Text Message
Thu, Jan 27, 3:44 PM

Hey friend - would appreciate a moment of conversation re carpool Campbell's going in directly across the street from the Oakland Schools Royal Oak campus

Sure. I've got 10 mins now

That was really helpful. Thanks!

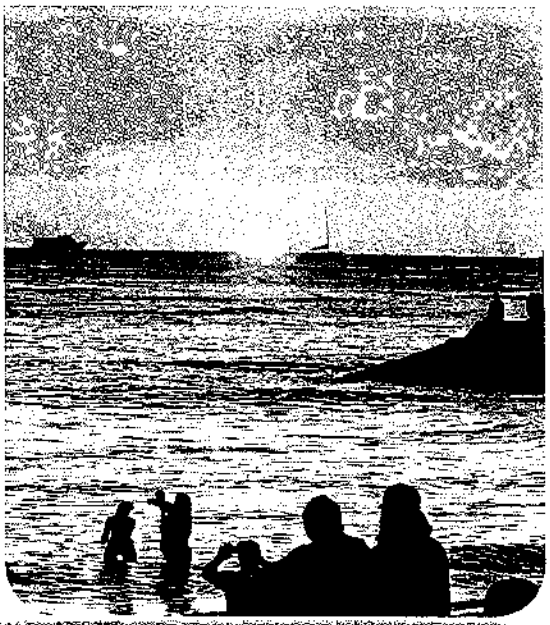
Have an awesome time! I'm super jealous. It's so beautiful there!

RECEIVED by MSC 12/10/2025 3:03:01 PM

1:49

49

Dubuc



Last night! And we renewed our vows on the beach this morning w a hula dancer and ukulele accompaniment. Highly recommend for when you and Tara in 30 years (or even sooner!)

So cool!

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ATTITUDE WELLNESS, LLC,

Plaintiff,

v. File No. 2022-192288-CZ

CITY OF ROYAL OAK,

Defendant.
_____/

CONSOLIDATED CASES File No. 2022-192383-CZ
File No. 2022-192830-CZ
File No. 2022-193015-CZ
File No. 2022-194223-CZ
File No. 2022-194753-CZ
_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE RAE LEE CHABOT, CIRCUIT COURT JUDGE

Pontiac, Michigan - Wednesday, December 14, 2022

APPEARANCES:

For Attitude Wellness:	MR. KEVIN M. BLAIR, P-76927
For Quality Roots:	MR. BRIAN E. ETZEL, P-54905
For BDE Warren:	MR. DAVID S. SENAWI, P-71000
For Exclusive Capital:	MR. ANTHONY J. BOLOGNA, P-72698
For Green Square Holdings:	MR. FRANK M. DELUCA, P-41604
For Green Theory:	MR. JAMES L. KRESTA, P-81224
For City of Royal Oak:	MS. ANNE MCCLOREY MCLAUGHLIN, P-40455
For PGSH Holdings:	MR. DAVID E. SCHLACKMAN, P-58894

(See next page for attorney addresses and phone numbers)

TRANSCRIBED BY: Teresa R. Kozlowski, CER-1316
THERESA'S TRANSCRIPTION SERVICE
PO Box 21067
Lansing, MI 48909-1067
517-882-0060

RECEIVED by MSC 12/10/2025 3:03:01 PM

APPEARANCES (continued):

For Attitude Wellness:
MR. KEVIN M. BLAIR, P-76927
222 N. Washington Square, Ste. 400
Lansing, MI 48933-1800
517-377-0716

For Quality Roots:
MR. BRIAN E. ETZEL, P-54905
380 N. Old Woodward Avenue, Ste. 300
Birmingham, MI 48009-5322
248-642-0333

For BDE Warren:
MR. DAVID S. SENAWI, P-71000
550 W. Merrill Street, Ste. 100
Birmingham, MI 48009-1443
248-712-1051

For Exclusive Capital:
MR. ANTHONY J. BOLOGNA, P-72698
26100 American Drive, Ste. 500
Southfield, MI 48034-6184
248-227-2278

For Green Square Holdings:
MR. FRANK M. DELUCA, P-41604
1615 S. Telegraph Road, Ste. 300
Bloomfield Hills, MI 48302
248-763-8765

For Green Theory:
MR. JAMES L. KRESTA, P-81224
27777 Franklin Road, Ste. 2500
Southfield, MI 48034-8222
248-351-3000

For City of Royal Oak:
MS. ANNE MCCLOREY MCLAUGHLIN, P-40455
27555 Executive Drive, Ste. 250
Farmington Hills, MI 48331-3550
248-489-4100

For PGSH Holdings:
MR. DAVID E. SCHLACKMAN, P-58894
4111 Andover Road
MR. LIVINGSTON: 2NDW, West Building
Bloomfield Hills, MI 48302-1924
248-644-4840

RECEIVED by MSC 12/10/2025 3:03:01 PM

TABLE OF CONTENTS

PAGE

WITNESSES:

None

EXHIBITS: MARKED ADMITTED

None

RECEIVED by MSC 12/10/2025 3:03:01 PM

Pontiac, Michigan

Wednesday, December 14, 2022 - 11:27 a.m.

COURT STAFF: Calling --

(Inaudible words by unidentified speakers)

COURT STAFF: -- the matter of Attitude Wellness --

(Inaudible words by unidentified speakers)

COURT STAFF: -- versus City of Royal Oak, docket --

(Inaudible words by unidentified speakers)

COURT STAFF: -- number 22-1-9-2-2-8-8-C-Z.

(Pause in proceedings)

THE COURT: Who wants to start?

UNIDENTIFIED SPEAKER: (Inaudible words) --

MR. ETZEL: Good morning, your Honor. Brian Etzel on behalf of plaintiff Quality Roots, Inc.

MR. SENAWI: Good morning, your Honor. David Senawi appearing on behalf of plaintiff B-D-E Warren, L-L-C.

MR. DELUCA: Good morning, your Honor. Frank DeLuca on behalf of Green Square Holdings, L-L-C.

MR. KRESTA: Good morning. James Kresta on behalf of Green Theory, L-L-C.

MR. BOLOGNA: Good morning, your Honor. Anthony Bologna on behalf of Exclusive Capital Partners.

MR. BLAIR: Good morning, your Honor. Kevin Blair on behalf of Attitude Wellness.

MS. MCLAUGHLIN: Good morning, your Honor. Anne

McClorey McLaughlin for the City of Royal Oak.

MR. SCHLACKMAN: Good morning, your Honor. David Schlackman on behalf of intervening defendant P-G-S-H intervening only in the Attitude Wellness and Quality Roots matters.

THE COURT: Excellent. Okay.

So, uh, I have many memos here on each of these cases, but you want me to decide Attitude Wellness and that's going to apply to the other ones?

MS. MCLAUGHLIN: It could, your Honor. But there are --

THE COURT: I don't -- (inaudible words) --

MS. MCLAUGHLIN: -- there are some overlapping issues.

THE COURT: I know.

MS. MCLAUGHLIN: And some that I bel-, there are very few issues that are not common to all of the --

THE COURT: Right.

MS. MCLAUGHLIN: -- uh, defendants.

THE COURT: Okay.

MS. MCLAUGHLIN: I'm sorry --

THE COURT: So we're not --

MS. MCLAUGHLIN: -- of all --

THE COURT: -- going to do these --

MS. MCLAUGHLIN: -- to all of the plaintiffs.

THE COURT: -- under one case. We're going to do them

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

individually.

MR. ETZEL: Right.

THE COURT: Okay. So --

MR. ETZEL: But, but we're, I think we're going to sort of take a divide and conquer approach. We're going to raise -- there, you know, instead of repeating the same set of issues, I think, you know, some attorneys are going to emphasize one issues and another attorney is going to emphasize another issue. Just --

THE COURT: I don't think the attorneys should get argument at all.

MR. ETZEL: Okay.

MR. KRESTA or UNIDENTIFIED ATTORNEY: (Inaudible words) --

MR. ETZEL or UNIDENTIFIED ATTORNEY: Okay.

MS. MCLAUGHLIN: Well, you can dispense with oral argument under the rule --

MR. ETZEL or UNIDENTIFIED ATTORNEY: Yeah.

MS. MCLAUGHLIN: -- your Honor.

MR. ETZEL or UNIDENTIFIED ATTORNEY: It's your, it's your --

MS. MCLAUGHLIN: Uh --

MR. ETZEL or UNIDENTIFIED ATTORNEY: -- it's your call.

MS. MCLAUGHLIN: -- as the moving party, your Honor,

RECEIVED by MSC 12/10/2025 3:03:01 PM

I just want to, uh, iterate that I rely on the well, uh, briefed and, uh, adequately briefed issues that were raised in our motion and in all of the briefs, uh, in these matters.

The only thing that I would like to bring to the court's attention is that the two, uh --

THE COURT: You are here on Attitude --

MS. MCLAUGHLIN: I'm here --

THE COURT: -- Wellness?

MS. MCLAUGHLIN: Yes. Uh --

THE COURT: And you are the City of Royal Oak?

MS. MCLAUGHLIN: Correct.

THE COURT: Okay.

MS. MCLAUGHLIN: Uh, the two successful applicants in these cases who, uh, did receive, uh, their license slots did proceed through the site plan approval and, uh, received their site plan approvals and received their licenses from the City of Royal Oak have since taken measures to implement their licenses.

Royal Treatment, uh, has gone through and obtained approval to combine the four lots that were, uh, part of its application. And those lots have been combined. Uh, that occurred begin-, I believe the application was made in August and it, and it has been, uh, completed.

As for Gatsby Cannabis, they are in the process of app-, applying for and receiving building review, building plan review in order to obtain a building permit to begin building

their, uh, building out their facility that was approved and is licensed under the city, uh, ordinance.

Other than that, your Honor, I have nothing further to add. Thank you.

THE COURT: Anyone else want to be heard on this case?

MR. BLAIR: Uh --

UNIDENTIFIED ATTORNEY: Uh --

MR. BLAIR: They're other plaintiffs that want or, excuse me --

UNIDENTIFIED ATTORNEY: Defendants.

MR. BLAIR: -- on defendants as the moving party? Or -- Attitude Wellness would like to speak, your Honor.

UNIDENTIFIED ATTORNEY: Yeah.

THE COURT: Yes.

MR. BLAIR: But I don't know if there are other defendants that want to talk first. No?

MR. SCHLACKMAN: Your Honor, on behalf of defendant P-G-S-H I'll just reserve time for any rebuttal. We concurred in the relief sought by the city to the extent that their arguments or questions that the court has that we need to address on rebuttal, I'll just reserve time for that to the extent that there need be. But I didn't know we were having oral argument, but that's --

THE COURT: I didn't think we were having --

UNIDENTIFIED ATTORNEY: Yeah. Do --

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

THE COURT: -- oral argument. Uh, I, counsel said she's willing to rely on her briefs but she had a few points she wanted to point out to the court. I would appreciate that format.

MR. BLAIR: Okay.

THE COURT: I mean these are treatises that I have on all of this.

MR. BLAIR: Uh --

THE COURT: I, and I know that you spent a lot of time talking to Mr. Garrison about this. So you know that he and I both understand the issues in this case.

MS. MCLAUGHLIN: And if I may --

THE COURT: And the pleadings.

MS. MCLAUGHLIN: If I may, your Honor, what I just informed the court of was simply to make a record of facts that have occurred since all the briefing has been completed.

THE COURT: Okay.

MR. BLAIR: Your Honor, I'll, I'll try to be as brief as possible. Kevin Blair, again, on behalf of Attitude Wellness.

Uh, I want to emphasize that, you know, this case got consolidated for efficiency purposes and, and, you know, for purposes of today it's, it's a bit of a tangled mess and --

THE COURT: Yep.

MR. BLAIR: -- you know, uh, tis the season, uh, that

metaphor I think is, you know, the ball of Christmas tree lights, uh, and, and they're, you know, multiple attorneys here, uh, plac-, have different claims. There's, there's certainly not a monolithic, uh, set of claims here. Uh, and, and to add, you know, more complexity to it some, in this, during the process of the summary disposition briefing a couple of parties have amended their complaints. Uh, and I don't mean that in a critical or pejorative sense. I, I think and it overall that helps kind of focus the issues and, and narrow things. Uh --

THE COURT: Okay.

MR. BLAIR: -- but, but there are a lot of claims. We're, you know, I'm here under oral argument on a brief that, or a motion that was filed, I think, back in, in March. Uh, and I, and I just want to make sure that the, the court, uh, detangles the, the ball of Christmas lights and looks at each case rises and falls on its own merits.

As to Lume specifically, your Honor, uh, the motion is only under C-8. Uh, we have, uh, uh, with one exception. Uh, there were five counts in our, uh, complaint, uh, and the, uh, city's reply brief, uh, explicitly specifies that they are only moving for, under C-10 as the Open Meetings Act count, which is count one. So we had, count two and three are MRTMA claims and four and five are constitutional claims. Those are under C-8. We believe we more than satisfy the, uh, that low bar to, to survive a C-8 ruling here.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Uh, the, uh, again, the reply brief said that the discovery is quote irrelevant because this is a C-8, uh, posture. Uh, count one is on Open Meetings Act. That's the only one under C-10. Uh, the, the city has relied heavily on *Pinebrook*. *Pinebrook* is distinguishable under *Booth*, *Davis* and *Morrison* because the city counsel, city commission, excuse me, in Royal Oak did not get the underlying applications, uh, which is a key distinguishing factor from the cases they rely on. Uh, and there's also a fact question there because, uh, as was cited in some other, uh, briefs, uh, Mr. Brake, uh, gave conflicting testimony or inconsistent testimony about whether he was the sole decision maker or whether it was a group decision by the committee. Uh, so that alone would be a fact question on the Open Meetings Act claim, material, uh, facts.

THE COURT: I, I'm going to limit everyone to no more than five minutes.

MR. BLAIR: Okay. Thank you, your Honor.

THE COURT: I think that's very generous.

MR. BLAIR: Okay.

THE COURT: Okay.

MR. BLAIR: Uh --

THE COURT: Cause you're going through housekeeping matters.

MR. BLAIR: Okay. I, I have five minutes.

THE COURT: I get it, I get it. It's the history of

RECEIVED by MSC 12/10/2025 3:03:01 PM

the case and the proceedings.

MR. BLAIR: Okay. Uh, counts two and three, your Honor, are the MRTMA -- (inaudible word) -- applied. The, the statute focuses on whether the process, quote unquote process was intended to select the best suited applicants to, best suited operating compliance with MRTMA within, uh, Royal Oak.

The, the words process and attended, I think, by their very nature are, uh, inappropriate for a C-8 ruling. Uh, they're, we have clearly satisfied the C-8 burden stating that the process was not intended correctly in accordance with MRTMA. The complaint even quotes three different, uh, city officials who, uh, specified in a public forum that they were trying to favor locals, and, and, uh, disadvantage out of towners.

Uh, the brief, the city's brief, uh, respectfully, does not even try to tie some, uh, some of the most egregious criteria back to the MRTMA methodology, including sustainability, renovations, having a business in Royal Oak. Uh, the city's arguments instead are that they have the power to prohibit the stores so they have the power carte blanche to decide whatever they want.

Uh, I, I, I think that that's a red herring, your Honor. The, the MRTMA is set up to, communities can either decide to allow stores or not allow stores, but if they kept it and have scarcity, then, uh, there's a mandated methodology to decide how those stores, which stores get licenses.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Uh, they also mention that the pre-qualification process -- I've seen other municipalities make this argument as well -- that everybody is qualified and so we just get to pick based on sustainability factors. The pre-qualification at the state level, your Honor, really just only weeds out, uh, pardon upon, uh, any, you know, felons or people who owe taxes. It is a very low bar. It does not, uh, even address who is suited to comply with MRTMA. And, and, again, the statute doesn't say who's well suited. It says who's best suited. So that superlative necessarily requires some analysis and competitive, uh, analysis there.

Uh, remember this is C-8, again, but there is outstanding discovery. This court has already ruled three or four times. Uh, we were here, I think, almost four or five consecutive Wednesdays back in May and June. Uh, the court ordered Gatsby to sit for a deposition and produce documents. Neither of those has, have happened yet. So, again, while we're under C-8 here, there's still discovery that the court has ordered would happen, uh, three or four times in different motions, uh, formats and, and that hasn't happened yet.

Uh, the dormant commerce clause, your Honor, I just want to highlight on that one. Uh, in the city's brief as to Attitude Wellness everything is combined with the due process and dor-, dormant commerce clause in the, their city's brief responding to B-D-E's, uh, complaint, they separate those out.

RECEIVED by MSC 12/10/2025 3:03:01 PM

They, the city understands that there's, those are two separate analysis, uh, and, and with Lume's brief they're trying to combine those and gloss over the fact that there is a dormant commerce clause, uh, claim here. And in, we've cited binding, uh, uh, caselaw that says the, any, any time a municipality is treating outsiders differently than locals that is virtually per se unconstitutional.

Uh, on the, uh, circling back to the, the, the school distance issue. Your Honor, I, you know, we're not asking the court to, to make a policy choice of whether it's a good idea to have a store 80 feet from a school, uh, that is clearly a legislative decision entrusted to city officials. But the court's duty, responsibility, is to interpret and enforce the law. And that is what we are asking the court to do. You are interpreting and enforcing the law. There's plain language in MRTMA that says a store cannot be within 1,000 feet of a school unless the ord-, the municipality passes an ordinance that reduces that requirement.

Here it's undisputed that there is no ordinance reducing that distance. The city claims that by giving Gatsby a slot the, the city commission implicitly made one favor to one applicant and looked the other way for 80 feet but that's --

MR. SENAWI: You got --

MR. BLAIR: -- that's not --

MR. SENAWI: -- you got 60 more seconds. I'm going to

RECEIVED by MSC 12/10/2025 3:03:01 PM

be a timekeeper, Judge.

MR. BLAIR: Okay.

MR. SENAWI: Okay.

THE COURT: Okay.

MR. BLAIR: Thank you.

THE COURT: You started late --

MR. BLAIR: So --

THE COURT: -- but that's fine.

MR. BLAIR: So, but that's not what the, the statute requires. The statute clearly requires an ordinance that reduces the requirement, and the Royal Oak commissioners are trying to get away with not having that vote and not doing what they need to do under MRTMA.

So we'd ask it, that the court, uh, enforce the plain language in MRTMA. Uh, I think, again, we've, we've more than satisfied the C-8, uh, but if the court is inclined to grant the C-8, uh, summary disposition we'd move for leave to amend, uh, and it would not be futile in this circumstance. There are additional facts, including that the Royal Oak commission did not get the, uh, applications, which makes it distinguishable from *Pinebrook* and the other Open Meetings Act cases and that case, that count one should survive, uh --

THE COURT: Okay.

MR. BLAIR: Thank you.

THE COURT: Counsel, do you want to speak now?

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

MR. SCHLACKMAN: Uh, just real, real briefly, your Honor. Uh, a lot of back and forth, uh, Mr. Blair, between C-10 and C-8 and then referenced, I believe, an, an inability of my client to provide discovery. Uh, we had offered dates for deposition. The issue was essentially abandoned, uh, didn't pursue dates to take my client's deposition. To the extent that they wanted my client's, uh, application, we simply asked that a protective order be entered. As it stands right now I don't have approval from all the attorneys here on that protective order, always maintained the position that a redacted version would be provided once a protective order was entered. Just felt the need to address that.

THE COURT: Okay.

MR. SCHLACKMAN: And then the other issue, your Honor, Mr. Blair raised, uh, other municipalities, referenced what they do. Uh, it's curious if the court looks at the cases that have been brought to, uh, its attention, uh, by the city, these same arguments have been made by Mr. Blair in other cities and he's lost. Uh, so if he wants to reference what happens in other cities we should reference that as well.

THE COURT: Okay. This is, uh, Attitude Wellness L-L-C versus City of Royal Oak and P-G-S-H Holdings, L-L-C. This is defendant City of Royal Oak's motion for summary disposition.

Defendant's motion for summary disposition is granted

pursuant to C-8 and C-10. The claim for violation of the Open Meetings Act is dismissed as it is inapplicable to the facts of the case at bar. Pursuant to *Herald Company versus City of Bay City*, 463 Mich 111 at 130, year 2000, and *Pinebrook Warren L-L-C versus City of Warren*, Mich App 2022, the Open Meeting Act claim is dismissed. Likewise, the various constitutional claims are dismissed pursuant to C-8 and C-10 pursuant to *Pinebrook Warren, L-L-C* from the Court of Appeals.

Lastly, the claims regarding the city ordinance are dismissed pursuant to C-8 and C-10 insofar as the ordinance does not violate the statute. The statute requires municipalities to determine which entity is best suited to comply with the statute -- quote within the municipality unquote -- nor does the statute require certain variables to be given certain weight. The ordinance at issue does not violate M-R-T-M-A and the claims are hereby dismissed.

What's the next case?

MR. BLAIR: Your Honor, while we're, uh, on my case, can we, uh, does the court want to rule on my motion for leave to amend?

THE COURT: Uh --

MR. BLAIR: We've not amended yet and, uh, there are, there are facts that would not be futile --

MS. MCLAUGHLIN: Uh, your Honor --

MR. BLAIR: -- if proffered for the record.

RECEIVED by MSC 12/10/2025 3:03:01 PM

MS. MCLAUGHLIN: I'm sorry. Uh, under the rule the, under rule I-5 under M-C-R 2 point 1-1-6, it says leave is to be granted unless the evidence before the court does not justify or shows that the amendment would not justify. Number one, I'm not certain what amendment he's discussing, uh, because the claims that the court has disposed --

THE COURT: Granted.

MS. MCLAUGHLIN: -- of now --

THE COURT: I will allow you to amend.

MR. BLAIR: Thank you, your Honor.

MS. MCLAUGHLIN: All right. Thank you.

THE COURT: If it's futile, it --

UNIDENTIFIED FEMALE SPEAKER/COURT STAFF: (Inaudible words) --

THE COURT: -- it will be dismissed.

(At 11:44 a.m., proceedings concluded)

[TRANSCRIPTIONIST NOTE: A hearing immediately followed regarding Quality Roots, Inc. versus City of Royal Oak, a consolidated case, file number 2022-192383-CZ.]

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 19 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case, Attitude Wellness, LLC, versus City of Royal Oak, on Wednesday, December 14, 2022.

Dated: December 26, 2022

/s/ Teresa R. Kozlowski
Teresa R. Kozlowski, CER-1316

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

EXCLUSIVE CAPITAL PARTNERS,

Plaintiff,

v File No.: 2022-193015-CZ

CITY OF ROYAL OAK,

Defendant.
_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE RAE LEE CHABOT, CIRCUIT COURT JUDGE

Pontiac, Michigan - Wednesday, December 14, 2022

APPEARANCES:

For the Plaintiff: ANTHONY J. BOLOGNA (P72698)
Legal Consulting, PLLC
26100 American Drive, Suite 500
Southfield, Michigan 48034-6184
(248) 227-2278

For the Defendant: ANNE MCCLOREY MCLAUGHLIN (P40455)
Rosati Schultz Joppich and Amtsbuechler, PC
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331-3550
(248) 489-4100

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Kristin Novello, CER #9570
P.O. Box 21067
Lansing, Michigan 48909-1067

RECEIVED by MSC 12/10/2025 3:03:01 PM

TABLE OF CONTENTS

WITNESSES: PLAINTIFF PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT

None

EXHIBITS: INTRODUCED ADMITTED

None

Pontiac, Michigan
Wednesday, December 14, 2022 - 12:00:07 p.m.

THE CLERK: Calling the matter Exclusive Capital versus Royal Oak, docket number 22-193015-CZ.

MR. BOLOGNA: Thank you. I will keep it brief, your Honor. Mr. --(inaudible)-- stole a lot of my thunder so I'm just gonna add a little bit on to that. We too brought a void (ph) for vagueness (ph) claim and one of the standards is an ordinance is void for vagueness if it forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and suffer as to its application.

We firmly believe that this ordinance was drafted in such a vague way that it did give unfair discretion to Mr. Brick (ph). When deposed, we asked what standards did you apply in ranking the applicants? And he said I applied my own qualitative analysis. When asked define what qualitative analysis -- cause it's not in the ordinance, it doesn't say the city administrator shall apply a qualitative analysis in ranking applicants -- he couldn't really give an explanation. He just said well, I looked at certain factors and I just determined on my own which applicant I thought was better.

That qualitative analysis and the fact that there is not a ranking shows how this is a vague ordinance.

RECEIVED by MSC 12/10/2025 3:03:01 PM

It's poorly drafted -- no offense to the drafter -- but I think it's by design because it gives them a lot of outs. Right? It's -- it allows them to hide behind this -- we can kind of pick and choose and have this discretion of who we ultimately wanna give this to. And as far as the ranking goes, when asked, they didn't rank. Ranking is one, two, three, four, five. And what it does is it tells whoever's in three, four, five, if one or two can't comply, you're next in line to get a license. That never occurred here. It was clustering that occurred here. There was a clustering of I think these are the best two and then I think everyone else is not the best.

So everyone else is guessing and that's the whole point of void for vagueness. The common person should not look at a drafted ordinance and have to guess at what the implications are of that ordinance. So I'll add that on. I have a feeling of how the court's gonna ultimately rule in this matter but I just wanted to present that to the Court. Thank you, your Honor.

THE COURT: Thank you.

MS. MCLAUGHLIN: I have nothing in response, your Honor. I rely on my briefs.

THE COURT: All right, this is Exclusive Capital Partners, LLC versus City of Royal Oak and this is Defendant City of Royal Oak's motion for summary disposition

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

as to the second amended complaint. First, the claims that the city manager violated the ordinance are dismissed. The city manager complied with the statute and the ordinance. The claims regarding this issue are dismissed pursuant to (C)(10). Likewise, the claims challenging the ordinance for vagueness are dismissed. The city manager was required to consider certain factors which he testified were indeed considered.

The ordinance does not infringe on First Amendment rights, does not prohibit certain conduct, does not grant the finder of fact unfettered discretion. Thus, the ordinance is not void for vagueness. Further, Plaintiff's assertion that it was denied in appeal is without merit and moot. The various constitutional claims are dismissed pursuant to (C)(8) and (C)(10) pursuant to *Pinebrook Warren, LLC versus City of Warren*. The claims regarding the city ordinance are dismissed pursuant to (C)(8) and (C)(10) and so far as the ordinance does not violate the statute.

The statute requires municipalities to determine which entity is best suited to comply with the statute within the municipality nor does the statute require certain variables to be given certain weight. The ordinance at issue does not violate the MRTMA and the claims are hereby dismissed. As are the claims that the city manager

violated the statute and the ordinance. Defendant's motion for summary disposition is granted pursuant to (C)(8) and (C)(10). The claim for violation of the Open Meetings Act is dismissed as it is inapplicable to the facts of the case at bar. This is pursuant to *Herald Company versus City of Bay City* and *Pinebrook Warren, LLC versus The City of Warren*.

Lastly, the claim seeking a writ of mandamus is dismissed. A claim of mandamus is appropriate where one, the plaintiff has a clear, legal right to perform the specific duty sought. Two, the defendant has a clear, legal duty to perform. Three, the act is ministerial and four, no other legal or equitable remedy exists that might achieve the same result; *Tuggle (ph) versus Department of State Police.*

In the case at bar, the actions are not merely ministerial and do -- and do indeed involve the exercise of discretion. Further, there are obviously other remedies available as demonstrated by the myriad of claims set forth in the complaint. This claim is dismissed pursuant to (C)(8) and (C)(10).

(At 12:05:14 p.m., hearing concluded)

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of seven (7) pages, before the 6th Judicial Circuit Court, Oakland County, Michigan:

EXCLUSIVE CAPITAL PARTNERS,

Plaintiff,

v

CITY OF ROYAL OAK,

DEFENDANT.
_____/

Location: Pontiac, Michigan

Date: Wednesday, December 14, 2022

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Kristin Novello
Kristin Novello, CER #9570
Certified Electronic Recorder

Dated: Thursday, June 29, 2023

FILED Received for Filing Oakland County Clerk 12/21/2022 12:18 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

QUALITY ROOTS, INC., a Michigan corporation,

Plaintiff,

-vs-

Case No. 2022-192383-CZ
HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan municipal corporation,

Defendant,

and

PGSH HOLDINGS, LLC, a Michigan Limited Liability Company,

Intervening Defendant.

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
BRIAN E. LETZEL (P54905)
WILLIAM C. DiSESSA (P81906)
Attorney for Plaintiff
380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
(248) 642-0333
bee@wwrplaw.com
wcd@wwrplaw.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, PC
ANNE McCLOREY McLAUGHLIN (P40455)
Attorneys for Defendant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

CARSON, FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
Attorneys for Intervening Defendant
4111 Andover Road, West – Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840
rcarson@carsonfischer.com
dschlackman@carsonfischer.com
jmiller@carsonfischer.com

ORDER GRANTING MOTIONS OF DEFENDANT, CITY OF ROYAL OAK, FOR SUMMARY DISPOSITION

At a session of the Court held in the
City of Pontiac, Oakland County, Michigan
On 12/21/2022

PRESENT: HON. RAE LEE CHABOT
Circuit Judge

RECEIVED by MSC 12/10/2025 3:03:01 PM

This matter having come before the Court on the motions of Defendant, City of Royal Oak, for summary disposition of the original Complaint and First Amended Complaint, the parties having submitted briefs and appearing for hearing on December 14, 2022, and the Court being advised of the premises;

IT IS HEREBY ORDERED that the Motions of Defendant, City of Royal Oak, for Summary Disposition be and are GRANTED for the reasons stated by the Court on the record of December 14, 2022.

This is a final order and closes the case.

/s/ Rae Lee Chabot

RAE LEE CHABOT
Circuit Court Judge

Approved as to form:

/s/ Brian E. Etzel (P54905)
Attorney for Plaintiff

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Defendant

/s/ David E. Schlackman (P58894)
Attorney for Intervening Defendant

FILED Received for Filing Oakland County Clerk 12/22/2022 9:27 AM

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

Case No. 2022-193015-CZ
HON. RAE LEE CHABOT

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278
ab@consultingpllc.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C.
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

Dated: December 21, 2022

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

EXCLUSIVE CAPITAL PARTNERS, LLC,
a Michigan limited liability company,

Plaintiff,

-vs-

CITY OF ROYAL OAK, a Michigan
municipal corporation,

Defendant,

Case No. 2022-193015-CZ
HON. RAE LEE CHABOT

LEGAL CONSULTING, PLLC
ANTHONY J. BOLOGNA (P72698)
Attorney for Plaintiff
26100 American Drive, Ste. 500
Southfield, MI 48034
(248) 227-2278
ab@consultingpllc.com

ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C.
ANNE McCLOREY McLAUGHLIN (P40455)
ANDREA M. PIKE (P74755)
DEBANI GORDON-LEHMAN (P83909)
Attorneys for Defendant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
apike@rsjalaw.com
dgordon@rsjalaw.com

ORDER GRANTING DEFENDANT'S MOTIONS FOR SUMMARY DISPOSITION

At a session of the Court held in the
City of Pontiac, Oakland County, Michigan

On 12/22/2022

PRESENT: HON. RAE LEE CHABOT
Circuit Judge

This matter having come before the Court on the motions of Defendant, City of Royal Oak, for summary disposition of the First and Second Amended Complaints, the parties having submitted briefs and appearing for hearing on December 14, 2022, and the Court being advised of the premises;

IT IS HEREBY ORDERED that Defendant's Motions for Summary Disposition be and are GRANTED for the reasons stated by the Court on the record of December 14, 2022.

This is a final order and closes the case.

YB /s/ Rae Lee Chabot

RAE LEE CHABOT
Circuit Court Judge

Approved as to form:

/s/ *Anthony J. Bologna* (P72698)
Attorney for Plaintiff

/s/ *Anne McClorey McLaughlin* (P40455)
Attorney for Defendant

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Court Explorer

Register of Actions

Go Back

Case Number
2022-193015-CZ
Entitlement
EXCLUSIVE CAPITAL PARTNERS vs. ROYAL OAK CITY
Judge Name
MARY ELLEN BRENNAN
Case E-Filed
YES
Case Filed
03/10/2022
Case Disposed
12/14/2022

Date	Code	Desc
02/27/2025	STO	STIP/ORD FILED MOD JAN 10TH ORDER OF THE COURT
02/24/2025	MPS	MIFILE PROOF OF SERVICE FILED
01/27/2025	ORD	ORDER FILED COA
01/10/2025	ORD	ORDER FILED AMD RE BRF ON REMAND
01/08/2025	ORD	ORDER FILED RE PARTIES TO FILE BRIEF
12/09/2024	ORD	ORDER FILED COA
01/03/2024	SEN	SENT TO COA/FTP/KK
12/26/2023	NTC	NOTICE FILED REQ FOR FILE COA
09/29/2023	RES	RESPONSE FILED OPPOS MTN ADJ/PLF SEE 22-192288-CZ
07/26/2023	STO	STIP/ORDER FILED STRIKE DEP TRNSCRIPTS 22-192383-CZ
06/29/2023	NTC	NOTICE FILED OF FILING TRN/POS
06/29/2023	TRN	TRANSCRIPT FILED 12/14/22 MTN
06/15/2023	CCR	CERTIF CT REPORTER FILED
06/14/2023	OTH	PLF STATMNT RE SERV REC/POS/FILED 22-192383-CZ
05/25/2023	CA	CLAIM OF APPEAL FILED /PLF

Date	Code	Desc
05/25/2023	MPS	MIFILE PROOF OF SERVICE FILED
05/04/2023	OPN	OPINION FILED /ORD RE BDE MTN RECONSID/SEE 22192830CZ
05/04/2023	OPN	OPINION FILED ORD RE PLF MTN RECONSIDERTION
01/13/2023	MTN	MOTION FILED FOR RECON SEE 22192288CZ
01/13/2023	MTN	MOTION FILED FOR RECON/PLF SEE 22192288CZ
01/01/2023	OJR	CASE REASSIGNED FROM JDG CHABOT TO JDG BRENNAN
12/22/2022	ORD	ORDER FILED GRNT DFT MTN SUM DISP
12/21/2022	MPS	MIFILE PROOF OF SERVICE FILED
12/14/2022	DM	DEFENSE MOTION SD - GR (PART)
12/14/2022	FDS	FINAL DISP-SUMMARY DISP
12/02/2022	STO	STIP/ORDER FILED PROTECTIVE SEE 22192288CZ
11/17/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/BRF/PLF
11/17/2022		SEE 22192288CZ
11/16/2022	RES	RESPONSE FILED MTN SUM DISP/POS/BDE 22-192288-CZ
11/16/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/POS/PLF 22-192288-CZ
11/09/2022	BRF	BRIEF FILED REP SUM DISP/DFT SEE 22-192288-CZ
10/31/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/RO CITY 22-192288-CZ
10/28/2022	STO	STIP/ORDER FILED EXT SUM DISP DEADLN/SEE 22-192288-CZ
10/28/2022	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/ROYAL OAK
10/28/2022		SEE 11192288CZ
10/28/2022	NTC	NOTICE FILED EARLY SCHED CONF VIA ZOOM
10/21/2022	MPS	MIFILE PROOF OF SERVICE FILED
10/21/2022	STO	STIP/ORDER FILED STRIKE CT XI OF AMD CMPLT 22-192288-CZ
10/21/2022	STO	STIP/ORD FILED STRIKE CT XI OF AMD CMPLT
10/20/2022	WLT	WITNESS LIST FILED /EXH/POS/GREEN SQUARE 22-192288-CZ

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
10/17/2022	ADJ	ORDER OF ADJOURNMENT FILED AMD/CMPLT FAC SEE 22-192288-CZ
10/14/2022	ADJ	ORDER OF ADJOURNMENT FILED SUM DISP/STP SEE 22-192288-CZ
10/13/2022	RES	RESPONSE FILED OPPOS MTN SUM DISP/PLF 22-192288-CZ
10/13/2022	NOH	NOTICE OF HEARING FILED /POS SEE 2022-192288-CZ
10/12/2022	OCC	ORDER CONSOLIDATING CASES FILED (SEE 22-194753-CZ)
10/12/2022	CON	CONSOLIDATED CASES W/2022-194753-CZ
10/11/2022	OCC	ORDER CONSOLIDATING CASES FILED /STP/ADJ DFT MTN SUM DISP
10/11/2022		SEE 22194223CZ
10/11/2022	CON	CONSOLIDATED CASES W/2022-194223-CZ
09/26/2022	ORD	ORDER FILED GRNT MTN AMD CMPLT 22-192288-CZ
09/23/2022	MPS	MIFILE PROOF OF SERVICE FILED
09/22/2022	WLT	WITNESS LIST FILED /POS/ROYAL OAK SEE 22192288CZ
09/22/2022	OTH	ROYAL OAK EXPERT LIST/POS FILED
09/22/2022		SEE 22192288CZ
09/22/2022	EXH	EXHIBIT LIST FILED /POS/ROYAL OAK SEE 22192288CZ
09/21/2022	MPR	MOTION PRAECIPE FILED FOR 12142022 JUDGE 12
09/21/2022	WLT	WITNESS LIST FILED PRELIM/EXPERT/EXH/PGSH 22-192288-CZ
09/21/2022	WLT	WITNESS LIST FILED EXH/PLF SEE 22-192288-CZ
09/13/2022	ANS	ANSWER FILED TO AMC/DFT SEE22-192383-CZ
09/13/2022	MTN	MOTION FILED LEAVE AMD CMPLT/SEE 22192288CZ
09/13/2022	NOH	NOTICE OF HEARING FILED SEE22192288CZ
09/13/2022	OTH	PLF CONCUR MTN ENFRC FILED SEE 22-192288-CZ
09/09/2022	ORD	ORDER FILED GRNT LV SPL AUTH SUM DISP SEE 22-192288-CZ
09/08/2022	MTN	MOTION FILED FILE SPL AUTH SUM DISP/DFT SEE 22-192288-CZ
09/08/2022	OTH	SPL AUTH MTN SUM DISP FILED SEE 22-192288-CZ
09/07/2022	NOH	NOTICE OF HEARING FILED /POS SEE 22192830CZ

Date	Code	Desc
09/07/2022	MTN	MOTION FILED FOR LEAVE TO AMD COMPLAINT/PLF
09/07/2022		SEE 22192830CZ
09/07/2022	MTN	MOTION FILED TO ENFRC/STRIKE ARGUMENTS/PLF 22-192288-CZ
08/29/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED /SEE 22-192288-CZ
08/23/2022	AMC	AMENDED COMPLAINT FILED /SEE 22-192288-CZ
08/23/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED /SEE 22-192288-CZ
08/19/2022	RES	RESPONSE FILED TO DFT MTN SUM DISP/POS/PLF
08/19/2022		SEE 22192288CZ
08/19/2022	ORD	ORDER FILED EXTND PG LIMITS/QUALITY 22-192288-CZ
08/18/2022	RES	RESPONSE FILED IN OPP TO ROYAL OAK MTN SUM/PLF
08/18/2022		SEE 22192288CZ
08/18/2022	RES	RESPONSE FILED IN OPP TO DFT MTN SUM DISP/PLF
08/18/2022		SEE 22192288CZ
08/18/2022	MTN	MOTION FILED UNOPPOSED TO EXCEED PG LIMIT/POS/PLF
08/18/2022		SEE 22192288CZ
08/17/2022	RES	RESPONSE FILED TO MTN SUM DISP/PLF SEE 22-192288-CZ
08/11/2022	MTN	MOTION FILED LV AMC/NOH/POS/PLF 22-192288-CZ
08/05/2022	APR	DATE SET FOR CASE EVAL ON 10122022 9:40 AM
06/22/2022	MPR	MOTION PRAECIPE FILED FOR 09212022 JUDGE 12
06/22/2022	MTN	MOTION FILED COMPEL DISC/BRF/PLF SEE 22-192288-CZ
06/21/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP SEE22192288CZ
06/16/2022	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
06/16/2022	APC	ADJ-COUNSEL 06242022
06/16/2022	OFM	ORDER FOR FACILITATIVE MEDIATION FILED
06/15/2022	APR	DATE SET FOR CASE EVAL ON 10122022 NO TIME SET
06/13/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED SEE 2022192288CZ
06/10/2022	OTH	E SCHED C HELD VIA ZOOM
06/10/2022	OTH	REMOVED FROM STANDARD CASE EVAL; FACIL ORDERED
06/10/2022	OTH	FACILITATOR NOT YET SELECTED; WILL EMAIL COURT

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
06/10/2022	APR	DATE SET FOR PRETRIAL ON 06242022 08 30 AM Y 12
06/10/2022		PROCEEDING TO BE HELD REMOTELY BY ZOOM
06/10/2022	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
06/10/2022	APC	ADJ-COUNSEL 12092022 TO 03102023 BY ORDER
06/10/2022	APR	DATE SET FOR TRIAL ON 03102023 08 30 AM Y 12
06/10/2022		PROCEEDING TO BE HELD IN-PERSON
05/31/2022	MPS	MIFILE PROOF OF SERVICE FILED
05/31/2022	DSL	DISCLOSURE FILED INITIAL/EXCLUSIVE CAPITAL PARTNERS
05/24/2022	RES	RESPONSE FILED TO REQ ADMIT/DFT SEE 22-192830-CZ
05/20/2022	BRF	BRIEF FILED OPPOS MTN QUASH SUBPOENA/POS/PLF 22-192288-CZ
05/18/2022	RES	RESPONSE FILED AMD CMPLT/POS/RO CITY
05/18/2022	MPS	MIFILE PROOF OF SERVICE FILED
05/16/2022	MTN	MOTION FILED QUASH SUBPOENA/BRF/NOH/POS/ NONPTY
05/16/2022		SEE 22192288CZ
05/09/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP HRG 22-192383-CZ
05/09/2022	NOH	NOTICE OF HEARING FILED POS/SEE 22-192288-CZ
05/09/2022	NOH	NOTICE OF HEARING FILED /POS 22-192383-CZ
05/09/2022	RES	RESPONSE FILED IN OPP TO ATTITUDE WELLNESS MTN/ POS/PGSH
05/09/2022		SEE 22192288CZ
05/04/2022	MTN	MOTION FILED COMPEL NTC DEP SEE 2022192288CZ
05/02/2022	OBJ	OBJECTION FILED TAKING DEP/POS/PGSH 22-192288-CZ
05/02/2022	OBJ	OBJECTION FILED TAKING DEP/POS/PGSH 22-192383-CZ
05/02/2022	OBJ	OBJECTION FILED TAKING DEP/POS/PGSH 22-192383-CZ
04/27/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/27/2022	REQ	REQUEST FILED APP/QUAL ROOTS
04/27/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/27/2022	REQ	REQUEST FILED /APP

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
04/27/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/27/2022	AMC	AMENDED COMPLAINT FILED EXCLUSIVE PARTNERS
04/26/2022	INT	INTERROGATORIES FILED /REQ PROD DOCS/ SEE22192830CZ
04/26/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/26/2022	REQ	REQUEST FILED ADD PARTY/QUALITY ROOTS (OTHER)
04/25/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/25/2022	RES	RESPONSE FILED INTRVN DFT MTN PROTECT ORD/PLF 22-192288-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-192383-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-192288-CZ
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/ATTITUDE 22-192830-CZ
04/25/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/POS/ ATTITUDE
04/25/2022	RES	RESPONSE FILED OPP PGSH MTN PROT ORD/EXCLUSIV 22-192288-CZ
04/22/2022	REQ	REQUEST FILED APP/ATTITUDE WELLNES
04/22/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/21/2022	MTN	MOTION FILED TO COMPEL/BRF/NOH/POS/PLF
04/21/2022		SEE 22192288CZ
04/21/2022	REQ	REQUEST FILED ADD PARTY/ATTITUDE WELLNESS (OTHER)
04/21/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/20/2022	MPR	MOTION PRAECIPE FILED FOR 08102022 JUDGE 12
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-192288-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-192830-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS 22-192383-CZ
04/19/2022	NOH	NOTICE OF HEARING FILED /POS
04/19/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
04/15/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/15/2022	NOH	NOTICE OF HEARING FILED
04/15/2022	NOH	NOTICE OF HEARING FILED /POS 22-192288-CZ
04/15/2022	NOH	NOTICE OF HEARING FILED /POS 22-192383-CZ
04/15/2022	POS	AFFIDAVIT/PROOF OF SERVICE FILED SEE 22192830CZ
04/15/2022	SO	SCHEDULING ORDER FILED RE DFT MTN SUM DISP
04/14/2022	ADJ	ORDER OF ADJOURNMENT FILED MTN SUM DISP 22-192288-CZ
04/14/2022	ADJ	ORDER OF ADJOURNMENT FILED /STP PLF MTN SUM DISP
04/14/2022		SEE 22192383CZ
04/14/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/14/2022	DSL	DISCLOSURE FILED INITIAL/QUAL ROOTS/POS SEE 22-192288-CZ
04/14/2022	MTN	MOTION FILED SUM DISP/NOH/POS/RO CITY
04/13/2022	OTH	ONE OF THREE CASES CONSOLIDATED UNDER CASE
04/13/2022	OTH	. . . #22-192288-CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED 192288/192383/192830CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED 22-192288-CZ
04/13/2022	OCC	ORDER CONSOLIDATING CASES FILED (22-192383-CZ)
04/13/2022	CON	CONSOLIDATED CASES W/2022-192288-CZ
04/13/2022	CON	CONSOLIDATED CASES W/2022-192383-CZ
04/13/2022	CON	CONSOLIDATED CASES W/2022-192830-CZ
04/13/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/12/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/11/2022	RES	RESPONSE FILED TO DFT MTN CONSOLIDATE/PLF
04/11/2022	MPS	MIFILE PROOF OF SERVICE FILED
04/06/2022	MPR	MOTION PRAECIPE FILED FOR 04132022 JUDGE 12
04/06/2022	MTN	MOTION FILED CONSOLIDATION/NOH/BRF/POS
04/06/2022	MPS	MIFILE PROOF OF SERVICE FILED
03/22/2022	MPS	MIFILE PROOF OF SERVICE FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

Date	Code	Desc
03/22/2022	APP	APPEARANCE FILED /POS/DFT
03/22/2022	REQ	REQUEST FILED /APP/DFT
03/15/2022	SUM	P/S ON SUMMONS FILED 03/15/22
03/10/2022	SI	SUMMONS ISSUED
03/10/2022	C	COMPLAINT FILED

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 5/4/2023 11:35 AM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

QUALITY ROOTS, INC,

Plaintiff,

v

CITY OF ROYAL OAK

Defendant

and

PGSH HOLDINGS, LLC,

Intervening Defendant.

_____/

Case No. 22-192383-CZ

Hon. Mary Ellen Brennan

Consolidated with:
Case No. 22-192288-CZ
Case No. 22-192830-CZ
Case No. 22-193015-CZ
Case No. 22-194223-CZ
Case No. 22-194753-CZ

OPINION AND ORDER RE: PLAINTIFF QUALITY ROOTS, INC'S MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan
On

5/3/2023

This matter is before the Court on Plaintiff Quality Roots, Inc.'s motion for reconsideration of the Court's order granting Defendant City of Royal Oak's motion for summary disposition under MCR 2.116(C)(8) and (10).

In February 2022, Plaintiff filed a complaint challenging Defendant's process for issuing municipal marijuana establishment licenses. In August 2022, Plaintiff filed its First Amended Complaint. In September 2022, Defendant filed a Motion for Summary

RECEIVED by MSC 12/10/2025 3:03:01 PM

Disposition of Plaintiff Quality Roots, Inc.'s First Amended Complaint, seeking dismissal of Plaintiff's claims under MCR 2.116(C)(8) and (10). The Court heard oral arguments on the motion on December 14, 2022, and issued an oral ruling granting Defendant's motion for summary disposition under MCR 2.116(C)(8) and (10). On December 21, 2022, the Court entered an order granting Defendant's motion for summary disposition for the reasons stated on the record on December 14, 2022. Thereafter, Plaintiff Quality Roots filed its motion for reconsideration.

To succeed on a motion for reconsideration, the moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F). "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." *Id.*

Plaintiff's motion for reconsideration essentially presents the same issues already ruled on by the Court. To the extent Plaintiff argues that the Court did not expressly address the argument that the City violated the school buffer zone required by the MRTMA, the Court addressed the issue when it the Court concluded that the City's licensing ordinance does not violate the MRTMA. In its motion for summary disposition, Defendant argued that MCL 333.27959(3) addresses only the obligations of the Michigan department of licensing and regulatory affairs and does not impose any obligation on Defendant, and that the MRTMA authorizes the City to reduce the 1,000-foot buffer. Based on the plain language of the statute, Plaintiff has not demonstrated palpable error in the Court's decision.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Plaintiff next argues that the Court erred in dismissing its due process claims. The Court dismissed the due process claims based on *Pinebrook Warren, LLC v City of Warren,* ___ Mich App ___; ___ NW2d ___ (2022), in which the Court held that "[b]ecause a first-time applicant for a license cannot show that he or she has an entitlement to the license, a first-time applicant has no property interest in the issuance of the license." Plaintiff argues that it nevertheless stated a claim on which relief can be granted because it alleged that Defendant acted arbitrarily in awarding the licenses. Plaintiff argues that the Court failed to consider the *Pinebrook Warren* Court's acknowledgment that, despite the fact that a first-time license applicant has no property interest in the issuance of a license, the Court will review a city's decision regarding first-time applicants to determine whether the city acted arbitrarily and capriciously. *Id.,* slip op, p 27-28. Where the Court concluded that Defendant complied with the licensing ordinance, which set forth the competitive process, and the ordinance complied with MRTMA, Plaintiff has not shown palpable error in the Court's dismissal of the claim that the application process and Defendant's decision to deny Plaintiff an application was arbitrary and capricious.[1]

[1] The Michigan Court of Appeals has stated that the generally accepted meaning of "arbitrary" is " 'determined by whim or caprice,' " or " 'arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, ... decisive but unreasoned.' " *In re Keast,* 278 Mich App 415, 424; 750 NW2d 643 (2008). The generally accepted meaning of "capricious" is "apt to change suddenly; freakish; whimsical; humorsome." *Id.* at 424-425.

Plaintiff's remaining arguments merely present the same issues already ruled on by the court. MCR 2.119(F). Plaintiff has not shown a palpable error in the Court's decision. The Court therefore denies Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

Mary Ellen Brennan RCJ
Hon. Mary Ellen Brennan
Circuit Court Judge

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

FILED Received for Filing Oakland County Clerk 5/4/2023 10:59 AM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

EXCLUSIVE CAPITAL PARTNERS, LLC,

Plaintiff,

v

CITY OF ROYAL OAK

Defendant.

Case No. 22-193015-CZ

Hon. Mary Ellen Brennan

Consolidated with:
Case No. 22-192288-CZ
Case No. 22-192830-CZ
Case No. 22-192383-CZ
Case No. 22-194223-CZ
Case No. 22-194753-CZ

_____/

OPINION AND ORDER RE: EXCLUSIVE CAPITAL PARTNERS, LLC'S MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan
On

5/3/2023

This matter is before the Court on Plaintiff Exclusive Capital Partners, LLC's motion for reconsideration of the Court's December 16, 2022 order granting Defendant City of Royal Oak's motion for summary disposition under MCR 2.116(C)(8) and (10).

On March 10, 2022, Plaintiff filed a complaint challenging Defendant's process for issuing municipal marijuana establishment licenses. Plaintiff filed its First Amended Complaint on April 27, 2022, and its Second Amended Complaint on September 23, 2022. On October 31, 2022, Defendant filed a Motion for Summary Disposition of Plaintiff's Second Amended Complaint under MCR 2.116(C)(8) and (10). The Court heard oral

RECEIVED by MSC 12/10/2025 3:03:01 PM

argument on Defendant's motion for summary disposition on December 14, 2022. On December 16, 2022, the Court entered an order granting Defendant's motion for summary disposition. Thereafter, Plaintiff filed its motion for reconsideration.

To succeed on a motion for reconsideration, the moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F). "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." *Id.*

Plaintiff argues that the Court erred in failing to consider *Cary Investments, LLC v City of Mt Pleasant*, ___ Mich App ___; ___ NW2d___ (2022). In *Cary*, the Court explained as follows:

> As we have explained, "a first-time applicant" for a license "is not even entitled to minimal due process." *Wong v City of Riverview*, 126 Mich App 589, 592, 337 NW2d 589 (1983). Unlike the holder of a license seeking renewal, a new applicant for a license has no property interest in any license to support a claim for deprivation of procedural due process. See id. at 592-593, 337 NW2d 589. We have noted that, "even though the first-time applicant has no right to procedural due process, this Court will review the city's decisions" with respect to issuance of a license. *Id*. at 593, 337 NW2d 589. But "this review is extremely narrow." *Id.* "It is limited only to whether or not the city has acted arbitrarily and capriciously." *Id.*

While the Court did not specifically mention *Cary Investments*, Plaintiff has not shown that the Court failed to consider applicable law. Where the Court concluded that Defendant complied with the licensing ordinance, which set forth the competitive process, and that the ordinance complied with MRTMA, Plaintiff has not shown palpable error in

the Court's dismissal of the claim that the application process and Defendant's decision to deny Plaintiff's application were arbitrary and capricious.[1]

Plaintiff's remaining arguments merely present the same issues already ruled on by the court. MCR 2.119(F). Plaintiff has not shown a palpable error in the Court's decision. The Court therefore denies Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

Mary Ellen Brennan
Hon. Mary Ellen Brennan
Circuit Court Judge

[1] The Michigan Court of Appeals has stated that the generally accepted meaning of "arbitrary" is " 'determined by whim or caprice,' " or " 'arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, ... decisive but unreasoned.' " *In re Keast,* 278 Mich App 415, 424; 750 NW2d 643 (2008). The generally accepted meaning of "capricious" is "apt to change suddenly; freakish; whimsical; humorsome." *Id.* at 424-425.

RECEIVED by MSC 12/10/2025 3:03:01 PM

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/10/2025 3:03:01 PM

□□A □E O□ M□C □ □□ A N

C O □ R □ O□ A P P E A □ □

EXCLUSIVE CAPITAL PARTNERS, LLC,

Plaintiff-Appellant,

v

CITY OF ROYAL OAK,

Defendant-Appellee.

FOR PUBLICATION
December 04, 2024
3:22 PM

No. 366247
Oakland Circuit Court
LC No. 2022-193015-CZ

□UALITY ROOTS, INC.,

Plaintiff-Appellant,

v

CITY OF ROYAL OAK,

Defendant-Appellee,

and

PGSH HOLDINGS, LLC,

Intervening Defendant-Appellee.

No. 366257
Oakland Circuit Court
LC No. 2022-192383-CZ

Before: BOONSTRA, P.J., and JANSEN and N. P. HOOD, JJ.

N. P. HOOD, J.

These consolidated appeals involve defendant, the city of Royal Oak's (the City), recreational marijuana ordinance. Plaintiffs, Exclusive Capital Partners, LLC (Exclusive), and □uality Roots, Inc. (□uality), appeal by right the separate December 2022 orders of the circuit court granting summary disposition in favor of the City under MCR 2.116(C)(8) and (C)(10) on plaintiffs' substantially identical claims challenging the award of marijuana retail licenses to other applicants.

RECEIVED by MSC 12/10/2025 3:03:01 PM

In Docket No. 366247, Exclusive adopts the arguments of □uality's brief and also argues that the circuit court erred by dismissing its claim that the marijuana ordinance was void for vagueness. In Docket No. 366257, □uality asserts that the circuit court erred by granting summary disposition because (1) the marijuana ordinance is inconsistent with the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., school-buffer requirement, MCL 333.27959(3)(c); (2) the marijuana ordinance is inconsistent with the MRTMA's competitive-process requirement, MCL 333.27959(4), both facially and as applied; (3) the City violated the Open Meetings Act (OMA), MCL 15.261 *et seq*., because the City Commission delegated its governing authority to the city manager who selected licensees in closed-door meetings; (4) □uality sufficiently alleged and established a claim of substantive due process; (5) □uality sufficiently alleged and established that the marijuana ordinance was unconstitutionally vague; and, (6) injunctive relief was proper because invalidation of a license is a proper form of relief.

For the reasons later stated, we affirm the orders granting summary disposition except as they relate to the OMA issue. Regarding plaintiffs' OMA claims, the circuit court erred by granting summary disposition. We reverse and remand for proceedings to determine the appropriate remedy for the violations.

I. BACKGROUND

A. MRTMA

These cases occur against the backdrop of the MRTMA. We recently summarized the origins and relevant sections of the MRTMA in a similar case, *Yellow Tail Ventures, Inc v Berkley*, 344 Mich App 689, 693-695; 1 NW3d 860 (2022):

> Our Constitution permits the people of Michigan to bypass our Governor and Legislature and enact a statute by the citizen-driven initiative process. Const 1963, art 2, § 9. A statute enacted by initiative has the same force and effect as one passed the traditional way, with the exception that the initiated statute is not subject to gubernatorial veto and any amendment requires □ votes of both chambers of the Legislature. *Id.*
>
> For decades, it has been unlawful to manufacture, sell, or possess marijuana, under both federal and state criminal law. In November 2018, Michigan voters approved Proposition 18-1 by a vote of 2,356,422 to 1,859,675. As a result of this approval, it is now lawful to manufacture, sell, and possess marijuana under Michigan law, though it remains unlawful to engage in any of these activities under federal law.
>
> Proposition 18-1 became the [MRTMA]. (Note: The MRTMA uses the "marihuana" spelling; when we are not quoting the act, we use the more familiar "marijuana" spelling.) Section 2 of the act sets out the people's "purpose and intent" with respect to the MRTMA. These include the need "to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved" and to "ensure security of marihuana establishments." MCL 333.27952. The people directed that, "[t]o the fullest extent

RECEIVED by MSC 12/10/2025 3:03:01 PM

possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section." *Id.*

Specifically with respect to the local regulation of marijuana, the MRTMA prohibits anyone from selling marijuana to the general public without first obtaining a local license. A municipality can "completely prohibit or limit the number" of marijuana establishments—including the number of retailers—that can operate within its boundaries. See MCL 333.27956(1). If a municipality permits marijuana establishments to operate within its geographical borders, then that municipality can adopt ordinances that, among other things, impose "reasonable restrictions on public signs" and "regulate the time, place, and manner of operation" of such establishments, so long as those ordinances "are not unreasonably impracticable" and do not conflict with the MRTMA or rules promulgated under the act. MCL 333.27956(2). And, if a municipality elects to limit the number of marijuana establishments, then that municipality must select its licensees "among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality." MCL 333.27959(4).

Additionally, the MRTMA prohibits any marijuana establishment from being located within 1,000 feet of an existing public or private school providing education for kindergarten through 12th grade, "unless a municipality adopts an ordinance that reduces this distance requirement[.]" MCL 333.27959(3)(c).

B. THE ROYAL OAK MARIJUANA ORDINANCE

Against the backdrop of the MRTMA, in July 2020, the City adopted a recreational marijuana ordinance, Royal Oak Ordinances, § 435 *et seq*. The marijuana ordinance authorizes all types of marijuana licenses allowed by the MRTMA, but limits the number of licenses available. See MCL 333.27959(2); Royal Oak Ordinances, § 435-2(B). With respect to retail licenses, relevant here, the marijuana ordinance limits the number of municipal licenses to two. See Royal Oak Ordinances, § 435-2(B)(5).

The marijuana ordinance grants the city manager "the power to fully and effectively implement and administer the municipal license application process." Royal Oak Ordinances, § 435-2(E). The ordinance directs that if more applications are received during the application window than licenses allowed, then "*the City shall decide among applications* by a competitive process intended to select the applicant(s) who are best suited to operate in compliance with the [MRTMA] within the City." Royal Oak Ordinances, § 435-4(C)(2) (emphasis added). Section 435-4(C)(4) of the marijuana ordinance sets forth a ranking process, directing that the applicants and their applications "will be ranked in the order of which is best suited to operate in compliance with the [MRTMA] within the City *as determined by the City Manager or his or her designee*." (Emphasis added.) Section 435-4(C)(4) further states that this ranking will be used to fill available license slots until all slots are filled, and mandates that 10 "competitive criteria" shall be used to meet this end: (1) the entire application and applicant's likelihood of success, (2) the applicant's tax history, (3) whether the applicant has previously operated a business within the

RECEIVED by MSC 12/10/2025 3:03:01 PM

City, (4) whether the applicant has a history of criminal convictions, (5) whether the applicant has ever been denied any kind of commercial license, (6) whether the applicant has ever applied for bankruptcy, (7) whether the applicant has conducted any outreach on behalf of the proposed business, (8) whether the applicant has encouraged a successful workforce, (9) whether the applicant has taken steps to introduce equity into the proposed operation, (10) whether the applicant has proposed a plan incorporating sustainable infrastructure. See Royal Oak Ordinances, § 435-4(C)(4)(a) to (j).

If an applicant is awarded a municipal license through this competitive process, the applicant has five days to pay an application fee. See Royal Oak Ordinances, § 435-4(D)(2). Once the applicant pays the fee, the application is forwarded to various City departments for their approval. See Royal Oak Ordinances, § 435-4(D)(3). If the application is complete, the City Planning Commission considers the applicant's special-land-use permit and site plan and makes a recommendation to the City Commission for approval. See Royal Oak Ordinances, § 435-4(D)(4)(f) and (5). See also Royal Oak Ordinances, § 770-52.1(B) (amended zoning ordinance providing a mechanism to allow marijuana land uses in certain zoning districts as a special land use, which requires site-plan review and recommendation by the Planning Commission before a final decision by the City Commission). If the City Commission approves and all conditions are ultimately met, the City Clerk issues the license. See Royal Oak Ordinances, § 435-4(D)(7).

Additionally, the marijuana ordinance contains numerous "operational requirements" for license holders. See Royal Oak Ordinances, § 435-5(A). These are the requirements that licensees must abide by once operating. See *id*. Among these operational requirements, consistent with the MRTMA, is that "[n]o Marihuana Establishment shall be permitted within a 1,000-foot radius of any school." Royal Oak Ordinances, § 435-5(A)(5)(a).

Although the MRTMA allowed municipalities to opt out of the 1000-foot-buffer-zone requirement, the City initially did not reduce the requirement within the marijuana ordinance, but it adopted amendments to its zoning ordinance to allow such reduction on a case-by-case basis. At the time the City approved the recreational marijuana ordinance, it also approved amendments to its zoning ordinance that would accommodate marijuana land use as a special land use. See Royal Oak Ordinances, § 770-52.1(B). The zoning ordinance gave the City Commission discretion to deviate from the operational requirements of the ordinance as follows:

> Deviations from applicable setback, parking, and other requirements may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section. [Royal Oak Ordinances, § 770-52.1(B)(14)].

In other words, the City Commission could approve a reduction of the buffer-zone requirement for a given site plan, but only on the recommendation of the Planning Commission.

As later described in further detail, the City later amended its ordinances to give the City Commission authority to make such approval without a recommendation from the Planning Commission. We take judicial notice that while the appeal was pending, on June 26, 2023, the

RECEIVED by MSC 12/10/2025 3:03:01 PM

City Commission approved amendments to the recreational marijuana ordinance. See Royal Oak Ordinance 2023-06 (June 26, 2023). The amendments to the marijuana ordinance were similar to provisions in the zoning ordinance, § 770-52.1(B)(14), which allowed deviation from the 1,000-foot-buffer requirement. The primary difference is that the amendments to the marijuana ordinance conferred authority to the City Commission, without recommendation from the Planning Commission.

C. THE RETAIL LICENSE SELECTION PROCESS

The City accepted applications for retail licenses from December 7, 2020 through February 7, 2021. The city manager at the time, Paul Brake, received a total of 31 applications, including, respectively, from □uality and Exclusive.

In evaluating the applications, the city manager consulted with various municipal officers, in what he called a "workgroup." The workgroup included Todd Fenton—the deputy city manager and director of economic development, the city manager's assistant, the director of community development, the city planner, the city engineer, the chief of police, the city treasurer, and the city attorney. This workgroup met in closed session four times in August 2021 to help evaluate the applications.

Members of the workgroup provided the city manager input not only from their review of the applications, but also regarding matters pertinent to their particular expertise, such as land use, parking, or business development. The workgroup did not rank applicants, but rather assisted the city manager with narrowing down the applicants through a process of elimination by assessing the applications on the basis of the competitive criteria in the marijuana ordinance.

The meetings took place on August 4, August 11, August 18, and August 25, 2021. According to the city manager, there are no official notes or minutes of the meetings. Fenton, however, testified that the city manager's assistant compiled comments from the meetings. According to the city manager, assessment of the competitive criteria required a "qualitative analysis." While the competitive criteria are all "equally important" on the "surface," some criteria were allotted greater weight than others, and, while many of the criteria facially required yes-or-no answers, applicants could satisfy some criteria by varying degrees. According to Fenton, the workgroup did not compare applications or weigh criteria; instead, members discussed the degree to which certain criteria were satisfied. By the last meeting, members of the workgroup were asked to submit their opinions regarding which candidates were the best applicants.

After the last workgroup meeting in August, the city manager consulted individually with Fenton and the director of community development regarding the finalists, and then using a "qualitative" approach, individually came to the final decision for the two retail licenses. The city manager then categorized the remaining applicants as either "standby" or rejected, but did not numerically rank them. The city manager confirmed that he did not use any type of scoring rubric, and each of the criteria were weighed equally. Regarding the compliance criterion, the city manager testified that he considered which applicant was best suited to comply with the marijuana ordinance, not the MRTMA. He further stated that, although the process was collaborative, he

RECEIVED by MSC 12/10/2025 3:03:01 PM

made the final selections himself. The city manager identified both plaintiffs in the standby category.

In December 2021, the City notified □uality that its application had not been selected for moving forward in the licensing process, but that the application would not be officially denied until the prospective licensees successfully completed the licensing process. Exclusive was also notified that it was on the standby list. Several days later, the City informed PGSH Holdings, LLC (Gatsby), and Royal Oak Treatment LLC (Royal Treatment) that the city manager chose them to receive retail licenses. Consistent with the marijuana ordinance, a hearing was scheduled before the City Planning Commission to consider its recommendation to the City Commission regarding these entities' special-land-use permits and site plans. That hearing was scheduled for February 8, 2022.

About a week before that hearing, □uality filed a complaint against the City, alleging due-process violations, OMA violations, and violations of the MRTMA's competitive-process and school-buffer requirements, given that Gatsby was located less than 1,000 feet from a K-12 public school, Oakland Schools Technical Campus Southeast (OSTC-SE). It is largely undisputed that Gatsby's site plan placed it approximately 88 feet from OSTC-SE. The complaint sought declaratory and injunctive relief preventing the City from issuing special-land-use permits and final authorization of licenses for Gatsby and Royal Treatment.

As scheduled, on February 8, 2022, the Planning Commission meeting proceeded after Gatsby and Royal Treatment had submitted applications for site-plan review and special-land-use permits under the City's zoning ordinance. The Planning Commission voted three to two to recommend denial of Gatsby's special land-use permit, and four to one to recommend approval of Royal Treatment's special-land-use permit. As later described in greater detail, the City Commission approved the special land use for Gatsby and Royal Treatment. In the case of Gatsby, the City Commission's approval was contrary to the Planning Commission's recommendation.

D. PROCEDURAL BACKGROUND

In March 2022, while the licensing process for Gatsby and Royal Treatment was still pending, the City moved for summary disposition in lieu of an answer regarding □uality's complaint. Around the same time, Exclusive filed its complaint, seeking, among other things, declaratory relief that the City failed to comply with its marijuana ordinance because a committee, not the city manager, had selected the successful applicants. It also sought declaratory relief regarding the alleged due-process violations, the alleged OMA violation, and the alleged MRTMA violation.

In April 2022, the circuit court consolidated the cases. The City then moved for summary disposition of Exclusive's complaint under MCR 2.116(C)(8) and (C)(10).

With both motions pending, on April 25, 2022, the City Commission approved the site plans and special-land-use permits for both Gatsby and Royal Treatment. The City issued the two retail licenses the next day. On May 18, 2022, the city manager informed □uality by letter that its license application was formally denied. Apparently, Exclusive did not learn that its application had been denied until August 1, 2022.

RECEIVED by MSC 12/10/2025 3:03:01 PM

After the City issued the licenses, plaintiffs amended their complaints. The City filed new motions for summary disposition, which plaintiffs opposed. The circuit court considered each case separately at a December 2022 motion hearing. Regarding □uality's claims, the circuit court granted the City's motion, stating:

> [The City's] motion for summary disposition is granted pursuant to C-8 and C-10. The claim for violation of the [OMA] is dismissed as it is inapplicable to the facts of the case at bar pursuant to [*Herald Co v Bay City*, 463 Mich 111; 614 NW2d 873 (2000)] . . . . The various constitutional claims are dismissed pursuant to C-8 and C-10 pursuant to [*Pinebrook Warren, LLC v City of Warren*, 343 Mich App 127; 996 NW2d 754 (2022), rev'd □□ Mich □□□ (2024) (Docket Nos. 164869 through 164877) (*Pinebrook I*)].
>
> The claims regarding the city ordinance are dismissed pursuant to C-8 and C-10 insofar as the ordinance does not violate the statute. The statute requires municipalities to determine which entity is best suited to comply with the statute within the municipality, nor does the statute require certain variables to be given certain weight. The ordinance at issue does not violate the [MRTMA], and the claims are hereby dismissed as are the claims that the city manager violated the statute and ordinance.
>
> Likewise, the claims challenging the ordinance for vagueness are dismissed. The city manager was required to consider certain factors, which he testified were indeed considered.
>
> The ordinance does not infringe on [F]irst [A]mendment rights, does not prohibit certain conduct, and does not grant the finder of fact unfettered discretion. Thus, the ordinance is not void for vagueness.
>
> Next, the claims that the city manager violated the ordinance are dismissed. The city manager complied with the statute and the ordinance. The claims regarding this issue are dismissed pursuant to C-10.
>
> Lastly, the claim seeking injunctive relief is moot. As noted by [the City], the licenses have been issued to two non parties. The court cannot create a new license, nor can the court remove the licenses from the non parties. The claim for injunctive relief is dismissed as moot.

Exclusive then briefly addressed its void-for-vagueness claim, arguing that the marijuana ordinance was so vague as to give the city manager unfair discretion, and that the city manager's own deposition demonstrated that he did not know how to apply the marijuana ordinance. The circuit court again ruled in favor of the City:

> First, the claims that the city manager violated the ordinance are dismissed. . . . The claims regarding this issue are dismissed pursuant to (C) (10). Likewise, the claims challenging the ordinance for vagueness are dismissed. The city manager was required to consider certain factors which he testified were indeed considered.

RECEIVED by MSC 12/10/2025 3:03:01 PM

> The ordinance does not infringe on First Amendment rights, does not prohibit certain conduct, does not grant the finder of fact unfettered discretion. Thus, the ordinance is not void for vagueness. Further, Plaintiff's assertion that it was denied in appeal is without merit and moot. The various constitutional claims are dismissed pursuant to (C) (8) and (C) (10) pursuant to [*Pinebrook I*]The claims regarding the city ordinance are dismissed pursuant to (C)(8) and (C)(10) [insofar] as the ordinance does not violate the statute.
>
> The statute requires municipalities to determine which entity is best suited to comply with the statute within the municipality nor does the statute require certain variables to be given certain weight. The ordinance at issue does not violate the MRTMA and the claims are hereby dismissed. As are the claims that the city manager violated the statute and the ordinance. [The City's] motion for summary disposition is granted pursuant to (C) (8) and (C) (10). The claim for violation of the Open Meetings Act is dismissed as it is inapplicable . . . . This is pursuant to [*Herald Co*, 463 Mich 111] and [*Pinebrook I*] . . . .

Thereafter, the circuit court entered orders consistent with its ruling from the bench.

Both plaintiffs moved for reconsideration, and the circuit court denied both motions. With the exception of the 1000-foot buffer requirement, the court concluded that both plaintiffs merely repeated the arguments of their original briefs. Regarding □uality's argument that the court had failed to rule on its claim that the City violated the 1,000-foot buffer requirement, the court reasoned as follows:

> Plaintiff's motion for reconsideration essentially presents the same issues already ruled on by the Court. To the extent Plaintiff argues that the Court did not expressly address the argument that the City violated the school buffer zone required by the MRTMA, the Court addressed the issue when it . . . concluded that the City's licensing ordinance does not violate the MRTMA. In its motion for summary disposition, [the City] argued that MCL 333.27959(3) addresses only the obligations of the Michigan department of licensing and regulatory affairs and does not impose any obligation on [the City], and that the MRTMA authorizes the City to reduce the 1,000-foot buffer. Based on the plain language of the statute, Plaintiff has not demonstrated palpable error in the Court's decision.

The circuit court also found that because it had determined that the City complied with its marijuana ordinance and the MRTMA, □uality had failed to demonstrate any palpable error in the dismissal of the due-process claim.

□uality appeals by right in Docket No. 366257. Exclusive appeals by right in Docket No. 366247 and explicitly incorporates by reference the arguments □uality advances. We consolidated these appeals. See *Exclusive Capital Partners, LLC v Royal Oak*, unpublished order of the Court of Appeals, entered June 6, 2023 (Docket Nos. 366247 and 366257).

RECEIVED by MSC 12/10/2025 3:03:01 PM

II. STANDARDS OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In this case, the circuit court did not specify the subrule under which it dismissed Exclusive's claim, but MCR 2.116(C)(10) appears to be the proper subrule because the circuit court seems to have referenced facts outside the pleadings. Summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). Summary disposition is appropriate under (C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Sunshine v Delta College Bd of Trustees*, 343 Mich App 597, 601; 997 NW2d 755 (2022) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (quotation marks and citation omitted).

Interpretation of a municipal ordinance is also a question of law reviewed de novo. *McMillan v Douglas*, 322 Mich App 354, 357; 913 NW2d 336 (2017). This includes the constitutional question whether an ordinance is void for vagueness. *In re TEM*, 343 Mich App 171, 179-180; 996 NW2d 850 (2022). The rules applicable to the interpretation of a statute apply to the interpretation of an ordinance. See *id*. at 180. When interpreting an ordinance, we must discern the drafter's intent, which we accomplish by giving the words selected by the drafter their plain and ordinary meanings. See *id*. If an ordinance is unambiguous, it must be applied as plainly written. *See id*.

III. VOID FOR VAGUENESS

The circuit court correctly granted summary disposition on plaintiffs' claims that the marijuana ordinance was void for vagueness and their related argument that it gave the city manager unfettered discretion.[1] Exclusive argues that the marijuana ordinance is unduly vague and therefore unconstitutional, giving the city manager inadequate standards or guidance for implementing a competitive process and leaving that officer with unrestrained discretionary power. We disagree.

"The 'void for vagueness' doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property without due process of law." *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 467; 639 NW2d 332 (2001), citing US Const, Am XIV; Const 1963, art 1, § 17. " 'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.' " *People v Howell*, 396 Mich 16, 20 n 4;

[1] □uality also raises a constitutional vagueness argument. Most of its argument is devoted to rebutting the City's arguments. Quality has otherwise raised only a cursory argument, which ordinarily would be insufficient for this Court's consideration. See *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). We nonetheless elect to address these claims as they overlap with Exclusive's vagueness claims.

RECEIVED by MSC 12/10/2025 3:03:01 PM

238 NW2d 148 (1976), quoting *Grayned v City of Rockford*, 408 US 104, 108-109; 92 S Ct 2294; 33 L Ed 2d 222 (1972). Vague laws implicate three related, core concerns:

> *First*, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. *Second*, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. *Third*, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." [*Grayned*, 408 US at 108-109 (quotation marks, citations, and alterations omitted).]

We have previously observed in other contexts, "[a] statute or ordinance may be void for vagueness if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in determining whether the statute has been violated." *Yankee Springs Twp v Fox*, 264 Mich App 604, 606; 692 NW2d 728 (2004).

At the threshold, we reject the City's argument that the void-for-vagueness doctrine is inapplicable because Exclusive lacks a valid property interest as a first-time license applicant. The cases on which the City relies hold that a first-time license applicant does not possess a property interest, but none of those cases support the proposition that a first-time license applicant's void-for-vagueness challenge fails for lack of such interest.[2] At its core, the void-for-vagueness doctrine is concerned that laws provide fair notice and prevent arbitrary enforcement rather than with the deprivation of a claimant's property or liberty interests; the doctrine applies regardless of whether a property or liberty interest is clearly established.

---

[2] See, e.g., *Pinebrook I*, 343 Mich App at 160 ("a first-time applicant for a license cannot show that he or she has an entitlement to the license, the first-time applicant has no property interest in the issuance of the license"); *Cary Investments, LLC*, 342 Mich App at 316 ("a new applicant for a license has no property interest in any license to support a claim for deprivation of procedural due process"); *Wong v Riverview*, 126 Mich App 589, 593; 337 NW2d 589 (1983) (a "first-time applicant has no right to procedural due process"). Of note, the City discusses *In re TEM*, 343 Mich App at 180, in which this Court considered a vagueness challenge to the Adoption Code, MCL 710.21 *et seq*. This Court did address whether the petitioners held a protected property interest and concluded that they did not. *Id*. at 181-182. But *In re TEM*'s conclusion in this regard was not dispositive of the petitioners' vagueness claim, *id*. at 182-185, and thus the case does not indicate that the lack of an existing property interest is fatal to a vagueness claim.

RECEIVED by MSC 12/10/2025 3:03:01 PM

We likewise reject the City's argument that the void-for-vagueness doctrine does not apply to a licensing scheme because the doctrine commonly applies in connection with penal laws or First Amendment rights. The single authority on which the City relies to support this argument, *Hackel v Macomb Co Comm*, 298 Mich App 311; 826 NW2d 753 (2012), recognized that courts have applied the void-for-vagueness doctrine in other contexts. *Id.* at 332.[3] And, while we are unaware of Michigan precedent applying the void-for-vagueness doctrine in the context of a first-time license applicant challenging a licensing scheme, we have applied the doctrine more broadly than criminal laws. See e.g., *In re TEM*, 343 Mich App at 180 (the Michigan Adoption Code); *Turunen v Dep't of Nat'l Resources*, 336 Mich App 468; 971 NW2d 20 (2021) (invasive species regulation); *Fox*, 264 Mich App at 604 (riparian-use regulation). Notably, the United States Supreme Court has applied the doctrine to a licensing ordinance. See *City of Mesquite v Aladdin's Castle*, 455 US 283, 291; 102 S Ct 1070; 71 L Ed 2d 152, 161 (1982). In short, the doctrine can apply to this sort of case.

But Exclusive's arguments fail. Exclusive contends that the marijuana ordinance is unconstitutionally vague because it is so lacking in standards as to grant the city manager unfettered discretion, and thus fails to put applicants on notice about how the ordinance is applied. "Vagueness challenges that do not involve a challenge to First Amendment freedoms are examined in light of the facts of the particular case." *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 539; 669 NW2d 594 (2003). A statute or ordinance has a strong presumption of constitutionality, and the party challenging such law has the burden of overcoming that presumption. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 341; 675 NW2d 271 (2003). "In determining whether a statute is void for vagueness, the entire text of the statute is examined and the words of the statute are given their ordinary meanings." *STC, Inc*, 257 Mich App at 539. A "statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required." *Id*. A statute is unconstitutionally vague "where people of common intelligence must guess at the statute's meaning and differ with regard to how it applies." *City of Westland v Okopski*, 208 Mich App 66, 74; 527 NW2d 780 (1994). "When determining whether a statute inappropriately delegates unstructured and unlimited discretion to a decision maker, the court examines whether the statute provides standards for enforcing and administering the laws in order to ensure that enforcement is not arbitrary or discriminatory . . . ." *English v Blue Cross Blue Shield*, 263 Mich App 449, 469; 688 NW2d 523 (2004) (quotation marks and citation omitted).

Here, the marijuana ordinance charged the city manager with administering the application process for recreational marijuana licenses. See Royal Oak Ordinances, § 435-2(E). Although the

[3] *Hackel* involved a void-for-vagueness claim in relation to a county resolution governing the award of contracts. *Hackel*, 298 Mich App at 333. There, we held that the resolution did not fit "within the category of enactments against which a void-for-vagueness challenge is usually asserted," but did not expressly hold that the doctrine was limited to such contexts, and ultimately analyzed the challenged resolution and concluded it was not vague. *Id*. at 333-334. *Hackel*, in fact, recognized that the doctrine had been applied in other contexts. *Id*. at 332. The City otherwise cites no law indicating that claims of unconstitutional vagueness are inapplicable, as a matter of law, in the realm of municipal licensing schemes.

RECEIVED by MSC 12/10/2025 3:03:01 PM

City was required to decide among applicants if the number of applications exceeded the available license slots, the ordinance dictated that the city manager "or his or her designee" was to rank the applicants "in the order of which is best suited to operate in compliance with the Act . . . ." Royal Oak Ordinances, § 435-4(C)(2) and (4). The ordinance provided that certain "competitive criteria" "shall be" used for that purpose, including the likelihood of success in harmony with surrounding properties along with the nine other aforementioned criteria that implicate an applicant's tax history, criminal history, financial history, operational history, and sustainability plains. See Royal Oak Ordinances, § 435-4(C)(4)(a) to (j).

The plain text of the ordinance illustrates that the city manager was not without guidelines, and the public was not without notice as to the ordinance's application. The ordinance undoubtedly allows the city manager some leeway and discretion in administering the licensing process. But it does not do so to the extent that it renders the ordinance constitutionally infirm. The "prohibition against excessive vagueness does not invalidate every statute which a reviewing court believes could have been drafted with greater precision. Many statutes will have some inherent vagueness, for '[i]n most English words and phrases there lurk uncertainties.' " *People v Petrella*, 424 Mich 221, 255; 380 NW2d 11 (1985) (alteration in the original), quoting *Robinson v United States*, 324 US 282, 286; 65 S Ct 666; 89 L Ed 944 (1945).

On appeal, Exclusive focuses on the city manager's purported "confusion" in implementing the ordinance. It relies on a statement in his deposition testimony about using "qualitative analysis" when the ordinance did not dictate one, and his declining to numerically rank applicants. Exclusive however cites no authority for the position that a city official's confusion, or interpretation, regarding the meaning of an ordinance he or she is charged with implementing itself establishes that the ordinance is unconstitutionally vague. Due process "does not preclude a city from giving vague or ambiguous directions to officials who are authorized to make . . . recommendations." *City of Mesquite*, 455 US at 291. The relevant inquiry is whether the ordinance is so lacking in standards as to give those charged with implementing it carte blanche to follow their personal predilections. This ordinance does not. Even assuming that the city manager was confused with respect to implementation of the ordinance's competitive process, this alleged fact, if established, would not necessarily indicate that the city manager acted with unbridled discretion.

Exclusive has failed to overcome its burden of demonstrating that the marijuana ordinance is unconstitutionally vague. Because no genuine issue of material fact exists concerning whether the marijuana ordinance is unconstitutionally vague, the circuit court did not err by granting the City summary disposition with respect to Exclusive's void-for-vagueness claim.

IV. 1000-FOOT SCHOOL-BUFFER REQUIREMENT UNDER MCL 333.27959(3)(c)

□uality's lead argument is that the City violated the MRTMA's school-buffer requirement, and the circuit court erred by failing to address this issue and denying summary disposition. □uality describes this issue as "the most simple and straightforward in these consolidated cases." It is actually the most convoluted. Ultimately, we conclude that the circuit court properly granted summary disposition in favor of the City because (1) the marijuana ordinance and general zoning scheme do not conflict with MCL 333.27959(3)(c) and (2) awarding the retail license to Gatsby did not violate the MRTMA's school-buffer requirement despite the close proximity to a school.

RECEIVED by MSC 12/10/2025 3:03:01 PM

At the outset, we must clarify what exactly □uality is arguing and what it is not. It argues that the City violated the MRTMA. It does not argue that the City violated its own marijuana ordinance.

This is sensible because the City did not violate its ordinance by awarding Gatsby a retail license. None of the 10 competitive criteria for retail license applicants contained a school-buffer requirement. See Royal Oak Ordinances, § 435-4(C)(4)(a) to (j). In fact, nothing in Section 4, the section of the ordinance relating to applications, directly references a school-buffer requirement. See Royal Oak Ordinances, § 435-4.[4]

The marijuana ordinance, however, does contain a school-buffer requirement in Section 5, the section of the ordinance relating to *operations*. See Royal Oak Ordinances, § 435-5(A). As stated, consistent with the MRTMA, the ordinance provides, "[n]o Marihuana Establishment shall be permitted within a 1,000-foot radius of any school." Royal Oak Ordinances, § 435-5(A)(5)(a). Again, this is an operational requirement, not an application or licensing consideration. This means that an entity like Gatsby, whose proposed site was 88 feet from a school, might succeed in applying for a retail license, but be poised to violate the operational provisions of the ordinance. That is, unless the City Commission validly approved a deviation before it started operating.

For Gatsby, this means the City did not violate its ordinances when it awarded the City's retail license. We acknowledge that the marijuana ordinance requires the city manager to consider likelihood of success, which would implicate compliance with the MRTMA, including the school-buffer requirement. But both the MRTMA and the City's ordinances contemplated a reduction of that requirement. See MCL 333.27959(3) (recognizing that a municipality may adopt an ordinance that reduces the 1,000-foot buffer requirement). See also Royal Oak Ordinances, § 770-52.1(B)(14) (stating that the City Commission may deviate from zoning requirements upon recommendation of the City Planning Commission). To the extent that the city manager had to consider this as part of the competitive criteria, we accept that he could also consider the likelihood that the City Commission would eventually validly approve a deviation from the school-buffer requirement for Gatsby. See Royal Oak Ordinances, § 770-52.1(B)(14). And that is exactly what happened. The City Commission initially approved Gatsby's site plan, implicitly approving a deviation from the school-buffer requirement. To the extent that the initial deviation was invalid,[5]

---

[4] We acknowledge that one criterion potentially requires consideration of the applicant's ability to comply with the MRTMA. Cf. Royal Oak Ordinances, § 435-4(C)(4)(a). This implicitly would incorporate the 1,000-foot-buffer requirement in the MRTMA, assuming the City Commission did not validly waive the requirement. As we discuss, to the extent this application criterion incorporates the school-buffer requirement, the City's ability to waive it before the licensee begins to operate has the potential to nullify an such incorporation.

[5] As noted, both the marijuana ordinance and general ordinances included the buffer requirement. Royal Oak Ordinances, § 435-5(A)(5)(a) and § 770-52.1(B)(3). But § 770-52.1(B)(14) also allowed the City Commission to deviate from that requirement if the applicant showed that certain features had been designed into the plan and the City Commissions deemed them adequate "upon recommendation of the Planning Commission."

RECEIVED by MSC 12/10/2025 3:03:01 PM

the City Commission amended its ordinance to allow it to validly deviate from the school-buffer requirement on June 26, 2023. Any operation after that point would not violate the statute.

To summarize, the City did not violate the statute by awarding a retail license to Gatsby. To the extent that Gatsby violated the statute by operating without a valid deviation, it was Gatsby's problem, not the City's. And it was a problem that was solved by June 2023 when the City Commission amended its ordinances to allow it to validly deviate from the buffer requirement without a recommendation from the Planning Commission.

Recall, however, □uality does not argue that the City violated its own ordinances. It argues that it violated the MRTMA because MCL 333.27956(3) prohibits municipalities from imposing licensure requirements that conflict with the act, MCL 333.27959(3)(c) requires a school-zone buffer of 1,000 feet unless a municipality has adopted an ordinance that reduces this distance, and the City has adopted no such ordinance. We disagree.

□uality effectively raises a conflict preemption claim, i.e., a claim that "a local regulation directly conflicts with state law." *Deruiter v Twp of Byron*, 505 Mich 130, 140; 949 NW2d 91 (2020). "Conflict preemption applies if the ordinance is in direct conflict with the state statutory scheme[.]" *Id*. at 140 (citation and quotation marks omitted). This analysis necessarily begins with an examination of the relevant provisions of the MRTMA and the marijuana ordinance.

MCL 333.27959(3) provides as follows:

> Except as otherwise provided in this section, the department shall approve a *state* license application and issue a state license if:
>
> □ □ □
>
> (c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within

---

Again, Gatsby's proposed location was 88 feet from OSTC-SE, which the City did not dispute qualified as a public school for purposes of the City's ordinances. Under both the marijuana ordinance and the general zoning ordinance, then, Gatsby was prohibited from *operating* its marijuana facility at its proposed location. The City Commission, however, voted to approve the license, despite that the Planning Commission had voted to not recommend approval of Gatsby's application. The City Commission could approve the license. But because the City Commission's approval of the deviation from the buffer requirement in the absence of a recommendation from the Planning Commission, the City arguably violated § 770-52.1(B)(14). If the initial deviation was invalidly obtained under § 770-52.1(B)(14), Gatsby's operation likely violated the marijuana ordinance's operations provisions from the time it started operating until the later valid deviation following the amendments to the marijuana ordinance. This precise issue is not presently before us. We discuss it only to the extent that it is necessary for us to fully address Quality's argument.

RECEIVED by MSC 12/10/2025 3:03:01 PM

> 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, *unless a municipality adopts an ordinance that reduces this distance requirement*[.] [Emphasis added.]

In other words, the MRTMA allows provision of a *state* license within 1,000 feet of a preexisting public or private grade school *only if* the municipality has adopted an ordinance that reduces this distance requirement.

The MRTMA also authorizes municipalities to adopt ordinances regulating recreational marijuana establishments within their boundaries and provides certain guidelines. MCL 333.27956(3) provides that "[a] municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, *but may not impose qualifications for licensure that conflict with this act* or rules promulgated by the department." (Emphasis added.)

Reading MCL 333.27956(3) and MCL 333.27959(3)(c) together, we discern two critical points: (1) the MRTMA does not require a municipality to adopt the buffer requirement as a qualification for municipal licensure because MCL 333.27956(3), by its plain language, requires it for state, not municipal, licenses, and (2) an ordinance reducing the buffer zone, as qualification for municipal licensure, would not conflict with the act because MCL 333.27959(3)(c) indicates that a municipality may adopt an ordinance reducing that buffer zone.

Our review of the City's ordinances applicable during the application process reveals no conflict with MCL 333.27959(3). Section 435-5(A)(5)(a) of the marijuana ordinance stated as follows:

> A. A Marihuana Establishment issued a Municipal License under this Ordinance and operating in the City shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.
>
> □ □ □
>
> 5. The following spacing requirements for Marihuana Establishments are required:
>
> a. No Marihuana Establishment shall be permitted within a 1,000-foot radius of any school.

Additionally, the City's general ordinances included the provision, "No marihuana establishment shall be permitted within a 1,000-foot radius of any existing public or private school with a curriculum equivalent to kindergarten through 12th grade." Royal Oak Ordinances, § 770-52.1(B)(3). The plain text of these provisions illustrate that the City adopted the buffer requirement of MCL 333.27959(3)(c) even though the MRTMA did not require it for municipal licensing.

RECEIVED by MSC 12/10/2025 3:03:01 PM

But, § 770-52.1(B)(14) of the Royal Oak Ordinances allowed for deviation from the ordinances' buffer requirements:

> Deviations from *applicable setback*, parking, and *other requirements* may be granted by the City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission *upon the recommendation of the Planning Commission* that are designed into the site plan for purpose of achieving the objectives of this section. [Emphasis added.]

Thus, while deviation from the buffer requirement is permitted under § 770-52.1(B)(14) of the Royal Oak Ordinances, such a deviation may be granted only if the applicant shows that certain features have been designed into the plan, and that the City Commission deems them adequate "upon recommendation of the Planning Commission." *Id*. This provision allows the City to reduce the distance requirement of § 435-5(A)(5)(a) of the marijuana ordinance and § 770-52.1(B)(3) of the Royal Oak Ordinances.

Because the City adopted an ordinance allowing reduction of the buffer zone consistent with MCL 333.27965(3) and MCL 333.27959(3), the City's ordinances, on their face, do not conflict with the MRTMA. While MCL 333.27959(3)(c) does not require a municipality to adopt the buffer requirement, that statute indicates that a municipality may adopt an ordinance reducing the buffer requirement for purposes of state licensing. A review of the City's licensing and zoning scheme, which allows a reduction of the buffer zone, reveals no inherent incompatibility between the then-existing licensing and zoning provisions and the MRTMA.

□uality, however, argues that the City's zoning does not comply with MCL 333.27959(3)(c) because the latter does not allow a municipal body to decide that the buffer requirement does not apply. According to □uality, MCL 333.27959(3)(c) requires the municipality to "adopt an ordinance that reduces [the] distance requirement," as opposed to allowing a municipal body to make the decision. We disagree. The zoning ordinance then in effect allowed the City Commission to deviate from the buffer requirement "provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission . . . ." Royal Oak Ordinances, § 770-52.1(B)(14). This provision, when implemented, reduced the buffer requirement of the MRTMA. See MCL 333.27959(3)(c). Notably, the MRTMA does not specify the procedure by which an ordinance reducing the buffer requirement is adopted. □uality's claim that § 770-52.1(B)(14) of the Royal Oak Ordinances conflicts with the MRTMA is not supported by the language of the statute. In fact, Quality's interpretation ascribes an intent not reflected in the statute's plain language. Because the City's ordinances do not conflict with MCL 333.27956(3) and MCL 333.27959(3)(c), □uality has failed to state a claim on which any relief can be granted.

V. COMPETITIVE PROCESS MANDATE UNDER MCL 333.27959(4)

□uality argues that the marijuana ordinance conflicts with the MRTMA's competitive-process mandate on its face and that the City's application violated the MRTMA's competitive-process mandate. We disagree. The marijuana ordinance did not conflict with the competitive-process requirement of MCL 333.27959(4), and there was no genuine issue of material fact that

RECEIVED by MSC 12/10/2025 3:03:01 PM

the city manager complied with the ordinance and the MRTMA. We address each argument in turn.

Regarding the facial challenge, □uality argues that the ordinance conflicted with the MRTMA's competitive-process mandate because the selection process was inherently noncompetitive. Essentially, □uality argues that the ordinance's use of binary, yes-or-no factors, and lack of a numerical ranking system left the City with no meaningful way to distinguish between applicants.

Here, □uality again raises a conflict preemption claim, i.e., a claim that "a local regulation directly conflicts with state law." *Deruiter*, 505 Mich at 140. This analysis necessarily begins with an examination of the relevant provisions of the MRTMA and the marijuana ordinance.

MCL 333.27956 allows a municipality to adopt a recreational marijuana ordinance. That section provides in relevant part that, "[a] municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this case . . . ." MCL 333.27956(2). Additionally, MCL 333.27959(4), mandates that a municipality use a "competitive process" to select among applicants if there are more applicants than available licenses:

> If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, *the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality*. [Emphasis added.]

Because its marijuana ordinance restricted the number of recreational marijuana licenses, the City adopted the following "competitive" process:

> The applicants and their applications will be ranked in the order of which is best suited to operate in compliance with the Act within the City as determined by the City Manager or his or her designee. This ranking will be used to fill available municipal license slots, starting with the best-suited applicant and application, until all available municipal license slots are filled. The competitive criteria to be used shall be as follows:
>
> (a) Review of the applicant's completely submitted, detailed application (including plans which address the provisions of this section and related provisions, such as security, lighting, processing, handling of hazardous waste, site plans, recordkeeping, disposal, water/utility, ventilation, odor, etc.), which illustrates the likely success of the proposed business, in harmony with surrounding properties at the proposed site;
>
> (b) Whether the applicant is currently in default or arrears on any taxes or fees otherwise due to the City, has a history of noncompliance or violations with

RECEIVED by MSC 12/10/2025 3:03:01 PM

City ordinances or applicable laws, or has been served with any complaint or notice filed by or with any public body regarding the delinquency in the payment of any tax required under federal, state or local law;

(c) Whether the applicant is/was a business operating in the City of Royal Oak within the past two years;

(d) Whether the applicant has a history of criminal conviction/plea, other than as specified by the MRTMA, MCLA 333.27958.1 (c), as may be amended;

(e) Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed, or has proceedings pending related to such;

(f) Whether the applicant filed, or had filed against it/him/her, a proceeding for bankruptcy or been involved in any formal process to adjust, defer, suspend or otherwise work out payment of a debt in the past seven years;

(g) Whether there is performed and planned future outreach on behalf of the proposed business and a written plan evidencing the outcome of such meetings, and whether the Applicant has made, or plans to make, significant physical improvements to the building housing the Marihuana Establishment

(h) Whether the applicant has taken steps to encourage employee retention, attract highly capable workers, train employees, and any other employee-employer factors tending to show a successful workforce;

(i) Whether the applicant has taken steps to include equity, diversity, and inclusion in their operations that would tend to yield greater profitability, innovation, and more-effective teamwork; and

(j) Whether the proposed plan incorporates sustainable infrastructure and energy-efficient elements and fixtures. [Royal Oak Ordinances, § 435-4(C)(4)(a)-(j).]

Nothing in MCL 333.27956, the section authorizing a municipality to impose local regulations on recreational marijuana, restricts or delineates what type of criteria may be used in formulating a "competitive process." See MCL 333.27956(2). See also MCL 333.27956(3). The only relevant direction is that any pertinent ordinance must not be "unreasonably impracticable" or "conflict" with the MRTMA. See MCL 333.27956(2).

□uality's argument that the marijuana ordinance's process is not "competitive" because competition requires a "situation in which people or businesses are trying to be more successful than each other . . . ." is not persuasive. Although the City used series of yes-or-no factors and did not use a numerical scoring system, there were still meaningful ways to distinguish the applicants, thus satisfying the "competitive" requirement within the meaning of MCL 333.27959(4).

RECEIVED by MSC 12/10/2025 3:03:01 PM

MRTMA does not define "competitive process." We therefore rely on the plain meaning and ordinary understanding of "competitive" which is "relating to . . . competition," or "a contest between rivals" or "the effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms." See Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/competition (accessed November 25, 2024). See also Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/competition (accessed November 25, 2024). When the relevant language is read as whole, then, MCL 333.27959(4) dictates that the process adopted must evaluate which applicants offer the most favorable terms, as compared to others, for the purpose of identifying which applicants are best suited to operate in compliance with the MRTMA. In other words, any criteria adopted must bear some relation to determining who is best suited to operate in compliance with the act, and must also aid in evaluating who offers the most favorable terms.

The marijuana ordinance's ten competitive criteria indicate that the ordinance does not lack a competitive process for selecting the applicants best suited to operate consistently with the MRTMA. See Royal Oak Ordinances, § 435-4(C)(4). On the contrary, many of the nine factors that call for a yes-or-no determination (out of 10 factors total) implicate varying degrees of compliance. For example, criterion (h) asks whether the applicant has taken steps to promote a successful workforce. Even if an applicant's response is affirmative, the way in which an applicant has met this end, and to what degree, would differentiate that applicant from others. The same may be said of responses to criteria (g) (future outreach), (i) (equity plans), and (j) (sustainable infrastructure), and to a lesser extent (c) (operating a business in Royal Oak), and (e) (commercial licenses). Further, consideration of the applicant's tax history, bankruptcy history, and criminal history potentially implicate variation and nuance. One bankruptcy is different than six. Someone owning property with a tax lien is different than a convicted tax cheat. □uality's argument ignores these nuances and inherent differences implicated by the considerations that do not otherwise provide a numerical rank or value.

Taken as a whole, the criteria serve as guideposts allowing a decision-maker to determine which applicants are most favorable for operating in compliance with the MRTMA, providing criteria an applicant may satisfy by varying degrees. Because the criteria allow for meaningful distinctions between applicants, the criteria are necessarily competitive.

There being no conflict with the MRTMA, and no allegation of unreasonable impracticality, □uality has failed to show that the City's competitive criteria improperly conflict with the MRTMA. Summary disposition under MCR 2.116(C)(8) was proper.[6]

[6] The City relies on *Yellow Tail Ventures*, 344 Mich App 703, where this Court upheld the city of Berkley's competitive criteria. Although this Court in *Yellow Tail Ventures* did uphold Berkley's competitive criteria, that case is not directly on point. The plaintiffs in *Yellow Tail* argued that MCL 333.27959(4) prohibited the city of Berkley from adopting criteria focused on such community concerns as green infrastructure. *Yellow Tail Ventures*, 344 Mich App at 701. Those plaintiffs did not argue that the criteria conflicted with MCL 333.27959(4) as binary or noncompetitive per se.

RECEIVED by MSC 12/10/2025 3:03:01 PM

We also conclude that the circuit court properly granted summary disposition on □uality's as-applied challenge. □uality argues that the City's implementation of the competitive process ran afoul of both the MRTMA and the City's own marijuana ordinance, because the city manager admitted he did not understand his task to select applicants best suited to operate in compliance with the MRTMA and failed to rank or score the applicants, because the interpretation and application of the criteria were contrary to the text of the ordinance, and because some applicants were outright disqualified although the ordinance did not allow for disqualification. We are not persuaded.

"The law presumes public officials perform their duty." *Veldman v Grand Rapids*, 275 Mich 100, 113; 265 NW 790 (1936). Generally, "the discretion vested in city officials is not subject to review by the courts." *White v Grand Rapids*, 260 Mich 267, 275; 244 NW 469 (1932). Accordingly, "[i]f they transcend their power, the courts may interfere. But if acting within the scope of their power they make mistakes it is not the business of a court to amend or correct their errors." *Id*.

This manifests as two questions: (1) under what authority did the city manager act, and (2) whether the city manager acted outside of that authority. Taken as a whole, the record establishes that the City acted within its authority by applying a competitive process to selecting the licensees. As stated, we discern no conflict between the ordinance and the MRTMA. It employs 10 criteria of local concern. The city manager applied the ordinance to determine which applicant was best suited to comply with the act. Initially, he formed a workgroup with whom he collaborated to narrow down the applicants on the basis of the ordinance's criteria. Ultimately, the city manager reviewed all the applications, considered each in relation to the competitive criteria of the marijuana ordinance, compared the applicants to one another, and independently ranked the applicants into three categories consisting of the two successful applicants, applicants put on standby, and applicants who were rejected. There is no genuine issue of material fact as to whether the City violated either the MRTMA or its marijuana ordinance by implementing this competitive process.

□uality's argument that the city manager did not understand his task to be selecting the applicants best suited to operate in compliance with the MRTMA missed the point. Because the City's marijuana ordinance complied with the MRTMA's competitive-process requirement, and the city manager indicated that he selected applicants based on who was best suited to comply with the ordinance, he neither violated the MRTMA nor acted outside his authority.

□uality's argument that he failed to rank or score the applicants is similarly not persuasive. The city manager did rank the applicants by category. He just did not use a scoring rubric that □uality preferred. That the city manager gave greater weight to some criteria rather than others that may have favored □uality does not indicate that he acted outside his authority or provide a basis for disturbing the City's decision.

Relatedly, □uality attacks the City's interpretation of various criteria, many of which required subjective assessment which □uality alleges the ordinance did not contemplate. These arguments reflect Quality's dissatisfaction with the way the city manager applied the criteria. But

RECEIVED by MSC 12/10/2025 3:03:01 PM

that does not amount to city manager acting outside the scope of his power.[7] □uality has not demonstrated that the City acted outside of the scope of its authority under the MRTMA.

Finally, □uality additionally asserts that the circuit court's analysis was insufficient to warrant summary disposition, and the court improperly weighed evidence to make a factual determination regarding the city manager's conduct. Although the circuit court's reasoning for granting summary disposition could have been more elaborative, its conclusion was proper because □uality failed to establish a genuine issue of material fact concerning whether the city manager's administration of the competitive process was inconsistent with the MRTMA or the City's marijuana ordinance. □uality also fails to elucidate how the court weighed the evidence and made credibility determinations in the course of its limited analysis.

In sum, □uality's facial and as-applied challenge regarding conflicts with the MRTMA's competitive-process mandate both fail.

VI. OMA VIOLATION

The circuit court erred by dismissing □uality's OMA claim. Here, authority rested with the City Commission, "the public body." It delegated authority to the city manager who was the de facto decisionmaker on awarding retail licenses. Relying on our Supreme Court's decision *Pinebrook Warren, LLC v City of Warren*, □□□ Mich □□□; □□□ NW3d □□□ (2024) (Docket Nos. 164869 through 164877) (*Pinebrook II*), which addressed this very same issue on similar facts, we conclude that an OMA violation occurred.

"The Open Meetings Act generally requires 'decisions' or 'deliberations' of a 'public body' to be open to the public." *Davis v Detroit Financial Review Team*, 296 Mich App 568, 576; 821 NW2d 896 (2012), citing MCL 15.262 and MCL 15.263. Because the act applies only to a public body, the initial inquiry is whether the entity at issue constitutes a "public body." MCL 15.262(a) defines "public body" to include "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . ."

Generally, the statute provides that for an entity to be a public body, two requirements must be met: (1) "the entity at issue must be a 'state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council,' " and (2) "the entity must be 'empowered . . . to exercise governmental or proprietary authority or perform a governmental or proprietary function,' and that power must derive from 'state constitution, statute, charter, ordinance, resolution, or rule . . . .' " *Herald Co*, 463 Mich at 129, quoting MCL 15.262(a). Beyond the statutory definition of "public body," our caselaw has recognized an additional

[7] At worst, □uality may have shown that a mistake was made, e.g., a home-based business did not satisfy criterion (c) (whether an applicant had operated a business within the City in the last 2 years). But even mistakes do not allow this Court to intervene so long as the city official was acting within the scope of his or her power. See *White*, 260 Mich at 275. Quality's arguments on appeal would require this Court to substitute its judgment for that of the city manager.

RECEIVED by MSC 12/10/2025 3:03:01 PM

pathway for qualifying as a public body: when one public body delegates authority to another entity. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 225-226; 507 NW2d 422 (1993) (holding that an individual member of the University of Michigan Board of Regents was a "public body" because the Board of Regents, itself a public body, had delegated the job of selecting a university president to the single regent). When a court is assessing such a delegation it must look not only at the language of the ordinance or governing document; it must also consider how the public body and the entity to which it supposedly delegated authority actually operated. See *Pinebrook II*, □□□Mich at □□□; slip op at 8.

In *Pinebrook II*, our Supreme Court held that the de facto decision maker, a review committee, similar to the city manager in this case, was subject to the OMA. *Pinebrook II*, □□□ Mich at □□□; slip op at 9. There, the city of Warren had adopted a medical-marijuana ordinance consistent with then-governing state law. *Pinebrook I*, 343 Mich App at 127. The ordinance created a review committee to evaluate applications, score them, and forward them, along with the scores and recommendations, to the city council. *Id*. at 136. The ordinance authorized only the city council to approve the issuance of a license. *Id*. at 136. On appeal, this Court held that the review committee was not a public body subject to the OMA, rejecting the argument that the City had made the review committee a public body under *Booth* by delegating its authority to it. *Id*. at 150. Instead, the city's marijuana ordinance gave the review committee independent authority to act. *Id*. at 145-146.

Our Supreme Court reversed, holding that this Court erred by limiting its analysis to the language of the ordinance while failing to consider how the review committee actually worked. *Pinebrook II*, □□□Mich at □□□; slip op 27. The Court clarified that

> in order to determine whether a public body has provided its authority to a different entity, thus subjecting that second entity to the OMA, we must examine both the language of the enabling action (in this case, an ordinance) and the actions actually taken by the new entity . . . . If the second entity makes public policy decisions that would otherwise have had to have been made by the original public body according to the law, then the second entity is also a public body covered by the OMA. [*Id*. at □□□; slip op at 29 (citations omitted).]

Under this framework, the Court concluded that, even though the city's ordinance technically gave the city council the final authority to choose which applicants would be awarded licenses, it was the review committee that, in reality, chose the successful applicants. *Id*. at □□□; slip op at 28-30. The Court relied on the fact that the review committee scored and ranked the applicants, and the city council simply adopted the work of the review committee by motion. *Id.* at □□□; slip op at 29-32. The Court held that, because the review committee performed the governmental function of making decisions for the city council, the review committee was a public body subject to the OMA. *Id*. The Court distinguished *Herald Co* on the ground that the city manager in *Herald Co* did not obtain his authority from the City Commission, but from the city charter, while in Pinebrook Warren, the city council created the review committee and authorized it to act on behalf of the council. *Id*. at □□□; slip op at 32-33.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Relying on *Pinebrook II* and *Booth*, we conclude that the city manager and his designees acted as a public body subject to the OMA. By way of analogy, here, the City Commission is to the city manager and his workgroup as the city council was to the review committee in *Pinebrook II*. Cf. *Pinebrook II* at □□□; slip op at 29-32. The City Commission is a public body that granted the city manager "the power to fully and effectively implement and administer the Municipal License Application process." Royal Oak Ordinances, § 435-2(E). On paper, the marijuana ordinance did not grant the city manager authority to make the final decision on awarding retail licenses. Rather, the ordinance indicated that the "City shall decide among Applications" which were best suited to operate in compliance with the MRTMA, see Royal Oak Ordinances, § 435-4(C)(2) (emphasis added). The city manager was only empowered to "implement and administer" the application process and directed to rank the applicants by applying the 10 competitive criteria, see Royal Oak Ordinances, § 435-2(E) and § 435-4(C)(4)(a)-(j). The successful applicants do not automatically receive a license after this process. Instead, an applicant obtains the license only after the City Commission approves the applicant's special-land-use permit and site plan, and, if other requirements are met, the City Clerk issues the license. See Royal Oak Ordinances, § 435-4(D)(4) and (7). That is according to the ordinance.

In practice, however, the city manager's role was not limited to administering the applications process and scoring the applicants: whichever applicants made it through the city manager's process received licenses. The City received 31 applications for two retail licenses. To rank the applicants, the city manager formed a workgroup composed of several city officers. They met in four closed-door sessions to help the city manager assess the applicants. Ultimately, as a result of these meetings, the city manager ranked the applications in three categories, including a recommendation that the top two applicants be awarded a license.

While the ordinance tasked the "City" with deciding which applicants would be best suited to operate within the City, and also with approving the applicants' special-land-use and site permits as a predicate to issuing licenses, see Royal Oak Ordinances, § 435-4(C)(2) and (D)(4)(f), the City Commission adopted the city manager's recommendation without apparent deliberation. The minutes of the City Commission meeting with respect the special-land-use permit and site plan of the two highest-ranked applicants as recommended by the city manager do not reflect any discussion of other applicants. Consequently, the city manager effectively selected who would receive the two recreational marijuana licenses. Because the city manager made a de facto policy choice for the City Commission, the city manager met the definition of "governing body," and, thus, was subject to the OMA. It follows that the meetings that the city manager had with his workgroup should have been noticed and made open to the public.[8]

We understand our Supreme Court's decision in *Pinebrook II* as implicitly rejecting the City's argument that the City Commission did not delegate authority to the city manager because the MRTMA provided the city manager with an independent source of executive authority. The

[8] Standing alone, the workgroup did not qualify as a public body because no public body delegated authority to it. It acted solely in advisory capacity. The city manager made the ultimate ranking after consultation and there was no indication that the city manager delegated any of his authority under the marijuana ordinance to the workgroup.

RECEIVED by MSC 12/10/2025 3:03:01 PM

city council in that case enacted an ordinance under the medical-marijuana law and established a review committee with authority to act on the city council's behalf, which the Court considered a delegation of city council's powers. *Pinebrook II*, □□□Mich at □□□; slip op at 30. Similarly, here, the City Commission enacted an ordinance under the MRTMA, and, although the commission did not create the office of city manager through the ordinance, the commission authorized that officer to act on its behalf. The city manager's power in the licensing process derived from the marijuana ordinance, through the City Commission, not from the text of the MRTMA itself.

For these reasons, the circuit court erred by granting summary disposition in favor of the City with respect to the OMA claim. We reverse the court's decision related to the OMA claim and remand to the circuit court to determine whether the licenses awarded to Gatsby and Royal Treatment should be invalidated under MCL 15.270(2). We observe that the OMA provides other remedial options for the public body in this instance. See MCL 15.270(5) (providing a mechanism for a public body to "reenact the disputed decision in conformity with [the] act" to avoid invalidation).

VII. SUBSTANTIVE DUE PROCESS

□uality also raises a substantive due process claim. It argues that the circuit court erred by granting summary disposition on its due-process claim because (1) to the extent it granted relief under MCR 2.116(C)(10), it failed to reference any material facts outside of the pleadings that would justify dismissal, and (2) to the extent it granted relief under MCR 2.116(C)(8), □uality argues it sufficiently alleged that the City acted arbitrarily and capriciously in awarding licenses. We disagree.[9]

The City's conduct in this matter did not rise to the level of substantive due-process violation. Substantive due process protects an individual against arbitrary government action. *Pinebrook I*, 343 Mich App at 158. The predicate for a due-process claim is a property interest at stake. *Id*. at 159. Because a first-time license applicant has no entitlement to a license, there is no property interest at stake. *Id*. at 160.

Further, this Court has limited such inquiry to whether a city has acted so arbitrarily and capriciously as to shock the conscience. *Id*. at 160-161; *Cary Investments, LLC v Mt Pleasant*, 342 Mich App 304, 316; 994 NW2d 802 (2022). Generally, "[r]efusal to issue a permit is not the

[9] □uality has likely abandoned this issue. Its argument is too cursory to warrant this Court's consideration. It does not cite any law explaining what requirements a first-time license applicant must meet to establish a due-process claim. □uality also does not highlight what evidence it proffered to establish the existence of a genuine issue of material fact in that regard. Instead, it summarily states the legal conclusion that its allegation that the City acted arbitrarily and capriciously stated a due-process claim, while offering no explanation of what the law requires. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton*, 256 Mich App at 339 (citations omitted). Because □uality failed to properly address the merits of this claim of error, this issue is likely abandoned. Nonetheless, we elect to address the merits.

RECEIVED by MSC 12/10/2025 3:03:01 PM

sort of municipal action that constitutes a violation of substantive due process," *Cary Investments*, 342 Mich App at 315, and "[p]icking winners and losers, although it might seem unfair, does not amount to irrational conduct or oppression, and it does not shock the conscience," *Pinebrook I*, 343 Mich App at 165.

The City simply denied □uality a permit. □uality has not established that the City violated either the MRTMA or its marijuana ordinance, or alleged any conduct that is so egregious and irrational that it shocks the conscious. Summary disposition of the substantive due-process claim was proper because □uality has brought to light no genuine issue of material fact concerning whether the City engaged in arbitrary, irrational, or oppressive conduct.

VIII. CONCLUSION

For the reasons previously stated, we affirm the circuit court's grant of summary disposition in all respects except as it relates to its handling of the OMA violation. Because an OMA violation occurred, the circuit court erred in dismissing those claims. We therefore reverse the circuit court's decision regarding the OMA violation and remand for the circuit court to address whether invalidation of the license awards is appropriate under MCL 15.270(2) and to provide the public body with the opportunity to remedy to violation. See MCL 15.270(5). In all other respects, we affirm. We do not retain jurisdiction.

/s/ Noah P. Hood
/s/ Mark T. Boonstra
/s/ Kathleen Jansen

RECEIVED by MSC 12/10/2025 3:03:01 PM

Court of Appeals, State of Michigan

ORDER

Mark T. Boonstra
Presiding Judge

Noah P. Hood
Judge

EXCLUSIVE CAPITAL PARTNERS LLC V CITY OF ROYAL OAK; QUALITY ROOTS INC V CITY OF ROYAL OAK

Docket No. 366247; 366257

LC No. 2022-193015-CZ; 2022-192383-CZ

The motion for reconsideration is DENIED.

Presiding Judge

Jansen, J., not participating.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 27, 2025
Date

Chief Clerk

CHARTER

CHAPTER ONE
Name and Boundaries

CHAPTER TWO
General Powers

CHAPTER THREE
Form of Government

CHAPTER FOUR
Registration, Nomination, Election, and Recall

CHAPTER FIVE
Ordinances

CHAPTER SIX
Initiative and Referendum

CHAPTER SEVEN
Franchises

CHAPTER EIGHT
General Finances

CHAPTER NINE
Bonds

CHAPTER TEN
Assessment of Taxes

CHAPTER ELEVEN
Special Assessments

CHAPTER TWELVE
Streets and Sidewalks, Sewers, Drains, and Water Supply

CHAPTER THIRTEEN
Condemnation and Appropriation of Property

CHAPTER FOURTEEN
Miscellaneous

CHAPTER FIFTEEN
Civil Service

CHAPTER SIXTEEN
City of Royal Oak Retirement System

[HISTORY: Passed by vote of electors of Royal Oak on 11-8-1921. Amendments noted where applicable.[1]]

Preamble

We, the people of the "City of Royal Oak," heretofore the "Village of Royal Oak," under the authority and by virtue of the Constitution and the General Laws of the State of Michigan, do ordain and establish this Charter for the "City of Royal Oak," Michigan, in the following form as hereinafter expressed.

[1] **Editor's Note: The entire Charter was amended 11-3-2015 to restate it in gender-neutral terms.**

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CHAPTER ONE
Name and Boundaries

NAME

Section 1. The municipal corporation heretofore created shall now and hereafter be known and designated under the name of the "City of Royal Oak."

BOUNDARIES

Section 2. The City of Royal Oak shall include all the territory described as follows, to-wit: The west half of the southwest quarter of Section Fifteen (W. 1/2 of the S.W. 1/4 Sec. 15); the southeast quarter of Section Sixteen (S.E. 1/4 of Sec. 16); all that part of the west half (W. 1/2) of Section 21 lying easterly of the center of Woodward Avenue, formerly called the Detroit and Birmingham Plank Road; the east half of Section Twenty-one (E. 1/2 of Sec. 21), and the west half of the west half of Section Twenty-two (W. 1/2 of the W. 1/2 of Sec. 22), all being in the Township of Royal Oak, County of Oakland, State of Michigan.

Section 3. The City of Royal Oak shall constitute one ward.

Section 4. Territory may be detached from said City or added thereto, or consolidation may be made with one or more other cities or villages by complying with the provisions of the general laws of the State in regard to annexing territory to or detaching territory from cities and consolidation of cities and villages; provided, however, before any proposition for the annexation of any territory to the City is submitted to the electors thereof the territory to be annexed shall have been provided with proper and adequate sewage and drainage facilities, the streets of said territory shall have been properly graded and improved and sufficient and adequate water pipes shall have been constructed in said territory, said pipes to be in conformity with the specifications and standards of the Detroit Water Board. It shall be the duty of the City Commission to determine whether said improvements have been installed and are suitable and adequate to take care of the needs of said territory, prior to submitting such annexation to the electorate. **[Amended and adopted 11-7-1939]**

CHAPTER TWO
General Powers

Section 1. The said City, as such, shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, bequest, devise, condemnation, appropriation, or lease with privilege to purchase, for any municipal purpose, including ways, public parking grounds, parks, recreational grounds, which shall be deemed to include the use of such grounds for amusements and all athletic sports and educational activities; may sell, lease, hold, manage, and control such property, and may make any and all rules and regulations by ordinance or resolution which may be deemed proper or which may be required to properly regulate and control all property used for public or any of the aforesaid purposes; or to carry out fully the provisions of any conveyance, deed, or will, in relation to any gift, devise, or bequest or the provision of any lease by which is acquired property or according to the judgment of any court, in the condemnation of property for any purpose; may acquire, construct, own, lease, operate, and regulate public utilities; may acquire, own, and operate gravel pits, sand pits, and asphalt plants for the manufacturing of paving materials; may regulate and control food, food supplies, and

food products; maintain, operate, license, own, and control public fuel supplies and markets of every kind; may regulate and control the storing, handling, disposing, and sale of explosives of every character; the construction of cellars and basements so far as the same in any manner affects the public health; may take all needful and necessary steps for the care and relief of the poor and indigent, delinquent, and juvenile offenders, those mentally or physically deficient, and the removal and remedying of the causes thereof; may adopt a City plan; may provide a plan of streets and alleys for a distance of three miles beyond the City limits and require that all streets and alleys in said district dedicated to the public, shall conform therewith; may provide for the restriction or exclusion of business from certain districts of the City; may establish the building line of houses with relation to streets; the width and depth of lots; the amount of air space around houses; may enact a building and housing code and may require building permits for all buildings or structures erected in the City; may regulate the planting and setting of trees, shrubs, flowers, or plants and the care thereof; may exercise jurisdiction over all diseased or noxious trees, shrubs, and plants; may provide for taking a census of the City; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the City may lawfully tax; may borrow money on the faith and credit of the City by the issue and sale of bonds or notes of the City; may appropriate the money of the City for any and all lawful purposes; may create, provide for, construct, regulate, and maintain all things in the nature of public works and improvements; may levy and collect assessments for local improvements; may define, prohibit, abate, suppress, regulate, or prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the City, and all nuisances and causes thereof; may regulate the construction, height, and the material used in all buildings and the maintenance and occupancy thereof; may regulate, license, or prohibit the construction, location, size, height, and the materials used in all billboards and the maintenance and use of the same; may provide for the regulation and control of all weights and measures and the use thereof; may regulate, license, control, and prohibit the sale or peddling of goods, wares, merchandise, or any kind of property by persons going about from place to place in the City for that purpose; may regulate, license, and control cab drivers, draypersons, teamsters, taxicabs, jitneys, and other forms of conveyance; may regulate, license, and control hotels, rooming houses, boarding houses, restaurants, candy and soft drinks manufacturers and distributors, either wholesale or retail, and other business and occupations; may regulate the location of and license telegraph, telephone, and electric light poles within the City; may construct, maintain, and regulate fountains and public drinking places, including watering troughs; may license dogs and other animals; may regulate and control the use, for whatever purpose, of the streets, alleys, and other public places; may create, establish, combine, organize, and abolish officers and departments, provided, that said City shall not abolish the office of City Manager; provide for the election and appointment of and fix the salaries and compensation of all officers and employees, except as herein otherwise provided; may make and enforce local police and sanitary regulations; may provide for the issuance of bonds of said City for the purpose of providing the first cost of installation and connection of sewers and water works on and to property when such installation and connections shall have been ordered by the proper health authorities, and to provide for a lien on such property for the money so used; may license and impose a license fee on street cars, telephone, gas meters, electric meters, water meters, or any other device for measuring service, also telephone, telegraph, electric light, and power poles and wires; all said license fees shall be exclusive of and in addition to other lawful taxes upon such property or the holder thereof; may provide for the approval of all plats of lands, subject to such terms and conditions as may be deemed best; may do any and all things needful, necessary, or proper to furnish, supply, control, and regulate water supply, sewage, sewage disposal, sanitation, and sanitary control within or without the boundaries of

RECEIVED by MSC 12/10/2025 3:03:01 PM

said City, upon such terms and conditions as the Commission shall decide; may regulate and control the disposition and handling of garbage, ashes, dead animals, and other articles or things detrimental to public health or good sanitation; and may pass such ordinances and adopt such resolutions as may be deemed expedient or necessary to maintain and promote the peace, good government, and welfare of the City and for the performance of the functions thereof; may build and equip or acquire by purchase, gift, bequest, devise, or agreement, city hospitals, and provide for the management, operation, and maintenance of the same; may exercise all powers which now or hereafter it would be competent for this Charter to enumerate as fully and completely as though said powers were specifically enumerated herein; and no enumeration of particular powers by this Charter shall be held as exclusive or in any wise a limitation on said City to legislate on other subjects; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner as shall be provided by ordinance, resolution, or the general laws of the State.

Section 2. The City shall have power to provide for and change the location and grade of all street crossings of any railroad track; and to compel any railroad company or street railway company to raise or lower their railroad tracks to conform to street grades which may be established by the City from time to time; and to construct street crossings in such manner and to keep them in repair, and should the railroad company or street railway company fail to repair such crossing within a reasonable time, the City Commission shall have authority under this section, to make such repairs and charge the expense thereof against the railroad company or street railway company, and enforce collection thereof in any court of competent jurisdiction by suit; also to require and compel railroad companies and street railway companies to keep flagpersons or watchpersons at railroad crossings; to regulate and prescribe the speed of all locomotives and railroad trains and street railway cars within the City; and regulate the obstructing of crossings by trains, engines, cars, or otherwise.

Section 3.

(a) The said corporation of the City of Royal Oak shall succeed to, own, possess, and control all the books, records, documents, and all the property, real, personal, or mixed, and all the rights, privileges, franchises, powers, and immunities now belonging to and possessed and enjoyed by the municipal corporation heretofore known as the "Village of Royal Oak" at the time of its incorporation as a City shall be incorporated under this Charter and shall continue in full force and effect until repealed or amended by the legislative body of the City or in such manner as may be provided for in this Charter.

(b) Shall be subject to and liable for all the legal debts, liabilities, judgments, bonds, notes, and other legal obligations for which the "Village of Royal Oak" was liable at the time of its incorporation as a city.

Section 4. All by-laws, resolutions, and ordinances, in force in the "Village of Royal Oak" when the same was incorporated as a city and in accordance herewith, shall continue in full force and effect until repealed or amended by the City Commission, or in such manner as may be provided for in this Charter.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CHAPTER THREE
Form of Government

Section 1. The form of government provided for in this Charter shall be known as the Commission-Manager form. There is hereby created a Commission, consisting of a Mayor and six Commissioners, who shall be qualified electors of said City, and who shall be elected in the manner hereinafter specified, shall have full power and authority, except as herein otherwise provided, to exercise all the powers conferred upon the City.

Section 2. The Commission shall constitute the legislative and governing body of said City, possessing all the powers herein provided for, with power and authority to pass such ordinances and adopt such resolutions as they shall deem proper in order to exercise any or all of these powers possessed by said City.

Section 3. The members of the Commission shall be elected on a non-partisan ballot by the City at large and shall be subject to recall as hereinafter provided. Any person to be eligible for the office of Mayor or Commissioner shall have been a resident of the territory included in the City of Royal Oak at least one year immediately preceding election and shall be a registered voter. **[Amended and adopted 9-12-1950; 11-7-1967; 8-2-2016; 7-24-2017; 8-7-2018]**

Section 4. The Mayor of the City shall be elected for the term of two years. In the Biennial City Election of 1947 the six candidates receiving the highest number of votes for the Commission shall be elected as Commissioners, the three highest to serve for a term of four years, the other three for a term of two years; thereafter, the three candidates for Commissioner receiving the highest number of votes shall be elected to serve a term of four years. The Commission shall be the judge of the election and qualification of its own members. The term of all elective officers shall commence at 12:00 noon on the third Monday in November following their election except as hereinafter provided for the first election under this Charter. **[Amended and adopted 7-24-2017]**

Notwithstanding any other Charter provision:

The term of City Commissioners elected in 2013 shall start at 12:00 noon on the first Monday in December following their election but shall end on the third Monday in November after their election in 2017 at 7:30 pm.

The term of City Commissioners elected in 2015 shall start at 12:00 noon on the first Monday in December following their election but shall end on the third Monday in November after their election in 2019 at 7:30 pm.

The term of the Mayor elected in 2015 shall start at 12:00 noon on the first Monday in December following his or her election but shall end on the third Monday in November after his or her election in 2017 at 7:30 pm.

Starting in 2017, the term of elected officials shall commence at 7:30 pm on the third Monday in November following their election. **[Amended and adopted 11-4-1947; 11-8-2011]**

Section 5. The first meeting of the Commission shall be held at 7:30 p.m., on the third Monday of November following their election, provided however that the first meeting of the first

RECEIVED by MSC 12/10/2025 3:03:01 PM

Commission elected under this Charter shall be held on the second Monday of December following their election at 7:30 p.m., and thereafter the Commission shall meet at least twice every month, and they may meet such other number of times as the Commission shall by ordinance or resolution provide. The Mayor or any two members of the Commission may call special meetings of the Commission, upon at least 18 hours' written notice to each member, served personally or left at his or her usual place of residence; provided, however, any special meeting at which all members of the Commission are present shall be a legal meeting for all purposes, without such written notice. All meetings of the Commission shall be public and any citizen may have access to the minutes and records thereof at all reasonable times. The Commission shall determine its own rules and order of business and shall keep a journal of its proceedings in English. **[Amended 8-5-2008; 7-24-2017]**

Section 6. A majority of all members elected to the Commission shall constitute a quorum, but a less number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The Commission shall act only by ordinance or resolution.

Section 7. In times of public danger or emergency, the Mayor may take command of the police and of such other departments and subordinates as may be deemed necessary by him or her to maintain order and enforce laws. The Commission shall also, at the first regular meeting, select a member of the Commission Mayor pro tem, who, during the absence or the disability of the Mayor, shall perform his or her duties and shall act in the name and stead of the Mayor, and shall during the time of such absence or disability, exercise all the duties and possess all the powers of the Mayor.

Section 8. Except for the purpose of inquiry, the Commission and each of its members shall deal with the Administrative branch of the Government solely through the Manager, except in the Department of Law, and neither the Commission nor any member thereof shall give any order or direction either publicly or privately, to any of the subordinates of the Manager. **[Amended and adopted 11-8-2005]**

Section 9. A vacancy on the City Commission shall be filled by appointment by a majority of the remaining members of the Commission and a vacancy in any other elective office shall be filled by appointment by the Commission. Such appointee shall hold office until the next biennial municipal election, at which election a successor shall be elected for the unexpired term of the person in whose office the vacancy occurs, beginning the following third Monday in November. **[Amended and adopted 11-4-1947; 7-24-2017]**

Section 10. Absence from five consecutive regular meetings shall operate to vacate the seat of a member, unless the absence is excused by the Commission, by resolution setting forth such excuse and entered upon the journal.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 11. The administrative functions and powers of the City shall be divided into six departments as follows: Law, Finance, Public Works, and Service, Public Welfare, Public Safety, and Public Health, subject to modifications as hereinafter provided.

Section 12. There shall be a director of every department who shall have the supervision and control thereof and who, with the exception of the Director of Law, shall be appointed by and be immediately responsible to the City Manager for the administration of the department. The Director of Law shall be responsible to the Commission for the discharge of their duties. Excepting the Department of Law and Public Health, the Manager shall be the Director of each and every department of the City, until otherwise provided for by the Commission. **[Amended and adopted 11-8-2005]**

Section 13. The director of every department, except that of Law, shall be subject to the supervision and control of the Manager in all things, except as otherwise herein specifically provided. **[Amended and adopted 11-8-2005]**

Section 14. The Commission shall, by ordinance, determine and prescribe the functions and duties of each department, subject to the expressed provisions contained herein, and may by a vote of five of its members create new departments, combine existing departments, and establish temporary departments for special work.

Section 15. The Commission shall appoint a City Manager, City Clerk, City Treasurer, City Assessor, City Health Officer, and Director of Law, each of whom shall be appointed for an indefinite period and be subject to removal by the Commission.

Section 16. The Manager shall be the chief administrative officer of the City. He or she shall be chosen by the Commission solely on the basis of his or her executive and administrative qualifications, and shall, during his or her term of office, reside in the City of Royal Oak; provided, however, he or she shall be a citizen of the United States of America and shall have attained the age of 25 years.

Section 17. The Manager shall be responsible to the Commission for the proper administration of the affairs of the City and to that end shall make all appointments, including the heads of departments, except as herein otherwise specifically provided.

Section 18. He or she shall be required to be present at all meetings of the Commission and be entitled to be present at all meetings of its committees and to take part in all discussions, but shall have no vote.

Section 19. The City Commission may enter into a written agreement with the City Manager, who serves at the pleasure of the City Commission as head of the City's administrative branch. The City Manager's contract may be for up to two years, one year's severance pay and six month's severance benefits. **[Amended and adopted 4-4-1949; 11-3-2015]**

Section 20. The Commission may appoint an Assistant Manager, who shall, when directed by the Commission, perform the duties of Manager in case of his or her sickness, absence from the City, disability, suspension, removal, or resignation.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 21. The City Clerk shall be Clerk of the Commission and shall, with the Mayor, sign and attest all ordinances; and the journal or record of the Commission's proceedings shall be prepared, kept, and signed by the City Clerk and approved in writing by the Mayor. In addition, the City Clerk shall perform such other duties as are prescribed by this Charter, the General Laws of the State, or by the Commission.

Section 22. The Director of the Department of Law must be an attorney-at-law and may be termed "City Attorney." He or she shall be the legal adviser, City Attorney, and counsel for the City and for all the officers and departments thereof in all matters relating to their official duties, and shall perform such other duties as may be imposed upon him or her from time to time by the Commission, either by ordinance or resolution, provided, however, that the City Commission may at any time employ such other counsel as it may deem necessary for the good of the City.

Section 23. The Commission, City Manager, the director of any department, or any officer or board, not included in any department, may require the opinion of the City Attorney upon any question of law, involving their respective powers and duties.

Section 24. The Director of Finance shall have direct supervision over the administration of the financial affairs of the City insofar as they relate to the keeping of accounts and financial records and the disbursing of City funds. He or she shall be the disbursing agent of the City, and shall perform such other duties as the Commission may by ordinance or resolution prescribe. The City Treasurer shall have supervision over the collection of taxes, special assessments, or other revenue, and of the proper recording of such receipts. The Treasurer shall make daily report to the Director of Finance of the financial transactions of the day, including the amount of cash received, and such other information as may be necessary for a proper financial record of the City's business, and shall perform such other duties as may be prescribed by the City Commission. **[Amended and adopted 11-4-30; 11-8-2005]**

Section 25. The Director of Public Works and Service shall, except as otherwise provided in this Charter, or by the Commission, manage and have charge of the construction, improvement, repairs, maintenance of streets, sidewalks, alleys, lands, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, and water courses; of municipal water supply, and all works, lands, water, lands under water, dams, pumping station, ways, mains, pipes, and all other works connected therewith, of all public buildings, public places, and grounds; of the establishment, development, and maintenance of parks and playgrounds, but not the management and supervision of such parks; of all sewage and garbage disposal and reduction plants and all other public utilities owned or operated by the City. He or she shall have charge of the enforcement of all the obligations of privately owned or privately operated public utilities enforceable by the City; of making and preservation of surveys, maps, plans, drawings, and estimates for public work; of the cleaning, sprinkling, and lighting of the streets and public places.

Section 26. The Director of Public Welfare shall have the supervision and management of all charitable, correctional, and reformatory institutions and agencies belonging to the City; the supervision of the use of recreational facilities of the City, including parks and playgrounds; the inspection and supervision of public entertainments; the study and research into the causes of poverty, delinquency, crime, and the relief and prevention thereof; and other welfare and social

problems in the community, and such other duties as the Commission may by ordinance or resolution prescribe.

Section 27. The Director of Public Safety shall have supervision of and enforce all the laws and ordinances relating to buildings, weights, and measures, City pounds, the preservation of the public peace and order, and all other laws and ordinances, the enforcement of which is not specifically provided for in this Charter. He or she shall have the control and management of the Police and Fire Departments, which Departments shall consist of a Chief of each and such other officers, patrol officers, firefighters, and other employees or members as the Manager may determine, except that the City shall employ not less than 1.17 full-time professional fire fighters per 1,000 of population, as indicated by the most recent United States census. **[Amended and adopted 11-2-2004]**

Section 28. The Director of Public Safety and the Chief of the Fire Department shall be vested with all the powers of State Fire Wardens.

Section 29. The Director of Public Safety and all members of the Police Department shall have the same powers as sheriffs and constables in the serving of civil and criminal process, in the making of arrests, both within and without the City, but within the state. They shall have the power to arrest, without process, all persons, who in the presence of the officer, shall be engaged in the violation of any law, and to detain such person until complaint shall be made as speedily as possible after such arrest.

Section 30. The Chief of the Fire Department or person in charge of the department at any fire, may cause any building to be razed or destroyed, when deemed necessary, in order to arrest the progress of a fire, and no action shall be maintained against any person or against the City therefor.

Section 31. The Director of Public Safety shall have such other powers and perform such other duties as the Commission may by resolution or ordinance prescribe.

Section 32. The Director of Public Health shall be a person of recognized qualifications in public health administration, and shall have and exercise for the City all the powers and authority conferred upon boards of health and health officers by the general laws of the State and by this Charter. It shall be his or her duty to enforce all laws and ordinances pertaining to public health, and such other duties as the Commission may by resolution or ordinance prescribe.

Section 33. The Director of Finance shall designate a purchasing agent, by whom all purchases for the City shall be made and all vouchers for the payment of the same approved. He or she shall also conduct all sales of personal property which the City Commission may authorize to be sold. **[Amended and adopted 11-6-2007]**

Section 34. No purchase shall be made excepting on requisition, by the head of a department, countersigned by the City Manager, and when the office of the Director of Finance is created by the Commission, then such requisition shall also be approved by the Director of Finance. No purchase shall be made in excess of appropriations. The City Commission shall set a purchasing limitation by resolution, adopted at the same time the annual city budget is approved. No

RECEIVED by MSC 12/10/2025 3:03:01 PM

purchase shall be made in excess of the purchasing limitation without the approval of the City Commission. **[Amended and adopted 11-8-1955; 11-6-2007]**

Section 35.[2] The Manager, with the approval of the City Commission, shall fix the salary or compensation of the heads of all the departments, except the Departments of Law and the City Clerk, and shall also fix the salary or compensation of the employees of all the departments, including the employees of the Departments of Law and the Office of the City Clerk; provided that this shall not be deemed to include officers or employees required in the conduct of elections, either primary, general, or special. The Commission shall fix the salary of the Manager, the Directors of the Departments of Law, Associate Counsel, and the City Clerk. **[Amended and adopted 11-5-1957; 11-8-2005]**

Section 36. All appointive officers of the City shall perform such duties as shall be prescribed by ordinance, this Charter, and the General Laws, which may be required by the Commission and the heads of departments.

Section 37. Relatives by blood or marriage of any Commissioner or the Manager, within the first degree of consanguinity or affinity, are hereby disqualified from holding any appointive office during the term for which the said Commissioner was elected, or during the tenure of office of said Manager.

Section 38. The compensation of all officers and employees of the City, including all election officials, shall be fixed by the Commission, except as otherwise specifically provided herein.

Section 39. Every officer shall, before he or she enters upon the duties of his or her office, subscribe and file with the Clerk an oath to support the Constitution of the United States and the Constitution of the State of Michigan, and faithfully perform the duties of the office to the best of his or her ability.

Section 40. The Commission may require any officer or employee to give a bond for the faithful performance of his or her duty, in such amount as it may determine, and the premium thereof shall be paid by the City.

Section 41. Any officer or employee, required by the provisions of this Charter, and General Laws of the State, by any ordinance of the City of Royal Oak, or by the Commission, to give bond, shall not enter upon the duties of his or her office or employment until such bond shall be duly filed, approved, and recorded.

Section 42. All such bonds, except as herein otherwise provided, shall be approved by the Commission and filed with the Clerk, excepting the bond of the Clerk, which shall be filed with the Treasurer.

Section 43. No elective officer shall hold any office or employment, except that to which he or she was elected, compensation for which is to be paid out of City funds, nor be elected or appointed to any office created or the compensation of which was increased or fixed by the

[2] **Editor's Note: Former Sections 35 and 36, which provided for appointment of representatives to the Board of Supervisors of Oakland County and for said representatives rights and responsibilities, were repealed and Sections 37 through 48 were renumbered as Sections 35 through 46, respectively 11-3-2015.**

RECEIVED by MSC 12/10/2025 3:03:01 PM

Commission while he or she was a member thereof, until the expiration of one year from the date when he or she ceased to be a member of the Commission.

Section 44. All bonds required under the provision of this Charter shall be surety company bonds.

Section 45. Each Commissioner hereafter elected shall receive the sum of $20 for each regular or special meeting of the Commission attended by him or her, but not to exceed the sum of $1,200 per annum. The Mayor shall receive the sum of $40 for each regular or special meeting of the Commission attended by him or her, but not to exceed the sum of $2,000 per annum. **[Amended and adopted 11-8-1955]**

Section 46. The Public Library of the City of Royal Oak shall be administered by a Library Board of not less than five members, whose duties shall be fixed by ordinance and whose members shall be appointed for fixed terms by the City Commission. Such Board shall appoint the Librarian and subordinate employees of the library and fix their compensation. Such Board may also make purchases for the library without the requisition specified in Section 34 of this chapter; provided, however, the total amount expended by said Board in any one year for compensation of employees, purchases, and other expenses shall not exceed the appropriation allowed for library purposes in the annual budget; and provided further, that no purchase or lease in excess of $10,000 shall be made without the approval of the Commission. The spending limit is tied to the rate of inflation. **[Amended and adopted 11-6-1928; 11-3-2015]**

CHAPTER FOUR
Registration, Nomination, Election, and Recall[3]

REGISTRATION

Section 1. The provisions of the Michigan Election Law, except as herein otherwise provided, shall apply to and control the registration of electors and the conduct of elections in the City of Royal Oak. **[Amended and adopted 11-5-1957]**

Section 2. Nomination. Prospective candidates for any elective office shall be nominated from the City at large by petition. Nominating petition forms shall be provided by the City Clerk. Petitions for each prospective candidate shall be signed by not less than 500 qualified and registered electors of the City of Royal Oak and shall be filed with the City Clerk on or before 4:00 p.m. of the twelfth Tuesday, preceding the election in question, or the date and time required by the Michigan Election Law, MCL 168.644e, as amended, or any substantially similar state law. A filing fee as set by the City Commission shall be paid to the City Treasurer on behalf of each candidate not later than the date and time required for prospective candidates to file their petitions. Each elector signing any such petition shall indicate his or her address and the date of signature. No elector shall sign petitions for more candidates for any office than the number of persons to be elected to such office. All such petitions shall conform to constitutional and state law requirements as to substance, form, and means of collection.. **[Amended and adopted 11-6-1990; 3-29-2001; 11-8-2005; 11-8-2011]**

Section 3. The City Clerk shall forthwith examine such petitions and if satisfied that the required number of qualified and registered electors have signed the same, he or she shall

[3] Editor's Note: See also Ch. 58, Elections.

RECEIVED by MSC 12/10/2025 3:03:01 PM

endorse thereon the word "APPROVED" with the date of filing the same; but should he or she find that the said petition does not contain the required number of names of qualified and registered electors as herein provided, he or she shall immediately return such petition to the person offering the same for filing, with the statement of the additional number of names of qualified and registered electors required. **[Amended and adopted 9-12-1950]**

Section 4. When any such petition shall be found to contain the required number of names of qualified and registered electors, the City Clerk shall forthwith notify the person therein placed in nomination. Such person shall thereupon and in not less than 27 days preceding such election file with the City Clerk his or her acceptance of such nomination and an affidavit as to his or her qualification, which may be in the following form: **[Amended and adopted 9-12-1950; 8-2-2016]**

STATE OF MICHIGAN

COUNTY OF OAKLAND--(ss):

I, _____, hereby accept the nomination for the office _____ in said City, and being duly sworn say that I reside at _____ street, City of Royal Oak, County of Oakland, State of Michigan; that I am a qualified and registered voter therein and otherwise qualified for said office; (the following applies to Mayor and Commissioners) that I will have been a resident of the territory included in the City of Royal Oak at least one year prior to the date of such election.

Signed _____

Subscribed and sworn to before me, this _____ day of _____, Year _____.

_____
Notary Public in and for Oakland County

Section 5. Whenever it shall be necessary at any municipal election to elect an officer to fill a vacancy such fact shall be stated in the petition filed in support of the same and the Board shall distinguish thereon candidates for unexpired term from candidates for the regular full term.

Section 6. The City Clerk shall prepare and keep on hand blank forms of the nominating petitions above prescribed for the use of voters and candidates in said City.

Section 7. All such nominating petitions shall be open to public inspection after being filed in the office of the City Clerk during regular office hours.

Section 8. Upon the expiration of the time for filing the petitions of candidates and at least eight days prior to the date of any municipal election, the City Clerk shall cause a notice of such election to be published in a newspaper in the City, designated by the City Commission. Said notice shall specify the time when, and the place where, such election is to be held and the offices for which candidates are to be elected. Said City Clerk shall, at the same time and in like manner, publish a notice containing the names of the persons for whom petitions have been

RECEIVED by MSC 12/10/2025 3:03:01 PM

filed as candidates for the several offices, which notice shall be included in the notice of the election. **[Amended and adopted 11-5-1957]**

Section 9. Voting machines may be used for the casting, registering, recording, and counting of votes at any general municipal election or special municipal election, and the construction, operation, maintenance, custody, and use of said machines shall be in accordance with the general laws of the State relating to voting machines, so far as applicable. The City Clerk shall cause a sufficient number of absent voters' ballots to be printed and filed in his or her office for use at such elections in accordance with the general election laws of the State, so far as applicable. **[Amended and adopted 11-7-1939]**

Section 10. The ballot labels for use on voting machines and absent voters' ballots for use at such general or special municipal elections shall be in the same general form as provided by law for general elections insofar as applicable, but such election ballot label or ballot shall be made or printed without any party mark, emblem, vignette, or designation whatever, and the general laws of the state relating to ballot labels and ballots, their printing, arrangement on machines, and numbering, shall govern insofar as applicable. The names of candidates for the several offices shall be transposed and alternated in accordance with the provisions of the general election laws, insofar as applicable. **[Amended and adopted 11-5-1957]**

Section 11. The City Commission shall provide polling places for the several precincts and shall provide and cause to be kept by the Clerk for use at all elections one or more voting machines for each polling place. **[Amended and adopted 11-7-1939]**

Section 12. The inhabitants of the City, having the qualifications of electors under the Constitution and General Laws of the State, and no others, shall be electors therein, and every elector shall vote in the election district where he or she shall have resided during the 30 days next preceding the day of election, unless such 30th day shall fall on a Saturday, Sunday, or legal holiday, in which event registration transfer shall be accepted during the next full working day. The residence of any elector, not being a householder, shall be deemed to be in the election district in which is located his or her regular place of lodging. **[Amended and adopted 11-5-1957]**

ELECTIONS

Section 13. A biennial election of officers shall be held within said City on the first Tuesday after the first Monday of November.

Section 14. Special elections may be called by resolution of the City Commission and held at such times and places as it shall determine, the purpose and object of such election shall be fully set forth in the notice of such election; provided, however, that not more than two special elections may be called in one year, provided, however, that the first biennial election held after the adoption of this Charter shall be held on the first Tuesday after the first Monday in November, 1923, and biennial thereafter and all officers elected at the time of adoption of this Charter shall hold office until their successors are elected and qualified; provided, further, that the first election shall be held in said City on the eighth day of November, A.D. 1921.

Section 15. The Board of City Election Commissioners shall consist of the City Clerk, City Attorney and City Assessor. It shall be the duty of the City Election Commission before each election to appoint for each election precinct, at least three inspectors and as many additional

RECEIVED by MSC 12/10/2025 3:03:01 PM

inspectors as in its opinion is required for the efficient, speedy and proper conduct of such election and shall designate one such inspector as Chairperson. Inspectors shall not be members of the City Commission nor candidates for any elective office within the City. The City Election Commission shall conform to MCL 168.25 as amended. **[Amended and adopted 11-5-1957; 8-4-1998]**

Section 16. Any matter, which by the terms of this Charter, shall be submitted to the electors of the City at any special election, may be submitted at any regular election.

Section 17. The official ballot language shall be substantially as follows: **[Amended and adopted 11-4-1947; 8-4-1998]**

FOR MAYOR
(Vote for One)
(Names of Candidates)

FOR CITY COMMISSIONER
(Vote for Six) (In the 1947 Election)
(Vote for Three) (After 1947)
(Names of Candidates)

TO FILL A VACANCY IN OFFICE OF

_____
FOR UNEXPIRED TERM

(To be used only when necessary).
(Names of Candidates)

The official ballot for absentee voters and for use in case of emergency when for any reason voting machines cannot be used, shall be similar in form as above and shall also bear the following heading:

CANDIDATES FOR CITY OFFICES FOR THE CITY OF
ROYAL OAK AT THE REGULAR MUNICIPAL ELECTION
(Place a cross, "X", or checkmark in the square opposite
the names of the persons for whom you desire to
vote for the respective offices.)

Section 18. The City Clerk shall prepare and deliver all voting equipment to polling places prior to the opening of the polls and, at the close of the polls, the election inspectors shall deliver election returns to the City Clerk, in compliance with the provisions of the Michigan Election Law relating to the use of voting equipment at elections. Challengers may be designated in the manner provided in the Michigan Election Law. **[Amended and adopted 11-5-1957; 8-4-1998]**

Section 19. The City Board of Canvassers shall convene within seven days after any election having municipal offices, questions, or propositions on the ballot, for the purpose of canvassing

RECEIVED by MSC 12/10/2025 3:03:01 PM

ballots and certifying results under the seal of the City, for entry into the minutes of the City Commission, and which shall be kept on file with the City Clerk. The City Commission may appoint the Oakland County Board of Canvassers to act as the City Board of Canvassers and to assume all rights and responsibilities provided for in the City Charter. **[Amended and adopted 8-4-1998; 11-6-2007]**

Section 20. The person receiving the greatest number of votes for any office in the City shall be deemed to have been duly elected to such office; and if there be no choice for any office, by reason of two or more candidates having received an equal number of votes, the City Board of Canvassers shall, at the meeting mentioned in Section 19, determine by lot between such persons, which shall be considered elected to such office. **[Amended and adopted 8-4-1998]**

Section 21. All elective officers of the City elected under the provisions of this Charter at the regular biennial municipal election, shall enter upon the duties of their office on the third Monday of November following their election, provided, however, that all elective officers elected at the first election to be held upon the adoption of this Charter shall enter upon the duties of their office on the 12th day of December 1921. **[Amended and adopted 7-24-2017]**

Section 22. A recount of the votes cast at any City election for any office or upon any proposition may be had in accordance with the provisions of the Michigan Election Law. Any petition for a recount of the votes cast at any City election shall be filed with the City Clerk by 5:00 p.m. on the second full day on which the Clerk's office is open for business after the official canvass of the vote. Such petition shall be accompanied by a deposit as set by the City Commission, which shall be returned to the petitioner if on a recount the candidate shall have been found to have been lawfully elected or the proposition to have carried, otherwise such deposit shall be paid into the general fund of the City. Upon the receipt of such a petition for a recount, the City Clerk, City Attorney, and City Assessor, on the same day or as soon thereafter as may be, shall open the counter compartments of the voting machines used in said election, and, without unlocking the machine against voting, re-canvass the votes cast thereon. The City Clerk, City Attorney, and City Assessor shall then report the results of said re-canvass to the City Commission, which shall enter the results of said re-canvass in the journal of its proceedings and shall determine what person or persons are elected, and what proposition or propositions have been carried. **[Amended and adopted 11-5-1957; 11-8-2005]**

Section 23. Any person who shall agree to perform any service, in the interest of any candidate for any office provided for in this Charter, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall upon conviction, be punished by a fine not exceeding $300, or by imprisonment in the county jail not exceeding 30 days, or both in the discretion of the court.

Section 24. It shall be unlawful for any candidate at any municipal election or any person in his or her behalf, directly or indirectly, to employ either with money, promises of money or other valuable considerations, office, place of employment, or any person to do any campaign work, electioneering, or soliciting votes for such candidate, and it shall be unlawful for any person to agree to perform any such service in behalf of any such candidate for any consideration, profit, or benefit whatsoever. Any violation of this section shall be a misdemeanor, and shall be punished as provided in the preceding section.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 25. It shall be unlawful for any candidate for any municipal office, or any one in his or her behalf, directly or indirectly, to employ or hire any conveyance for the purpose of conveying voters to the polls at any municipal election. Any violation of this section shall be a misdemeanor, and shall be punished as provided in Section 22 of this Chapter.

Section 26. At all elections, the polls shall be opened at 7:00 a.m. (Eastern standard time) in the forenoon and shall remain open until the hour of 8:00 p.m. (Eastern standard time) in the afternoon.

Section 27. The election precincts of the City shall be altered or rearranged by the City Commission in accordance with the provisions of the Michigan Election Law. **[Amended and adopted 11-5-1957]**

Section 28. In addition to other provisions herein contained, a vacancy shall exist in any elective office when an elected officer fails to qualify within 10 days after receiving his or her certificate of election, dies, resigns, is removed from office, removes from the City, or is convicted of a felony.

Section 29. Recall. Recall of any elective officer shall comply with Michigan Public Act 116 of 1954,[4] as amended. **[Amended and adopted 9-12-1950; 8-7-2018[5]]**

CHAPTER FIVE
Municipal Court
[Amended and adopted 8-7-1956; repealed at 11-8-2005 election and remaining chapters renumberd]

CHAPTER FIVE
Ordinances

Section 1. The enacting clause of all ordinances shall read, "The City of Royal Oak Ordains," but such caption may be omitted when said ordinances are published in book form or are revised and digested by authority of the Commission.

Section 2. The adoption of any ordinance by the Commission shall require for its passage the concurrence of a majority of all the members of the Commission.

Section 3. The time when any ordinance shall take effect shall be prescribed therein, which time shall not be less than 10 days from the date of its passage, except emergency ordinances, which may be given immediate effect. No ordinance shall be finally passed on the day it is introduced, except in case of public emergency. An emergency ordinance shall be defined to be one necessary for the immediate preservation of the public peace, property, health, safety, or providing for the usual daily operation of a department which contains a statement of its urgency.

---

[4] **Editor's Note: See MCLA § 168.1 et seq.**

[5] **Editor's Note: This resolution also repealed former Section 30, amended and adopted 9-15-1950, and former Sections 31 through 39, all of which set forth procedures for recall of elective officers.**

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 4. Immediately upon the final passage of any ordinance, the Mayor and Clerk shall sign the same under a certificate of the day and date of its passage.

Section 5.

(a) Except as otherwise provided in this section, all ordinances shall be published once within one week of their passage, in summary form in a newspaper printed or circulated within the City and in full on the Internet. The Clerk shall certify on the record of ordinances, the date of publication in the newspaper and on the Internet in which any ordinance was so published. Such certificate shall be prima facie evidence that legal publication of an ordinance has been made. **[Amended and adopted 11-3-2009]**

(b) The Commission may direct a codification of the general ordinances of the City in loose-leaf or pamphlet form and cause such codification to be maintained thereafter in current form. Any such codification may originally include provisions not previously contained in ordinances of the City. The Commission shall provide for making printed copies of the original codification available for public inspection and for distribution to the public at a reasonable charge and shall publish notice of the printing and availability of such original codification at least 10 days before the effective date thereof. Such printing and making available of the codification and notice thereof shall constitute publication of any such original codification. **[Amended and adopted 11-3-1953]**

Section 6. All ordinances shall be recorded in an index book marked "Ordinance Record;" and record of each ordinance shall be authenticated by the signature of the Mayor and Clerk. Such record and authentication shall be done within one week after the final passage of any ordinance, but failure to so record and authenticate any ordinance shall not invalidate it or suspend its operation.

Section 7. No repealed ordinance shall be revived unless the whole or so much as is intended to be revived shall be re-enacted. When any section or part of a section of any ordinance is amended, the whole section shall be re-enacted.

Section 8. Prosecutions for violation of any ordinance of the City shall be commenced within two years after the commission of the offense; provided that the limitations herein imposed shall only apply to violations penal in their nature, and shall not be construed as a limitation of the City's right to forfeit any franchise, grant, or license for violation of the terms and conditions thereof, after said two-year period.

Section 9. Prosecutions for violations of the ordinances of the City may be commenced by warrant, and all process in such cases shall be in the name of "The People of the State of Michigan." The practice in such cases shall be the same, as near as may be, as in the criminal cases cognizant by Justices of the Peace under the General Laws of the State or as may be provided for cases cognizable by the Municipal Court hereafter created. **[Amended and adopted 9-12-1950]**

Section 10. All process issued in any prosecution or proceeding for the violation of any ordinance, shall be directed to any police officer of the City, or County of Oakland, and may be

executed in any part of the State by said officer or any other officer authorized by law to serve process issued by a Justice of the Peace.

Section 11. In all judicial proceedings it shall be sufficient to plead any ordinance by title and the number of section or sections, and it shall not be necessary to plead the entire ordinance or section.

Section 12. Judicial notice shall be taken of the enactment, existence, provisions, and continuing force of all ordinances of the Village of Royal Oak adopted under the provisions of this Charter.

Section 13. Whenever it shall be necessary to prove any ordinance or resolution of the Commission, in any judicial proceedings, the same may be proved from the record thereof kept by the Clerk, by a copy thereof, duly certified by the Clerk under the seal of the City, or from any volume purporting to have been published, printed, or compiled by authority of the Commission.

Section 14. Ordinance Violation: Penalties. The Commission has the authority to provide for the punishment of those who violate its ordinances. Punishment for the violation of any ordinance shall not exceed a fine of $500 and/or imprisonment for 90 days or such fine and/or term as allowed for by the State of Michigan, in the discretion of the court. **[Amended and adopted 11-2-1999]**

Section 15. All ordinances, regulations, and resolutions in force at the time this Charter shall take effect and not inconsistent with the provisions thereof, shall remain and be in force until amended, modified, or repealed.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

CHAPTER SIX
Initiative and Referendum

Section 1. Any proposed ordinance may be submitted by petition, signed by qualified electors of the City, equal in number to the percentage hereinafter required. The procedure in respect to such petition shall be the same as provided in Sections 2, 3, 4, and 5 of Chapter Five except that petitions may be circulated for signature instead of being signed at the office of the City Clerk, with such modifications as the nature of the case requires, except that no blank form shall be furnished or preliminary affidavit made.

Section 2. If the petition accompanying the proposed ordinance be signed by qualified electors equal in number to at least 15% of the electors voting at the last preceding general municipal election, and contains a request that said proposed ordinance be submitted to a vote of the people, the Clerk shall thereupon ascertain and certify its number of qualified signers, whereupon if such certificate shows the required number of qualified signers, the Commission shall within 20 days thereafter either,

(a) Pass said ordinance without alteration (subject to the referendum provided by the Charter), or

(b) Call a special election, to be held within 30 days, unless a general or special municipal election is to be held within 90 days thereafter, and at such general or special municipal election said proposed ordinance shall be submitted without alternation to the vote of the qualified electors of said City.

Section 3. If the petition be signed by qualified electors equal in number to at least 5% but less than 15% of all the electors voting at the last preceding general municipal election, as shown in the manner hereinafter provided, and said proposed ordinance be not passed without alteration by the Commission within 20 days, as provided in the preceding section, then such proposed ordinance, without alteration, shall be submitted by the Commission to electoral vote at the next general municipal election that shall occur at any time after 30 days from the date of the Clerk's certificate of sufficiency attached to the petition accompanying such ordinance.

Section 4. No ordinance, except an emergency ordinance, shall take effect before 10 days after its final passage. If, within said 10 days, 100 electors of the City shall file a notice in writing with the Clerk, of their intention to circulate a petition for submitting said ordinance to the electors for their adoption or rejection as herein provided, then said ordinance shall not become effective until 30 days after its final passage by the Commission; provided that if petitions containing the requisite number of signatures required are not filed in accordance with such written notice within said 30 days, then said ordinance shall become effective after the expiration of said thirty-day period. If within said 30 days, a petition signed by qualified electors of the City equal in number to at least 10% of all of the electors voting at the last preceding general municipal election, be presented to the Commission, protesting against such ordinance taking effect, the same thereupon and thereby be suspended from taking effect, the Commission shall immediately reconsider such ordinance, and if the same be not entirely repealed, the Commission shall submit it, by the method provided in this Charter, to a vote of the qualified electors of the City, either at the next general municipal election or at a special election, which may in their discretion be called by them for that purpose, and such ordinance shall not take effect unless a majority of the qualified electors voting on the same at such

election, shall vote in favor thereof; provided, however, that the foregoing provisions shall not apply:

(a) To ordinances required by the General Laws of the State or by the provisions of this Charter.

(b) To emergency ordinances; provided no grant or franchise shall be construed to be an emergency ordinance.

Section 5. The procedure in respect to such referendum petition shall be the same as provided in Section 2, 3, 4, and 5, of Chapter Five of this Charter, with such modifications as the nature of the case may require, except that no blank forms shall be furnished or preliminary affidavit made, except as heretofore provided.

Section 6. The Commission may, of its own motion, submit to electoral vote for adoption or rejection at a general or special municipal election, any proposed ordinance or measure, or a proposition for the repeal or amendment of any ordinance, in the same manner and with the same force and effect as provided in this Charter for submission on petition. If the provisions of two or more proposed ordinances, or measures adopted or approved at the same election are inconsistent, then the ordinance or measure receiving the highest affirmative vote shall prevail.

Section 7. Whenever any proposed ordinance is required by the Charter to be submitted to the electors at any election, the Commission shall cause it to be published in a newspaper published and circulating in the City, once in each week for two successive weeks immediately preceding such election.

Section 8. The ballots used when voting upon such ordinance shall state the nature of the ordinance in terms sufficiently to identify it, and on separate lines, the words, "For the Ordinance," and "Against the Ordinance." If the majority of the qualified electors voting on said proposed ordinance shall vote "For the Ordinance," the same shall thereupon become an ordinance of the City and shall take effect as provided in this Charter.

Section 9. Provisions shall be made on separate ballots for voting upon all proposed ordinances.

Section 10. Any ordinance adopted under this Charter, by electoral vote, cannot be repealed or amended, except by electoral vote.

Section 11. The Commission may, by ordinance, make such regulations, not in conflict herewith, as it may deem necessary to carry out the provisions of this chapter.

Section 12. No franchise, grant, or license shall be submitted under the provisions of this Charter, to the electors at a special election, unless the expense of holding the election, as determined by the Commission, shall be paid to the Treasurer in advance of calling such election by the grantee in said franchise, grant, or license.

Section 13. The Zoning Ordinance of the City of Royal Oak, as now in effect, shall not be repealed without submitting the question of said repeal to a vote of the electors, as provided in Section 6 of this chapter, but the Zoning Ordinance may be amended at any time, in accordance

RECEIVED by MSC 12/10/2025 3:03:01 PM

with the provisions of the State Law governing such amendments. **[Amended and adopted 11-4-1947]**

CHAPTER SEVEN
Franchises

Section 1. No franchise or grant shall be granted by the City for a longer period than 30 years. No license shall be granted by the Commission for a longer term than one year.

Section 2. Every permit granted by ordinance shall be accepted in writing by the grantee before said ordinance takes effect, and every franchise or modification of a franchise, before it is submitted to the electors, shall be so accepted. Such acceptance shall be filed with the Clerk. Any non-compliance with this section shall automatically annul such permit or franchise.

Section 3. No franchise or grant which is not revocable at the will of the Commission, shall be granted or become operative until the same shall have been referred to the people at a general or special election and has received the approval of a majority of the electors voting thereon at such election.

Section 4. No person, firm, or corporation shall ever be granted any exclusive franchise, license, right, or privilege whatsoever.

Section 5. No franchise, granted by the City, shall ever be leased, assigned, or otherwise alienated except in accordance with the express provisions of said franchise, and all franchises granted by the City shall provide how, and in what manner, and under what conditions, said franchise may be leased, assigned, or alienated, and no dealing with the lessee or assignee on the part of the City, which shall recognize the performance of any act or payment of any compensation by the lessee or assignee, shall be deemed to have operated as such consent.

Section 6. No change or modification of any franchise or grant or rights or powers previously granted to any corporation, firm, person, or association of persons shall be made, except in the manner and subject to all conditions herein provided for, in the making of original grants and franchises.

Section 7. The grant of every franchise or privilege shall be subject to the right of the City, whether in terms reserved or not, to make all regulations which shall be necessary to secure the safety in the most ample manner, welfare, and accommodation of the public, including among other things, the right to pass and enforce ordinances to require proper and adequate extensions of the service of such grant, and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of the franchise and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient, and proper service, extensions, and accommodations for the people and insure their comfort and convenience.

Section 8. The City, by and through its Commission, shall have the power to require any corporation holding a franchise from the City, to allow the use of its tracks, poles, and wires by any other corporation to which the City shall grant a franchise, subject to reasonable rental therefor. Any franchise or right which may hereafter be granted, to any person or corporation to operate a street railway within the City or its suburbs, shall be subject to the condition that the

RECEIVED by MSC 12/10/2025 3:03:01 PM

City shall have the right to grant to any other person or corporation desiring to build or operate a street railway or interurban railway, within or into the City, the right to operate its cars over the tracks of said street railway insofar as it may be necessary to enter and leave the City and to reach any section thereof used for business purposes provided, however, that the person or corporation desiring to operate its cars over the lines of said street railway, shall first agree in writing with the owner thereof as to terms and conditions and to pay it reasonable compensation for the use of its tracks and facilities. And if the person or corporation desiring to use the same cannot agree with said owner of said street railway as to said compensation, terms, and conditions within 60 days from offering the same in writing, then the Commission shall, by resolution, after hearing the parties concerned, fix the terms and conditions of such use and compensation to be paid therefor, which award of the Commission, when so made, shall be binding upon and observed by the parties concerned.

Section 9. The Manager and Director of Public Works and Service shall maintain general supervision over all public utility companies insofar as they are subject to municipal control. The Manager shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law and may revoke, cancel, or annul all franchises that may have been granted by the City, which have become in whole or in part or which for any reason are illegal or void and not binding upon the City.

Section 10. The enumeration and specification of particular matters in this Charter which must be included in every franchise or grant, shall never be construed as impairing the right of the Commission to insert in such franchise or grant any other and further matters, conditions, covenants, terms, restrictions, limitations, burdens, taxes, assessments, rates, fares, rentals, charges, control, forfeitures, or any other provisions whatever as it shall deem proper to protect the interests of the people.

Section 11. The Commission may grant a permit at any time, in or upon any street, alley, or public place, provided such a permit shall be revocable by the Commission at its pleasure at any time, whether such right to revoke be expressly reserved in said permit or not: Provided, that when such a permit is granted for water mains, sewers, or drains, it may be irrevocable unless the grantee be a private person, firm, or corporation. **[Amended and adopted 8-3-1954]**

Section 12. No franchise, lease, or right to use the street or public places or property of the City shall be granted by the City without fair compensation to the City therefor. Where the franchise, lease, or grant fixes the rate of fare or the rate to be charged for the service rendered or commodity furnished by the grantee, such rate of fare or price of service or commodity furnished shall be subject to review and change at the end of every ten-year period during the life of said franchise in such manner and form as in said franchise shall be provided. No such compensation by any such grantee shall ever be in lieu of any lawful taxation upon its property, or of any license or charges which are not levied on account of such use.

Section 13. All contracts, grants, rights, privileges, or franchises for the use of streets and alleys of this City not herein mentioned shall be governed by all the provisions of this Charter, and all amendments, extensions, or enlargements of any contract, right, privilege, or franchise previously granted by this City to any persons, firm, or corporation, for the use of the streets and alleys of such City, shall be subject to all the conditions herein provided for the making of original grants and franchises.

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 14. All contracts, granting or giving any original franchise, right, or privilege, or extending or renewing or amending any existing grant, right, privilege, or franchise, shall be made by ordinance and not otherwise.

Section 15. The Commission shall by ordinance provide for efficient inspection and regulation of all public utilities operated in the City and to that and[6] shall provide for the inspection of the quality and pressure of the gas furnished to consumers, the candle power, voltage, and insulation of electric wires, heat, and power furnished the City and its inhabitants, and the inspection and installation of meters for registering the consumption of any commodity sold by any grantee operating under any franchise, grant, or license from the City of Royal Oak or the State of Michigan. It being the intention of this section to provide means for securing to the City efficient service from all public utilities operated in the City and the proper observance by such operators of the conditions imposed by their respective franchises, ordinance, and the laws of the State.

Section 16. The City may purchase or condemn the franchises and property used in the operation, by companies or individuals, engaged in hospital, electric light, gas, heat, power business, and may purchase the franchises and property of street railway and tram railway companies. The City may make a contract, upon such terms, including terms of present or deferred payment or by the issuance of bonds in payment therefor, as herein provided, and upon such conditions and in such manner as the municipality may deem proper, to purchase, operate, and maintain any existing public utility property for supplying heat, light, power, or transportation to the City and the inhabitants thereof.

Section 17. No such contract shall bind the municipality unless the proposition therefor shall receive the affirmative vote of three-fifths of the electors voting thereon at a regular or special election. In the event of the purchase of a transportation utility, the Commission shall within a reasonable time establish a system of civil service for selection and retention of the employees.

CHAPTER EIGHT
General Finances

Section 1. The fiscal year of the City of Royal Oak shall commence on the first day of July in each year. **[Amended and adopted 11-3-1992]**

Section 2. Accounts shall be kept by the Director of Finance showing the financial transactions of the City. The Director of Finance shall prescribe forms, subject to the approval of the Commission, for keeping such accounts and such forms shall be adequate to record all cash receipts as reported by the Treasurer; all cash disbursements, all revenue accrued and liabilities incurred, and all transactions affecting the acquisition, custody, and disposition of all property belonging to the City, and make such reports of the financial transactions and conditions of the City as may be required by law, ordinance, or resolution. Adequate cost records shall be kept in all departments of the City; also a complete financial record of all property of the City and the cost and value thereof. **[Amended and adopted 11-4-1930]**

Section 3. Payments by the City shall be made only upon vouchers certified by the head of the appropriate department or division of the City government by means of draft, check, order, or

[6] Editor's Note: So in original.

RECEIVED by MSC 12/10/2025 3:03:01 PM

warrant, duly approved by the Commission and signed by the Director of Finance, and countersigned by the Treasurer. The Director of Finance shall be responsible for the disbursing of City funds, and shall examine all payrolls, bills, and other claims and demands against the City, except claims for unliquidated damages, and shall issue no warrant unless he or she finds that the claim is in proper form, correctly computed, and duly certified; that it is justly and legally due and payable and that payment has been authorized by the Commission; that an appropriation has been made therefor which has not been exhausted, or that the payment has been otherwise legally authorized; and that there is money in the City Treasury to make payment. He or she may investigate any claim, and for such purposes, may examine witnesses under oath. If he or she finds such bill, claim, or demand is fraudulent, erroneous, or otherwise invalid, he or she shall report such finding to the Commission and shall not issue a warrant therefor. **[Amended and adopted 4-4-1949]**

Section 4. All taxes, special assessments, and license fees, accruing to the City, shall be collected by the City Treasurer. All money received by any officer or employees of the City for or in connection with the business of the City shall be paid promptly in to the City Treasurer, and shall be deposited with such responsible banking institutions within the City designated by the Commission, furnishing such security as the Commission may desire and paying the highest rate of interest, and all such interest shall accrue to the benefit of the City. The Commission shall provide by ordinance for the prompt and regular payment and deposit of all City moneys as required by this section. The Sinking Fund shall be kept separate from other City funds. All fees received by any officer or employee shall belong to the City. **[Amended and adopted 4-4-1930]**

Section 5. The revenues raised by general taxation upon all the property in the City, or by loan to be repaid by such tax, shall be divided into such and so many funds as the Commission may by ordinance or resolution determine.

Section 6. Not later than 30 days before the end of each fiscal year the Manager shall prepare and submit to the Commission an annual budget for the ensuing fiscal year, based upon detailed estimates furnished by the several departments and other divisions of the City government, according to a classification as nearly uniform as possible. The budget shall present the following information:

(a) An itemized statement of the appropriation recommended by the Manager for current expenses and for permanent improvements for each department and each division thereof, for the ensuing fiscal year, with comparative statement, in parallel columns, of the appropriation and expenditures for the current and next preceding fiscal year and the increases and decreases in the appropriation recommended;

(b) An itemized statement of the taxes required and of the estimated revenue of the City, from all other sources, for the ensuing fiscal year, with comparative statements in parallel columns of the taxes and revenues for the current and next preceding fiscal year, and of the increases and decreases estimated or proposed;

(c) A statement of the financial condition of the City and an inventory of all property owned by the City; and

RECEIVED by MSC 12/10/2025 3:03:01 PM

(d) Such other information as may be required by the Commission.

Section 7. The Commission shall, by resolution, levy such taxes each year as may be necessary to meet the appropriations made (less the estimate of the amount of revenue from other sources) and all sums required by law to be raised on account of City debt, together with such addition, not exceeding 10% of the amount of the budget, as may be necessary to meet commissions, fees, and abatements in amount of taxes collected from the estimate, subject in each case to the laws of the State of Michigan.

Section 8. The Commission shall have authority within the limits herein prescribed to raise annually by taxation such sums of money as may be necessary to defray the expenses and pay the liabilities of the City and to carry into effect the powers in this Charter granted.

Section 9. All sums ordered in the annual appropriation bill in any year, to be raised for the several general funds, shall forthwith be certified by the Clerk to the Assessor and shall be levied and collected upon the assessed valuation of all taxable property within the City.

Section 10. All taxes, charges, and penalties, other than special assessments, ordered to be spread on each annual tax roll, shall become a lien upon the property assessed on and after the first day of July in each year.

Section 11.

(a) The total amount of general ad valorem taxes imposed upon real and tangible personal property in the City in any one year, for the purpose of defraying the general expenses and liabilities of the City, exclusive of levies necessary for payment of principal and interest on any bonded indebtedness of the City, shall not exceed 11 mills on each dollar of the assessed valuation of such property, except as otherwise permitted by law or by this Charter.

(b) In addition to the amount set forth in Subsection (a) above, the City may, for the sole purpose of defraying the general expenses and liabilities of the City for refuse collection, disposal and for a curbside recycling program, raise by a general tax upon the assessed value of all real estate and personal property in the City, a millage for a period not to exceed five years up to 1.00 mill, said tax to be assessed and spread beginning on the first day of July, 2012, pursuant to the provisions of Chapter Eleven of this Charter. **[Amended and adopted 8-2-2016]**

(c) In addition to the amount set forth in Subsections (a) and (b) above, the City may, for the sole purpose of defraying the general expenses and liabilities of the City for police, fire and emergency medical services, raise by a general tax upon the assessed value of all real estate and personal property in the City, a millage for a period of not to exceed five years up to 3.975 mills, said tax to be assessed and spread beginning on the first day of December, 2012, pursuant to the provisions of Chapter Eleven of this Charter.

(d) In addition to the amount set forth in Subsections (a), (b) and (c) above, the City may, for the sole purpose of defraying the general expenses and liabilities of the City for maintaining, repairing and reconstructing roads and right-of-ways, raise by a general tax upon the assessed value of all real estate and personal property in the City, a millage up to 2.5 mills for a period of not to exceed 10 years, said tax to be assessed and spread beginning on the first day of December, 2014, pursuant to the provisions of Chapter Eleven of this Charter. **[Amended and adopted 4-1-1957; 7-22-1975; 8-7-1990; 8-4-1992; 8-6-1996; 11-6-2001; 8-8-2006; 11-8-2011; 11-6-2012; 11-4-2014]**

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 12. In addition to the above amounts, the Commission may raise, by special assessment, in a special assessment district, such sums as they deem necessary, for the purpose of grading, curbing, paving, graveling, and otherwise improving the streets and alleys, and for constructing sidewalks, sewers, and drains, and making other improvements chargeable upon the land and property in the district, according to frontage or benefits, and for all other purposes for which special assessment funds are constituted.

Section 13. Money may be borrowed in anticipation of the receipts from taxes during any fiscal year, by the issue of notes or certificates of indebtedness, but the aggregate amount of such loans at any time outstanding shall not exceed 25% of the receipts from taxes during the preceding fiscal year; and all such loans shall be paid out of the receipts from taxes for the fiscal year in which they are issued, except in cases of special assessment.

Section 14. No public work or improvement shall be commenced or expenditure made, nor any contract therefor be let or made (excepting as herein otherwise provided) until an appropriation has been made therefor or a special assessment shall have been levied to pay the cost and expenses thereof. No such work or improvement shall be paid for, or contracted to be paid for, except from the proceeds of such appropriation or special assessment or from the proceeds of bonds or other obligations issued in anticipation of the collection of such appropriation or special assessment.

CHAPTER NINE
Bonds

Section 1. The City and the Commission thereof may borrow money and issue bonds therefor on the faith and credit of said City, provided that at no time shall the bonded indebtedness of the City exceed 5% of the assessed valuation of all real and personal property in the City. School bonds, bonds issued to cover cost of improvements to be paid by special assessment, and bonds issued to cover the cost of purchasing or installing or improving or extending public utilities which are a lien or mortgage on the utility and are payable from the income of such utility and which are not a general obligation of the City, shall not be included in the aforesaid limitation. **[Amended and adopted 4-1-1957]**

Section 1-A. The City, and the Commission thereof, may borrow money and issue bonds therefor to pay the cost and expense of enlarging, extending, or improving the water works system of said City, either within or without said City, and to pay the cost of contracting for means or sources of water supply, which said bonds may be secured by mortgage upon the water works system including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall not extend for a longer period than 20 years from the date of foreclosure. **[Amended and adopted 12-8-1926]**

Section 1-B. The said mortgage bonds shall not be issued or sold unless the amount of the proposed loan and the terms of the proposed security franchise shall have been approved by a three-fifths majority of the electors voting thereon at a general or special election.

Section 1-C. That a sinking fund shall be created by the City Commission by setting aside such percentage of the gross earnings of the water works system and its revenues as may be sufficient for the payment of the mortgage bonds at maturity and the interest thereon.

Section 1-D. Said bonds shall bear interest at a rate of not more than 5 1/2% per annum.

Section 2. Bonds may be issued for the following purposes: sewers, drains, sewage disposal and treatment works and, for enlarging, improving, or extending same; water works, water mains, water filtration, or purifying plants and works, for increasing the water supply and the distribution and protection thereof; fire stations, fire fighting equipment, fire alarm apparatus, police stations, police equipment, police telegraph and alarm equipment; for the purchase or installation of public utilities, gas and electric generating plants and distributing systems, heating plants, wireless telephone and telegraph stations, street railway or transportation systems or the extension or improving thereof; parks, playgrounds, recreation grounds and building and the improvements thereof; civic and community houses and centers; libraries, hospitals, dispensaries and clinics of all kinds; work houses and farms; almshouses, juvenile homes; grade separations; bridges; viaducts, street improvements, by grading, paving, curbing, or otherwise; markets and market houses; fuel markets and yards; garbage disposal works; garbage collection equipment; street cleaning apparatus; aviation fields or landings; hangers; municipal or public buildings of all kinds; for paying the City's share of street improvements and sewers when said improvements are paid in part by special assessment; for any municipal improvement necessary to advance the peace, health, safety, and welfare of the City or its inhabitants. The cost of procuring sites and furnishings shall be deemed to be a part of all the aforesaid. The aforesaid enumeration of powers shall not be a limitation of the right and power of the City to issue bonds for other purposes; provided, however, that no bonds shall be issued to defray operative and administrative costs and expenses of the City.

Section 3. Whenever the Commission shall desire to issue bonds, they shall pass an ordinance, stating the amount of bonds to be issued and the purpose thereof, how and when the same shall be due and payable and the rate of interest thereon, which ordinance shall not finally be passed on the day it is introduced, except in case of public emergency. Such ordinance shall be published once before its final passage by the Commission in a daily or weekly newspaper published and circulating in the City and thereafter shall be published once in each week for three successive weeks immediately preceding the election hereafter provided. The time when such ordinance shall take effect shall be prescribed therein, and it shall be submitted to the electoral vote of said City for adoption or rejection at a general or special municipal election to be held therein, and the Commission is hereby empowered to call a special municipal election, to be held in accordance with the provisions of this Charter and the General Laws of this State, for the submission to the qualified electors the question of issuing bonds for the aforesaid purposes, and all persons owning property which is assessed for City taxes and who have resided in the City three months next preceding said election and who have in addition thereto the qualifications of electors under the Constitution and General Laws of this State shall be eligible to register and vote at such special or general municipal election on said bonding questions. If three-fifths of the votes cast upon the question shall be in favor of the adoption of such ordinance and the issuance of such bonds, then such ordinance shall be considered as adopted and such bonds may be issued. **[Amended and adopted 11-3-1931]**

Section 4. The Commission shall have authority to raise money by loan, in anticipation of the receipts from special assessments, for the purpose of defraying the costs of the improvement for

RECEIVED by MSC 12/10/2025 3:03:01 PM

which the assessment was levied. Bonds or notes may be issued for such loans which shall not exceed the amount of the assessment for the completion of the whole work, nor shall such loan be made until after the special assessment roll shall have been confirmed. The Commission shall pledge the faith and credit of the City for the payment of such loan.

Section 5. In case of fire, floods, and other calamity, the Commission may borrow, for the relief of the inhabitants of the City and for the preservation of municipal property, a sum not exceeding one-quarter of one per centum of the assessed value of all real and personal property in the City, due in not more than three years. For any such loan lawfully made, the bonds of City may be issued payable in equal annual installments.

Section 6. All details as to the terms and forms of bonds and the issue thereof shall be determined by the City Commission.

Section 7. The City Commission shall make provision for a sinking fund with which to pay at maturity all bonds issued by the City, except serial bonds which fall due annually.

CHAPTER TEN
Assessment of Taxes[7]

Section 1. For the purpose of making the assessment of the property in the City, the Commission shall appoint, subject to removal, one Assessor and shall provide for his or her compensation.

The Assessor shall possess all the powers vested in, and be charged with all the duties imposed upon assessing officers by the General Laws of the State, except as otherwise provided in this Charter. **[Amended and adopted 11-2-1954]**

Section 2. All property subject to ad valorem taxation shall be assessed at its fair cash value, subject to review as provided by this Charter, the State law, or City ordinance.

Section 3. The Board of Review shall consist of three qualified electors, who shall be freeholders of the City, to be appointed by the Commission, and who shall not be connected in any other way with the City Administration. The City Assessor shall attend the meetings of the Board of Review and the City Clerk shall act as Secretary of said Board. The Board of Review shall have and exercise all the powers and duties at present or which in the future may be possessed by Boards of Review under the General Laws of the State, except as herein otherwise provided. The Board of Review shall review and equalize the assessment roll of the City. A majority of such Board shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day. They shall have the power and it shall be their duty to examine said assessment roll, and they shall have authority to, and shall correct any errors or deficiencies found therein, either as to the names, valuations, or descriptions; and of their own motion, or on cause shown, may reduce or increase the valuation of any property found on the said roll, and shall add thereto any taxable property in said City that may have been omitted, and shall value the same and shall strike from said roll any property wrongfully thereon, and generally shall perfect said roll in any respect by said Board deemed necessary and proper. **[Amended and adopted 11-2-1954]**

[7] Editor's Note: See also Ch. 17, Assessment Review.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 4. The Board of Review shall meet on Tuesday following the first Monday in March in the City Hall at 9:00 in the forenoon, and shall elect one of their number as Chairman. The Assessor shall submit to said Board the assessment roll for the current year, and during that day and such following days as the Board continues in session the Board shall review such roll, and make any additions or corrections thereto, as provided by law in reviewing and correcting assessments made by supervisors of townships, not inconsistent herewith and except as in this Charter otherwise provided. Said Board of Review shall also meet in the City Hall on the second Monday in March at 9:00 in the forenoon, of which time and place notice shall be given by the City Clerk at least two weeks prior to the time of said meeting by publishing notice thereof in a newspaper having circulation in the City of Royal Oak, and shall be in session for as many days thereafter, and for at least six hours each day, prior to the first Monday in April, as may be necessary to complete the review. It shall hold at least two evening sessions of not less than two hours each for such review; any person, or persons desiring so to do may examine his, her, or their, assessment on such roll and may show cause, if any exists, why the valuation thereof should be changed; and said Board of Review shall decide the same and their decision shall be final. They shall examine on oath, any person touching the matter of his or her assessment, and the Chairperson or any member of said Board may administer such oath. The Board shall keep a record of its proceedings, and all changes made on said roll, and the amount added to or deducted from the total valuation shall be entered upon such record. The decision of the majority of the members of said Board upon all questions shall govern. The roll as prepared by the City Assessor shall stand as approved and adopted, as the act of the Board of Review, except as changed as herein provided. After the said Board of Review shall have completed the revision of said roll, the Clerk shall endorse and sign a statement upon the roll to the effect that the same is the general assessment roll of the City for the year it has been prepared, as approved by the Board of Review. Such statement may be in the following form: **[Amended and adopted 11-2-1954]**

> I hereby certify that the Board of Review of the City of Royal Oak have reviewed, equalized, and corrected the within assessment roll, and have deducted (or added, as the case may be) _____ dollars from (or to, as the case may be) the valuation of the real estate; and have deducted, (or added, as the case may be) _____ dollars from (or to, as the case may be) the valuation of the personal property, as made by the City Assessor, and have determined the total valuation of the real estate to be _____ dollars, and total valuation of the personal property to be _____ dollars; and the total of both real and personal property to be _____ dollars, for the year A.D. _____.
>
> Dated:
>
> _____
> City Clerk

Section 5. On or before the first day of July of each year, or as soon thereafter as possible, the City Assessor shall deliver a certified copy of his or her assessment roll on which the City tax has been apportioned and spread, with his or her warrant annexed thereto, to the City Treasurer. Said roll shall be filed in said Treasurer's office as the City Tax Roll. **[Amended and adopted 11-2-1954]**

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 6. The taxes so assessed on the General City Tax Roll together with the school taxes of the School District of the City of Royal Oak shall be due and payable on the first day of July in the year assessed and may be paid during said month of July without penalty or interest: Provided, however, if the assessment roll has not been received by the City Treasurer before the first day of July, then such taxes may be paid without penalty or interest any time within 30 days from the filing of the assessment roll. Thereafter, such taxes, while unpaid, shall be deemed delinquent and shall bear interest at the rate of one-half of one percent per month, or fraction thereof, until return of such taxes to the County Treasurer. Provided, however, that when any person liable for the City and School taxes shall pay one-half thereof on or before the 31st day of July, or the 30th day after the filing of the assessment roll, of the year in which such tax is assessed, he or she shall have the right to do so, and shall have the further right to pay the remainder of such taxes on or before the 31st day of October of said year without payment of any further addition, penalty, or interest; further provided, when the last day specified for payment of taxes without interest or penalty; or when the last day of any month, falls on Sunday or a legal holiday or a day when the Treasurer's Office is officially closed, then such payment may be made without penalty or interest, or without additional interest, as the case may be, on the first day thereafter that the City Treasurer's Office is open for payment of taxes. The City Treasurer shall give to each taxpayer so paying his or her tax an appropriate receipt, showing the amount of his or her tax that is paid and shall make entry of such payment on the proper tax roll. In case the person paying the first one-half of his or her tax on or before the last day such payment may be made without interest or penalty shall fail to pay the remaining one-half tax thereof on or before the 31st day of October of the year in which said tax is assessed, or in case the 31st day of October falls on a Sunday or legal holiday or other day on which the City Hall is officially closed, on the first day thereafter that the Treasurer's Office is open for the receipt of taxes, said remaining one-half tax shall be subject to the interest and penalties provided for in this chapter. **[Amended and adopted 11-2-1954]**

Section 7. The City Treasurer shall give notice by publishing in an[8] newspaper published and circulating in said City for one week preceding July 1, which notice shall be sufficient demand for the payment of all taxes on said rolls that payment therein specified may be made to the Treasurer at any time during the month of July without penalty or interest; that if one-half of said taxes are not paid during said month of July and the remaining one-half during the month of October, said taxes or the unpaid balance thereof, shall be deemed delinquent as provided in Section 6 of this chapter, and shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, until the first of March following: Provided, however, that the failure to give the notice specified in this section for the payment of such taxes shall not invalidate the said taxes nor relieve the persons or property assessed from the penalty herein specified; Further, provided, if the certified assessment roll has not been received by the Treasurer by July 1, or if for other reason the Treasurer is unable to receive payment of taxes on that date, the Treasurer shall give notice of the first date the Treasurer's Office will be open for the payment of taxes and the interest above specified shall not begin until 30 days from such date. **[Amended and adopted 11-2-1954]**

Section 8. The taxes so assessed and the school taxes shall become at once a debt to the City from the persons to whom they are assessed, and the amounts assessed on any real property or interest therein shall, on the first day of July in the year assessed become a lien on such real property and the lien for such amounts and for all interest charges and penalties thereon shall continue until payment thereof. All personal taxes shall also be a lien on all personal property

[8] Editor's Note: So in original.

of the persons assessed for the same from and after the first day of July in the year assessed and shall take precedence over any sale, assignment, or chattel mortgage, levy, or other lien on said personal property executed or made after said first day of July, except for such property as actually sold in the regular course of trade at wholesale or retail. **[Amended and adopted 6-16-1930]**

Section 9. The City Assessor shall keep the original assessment roll in his or her office until time for presentation thereof to the Board of Supervisors of Oakland County for equalization and shall then present it to said Board, which roll, after equalization by said Board, shall be the assessment roll of the City for all assessment purposes whatsoever except the levying of taxes to be collected in the month of July, as herein provided. **[Amended and adopted 11-2-1954]**

Section 10. On the first day of November, the City Assessor shall apportion and spread upon the tax rolls all State and County taxes, certified to him or her by the Board of Supervisors, or otherwise, and such other taxes as are legally required to be spread on the rolls. **[Amended and adopted 6-16-1930]**

Section 11. Within 30 days after the first day of November, the City Assessor shall deliver a certified copy of the assessment roll to the City Treasurer to be filed in his or her office, to which roll shall be annexed a warrant signed by the City Assessor and directed to the Treasurer, and be in all other respects as near as may be as warrants of township treasurers for the collection of state, county, and township taxes.

Section 12. Upon receiving said tax roll as herein provided, the Treasurer shall give notice to the taxpayers of the City that such rolls have been delivered to him or her, and that the taxes therein levied can be paid to him or her at his or her office at any time from the 10th day of December to and including the 10th day of January next ensuing without any charge for collection, but that four-percent collection fee will be charged and collected upon all taxes remaining unpaid after the 10th day of January. Said notice shall be given by publishing the same six successive times in a newspaper published in said City. But any defect in said notice, or any omission to comply with the provisions of this section shall not invalidate said tax roll or any measure, thereafter to be taken, to enforce collection of the taxes thereon.

Section 13. For the collection of all taxes remaining unpaid on the general tax roll after the 31st day of July and the 10th day of January of each year, except as to such taxpayers as pay one-half of the City and School taxes in July and the remaining one-half in October, and as to such persons paying the first one-half in July but failing to pay the second one-half in October, after the 31st day of October on the unpaid second one-half of such taxes the Treasurer shall proceed in the same manner as township treasurers are required by law to do for the collection of taxes in townships and shall for that purpose have all the power and authority conferred by law upon township treasurers for such purposes, and it is hereby made mandatory upon the Treasurer to exhaust all legal remedies for the collection of unpaid personal taxes before the return thereof. **[Amended and adopted 4-30-1934]**

Section 14. The Treasurer shall, within 10 days after the expiration of the time limited in his or her warrant, or in case of extension of time for collecting such taxes within 10 days after such has expired, pay over to the Treasurer of the Board of Education the amount which by law is payable to him or her, and on the first day of March or within 10 days thereafter shall pay to the County Treasurer the balance which by law is payable to him or her and shall make his or her

RECEIVED by MSC 12/10/2025 3:03:01 PM

returns to the County Treasurer of Oakland County, Michigan, as hereinafter specified: On the 15th day of August, 1938, or within 10 days thereafter, all unpaid delinquent 1936 City and School taxes with the accrued fees and interest thereon; on the 15th day of September 1938, or within 10 days thereafter, all unpaid delinquent 1937 City and School taxes with the accrued fees and interest thereon; on the first day of March 1939, or within 10 days thereafter, all unpaid City and School taxes with the accrued interest thereon, shall be returned with the County and other taxes. Annually thereafter all such taxes shall be returned in the same manner. After their return, City and School taxes shall be collected and handled as other taxes and shall be governed in all things by the provisions of the general tax laws of the State, except as otherwise provided in this Charter. **[Amended and adopted 7-8-1938]**

Section 15. Any person owning an undivided share or other part or parcel of real property, assessed in one description, may pay on the part thus owned by paying an amount having the same relation to the whole tax as the part on which payment is made, has to the whole parcel. The person making such payment shall accurately describe the part or share on which he or she makes payment and the receipt given and the record of the receiving officers shall show such description and by whom paid; and in case of the sale of the remaining part, or share, for non-payment of taxes, he or she may purchase the same in like manner as any disinterested person could. These provisions shall include all taxes that may be assessed against real property, including special assessments.

Section 16. The fees and penalties for the collection of all taxes provided for by this Charter, or the General Laws of the State, shall belong to the City and shall be paid by said Treasurer into the City Treasury.

CHAPTER ELEVEN
Special Assessments

Section 1. The Commission shall have power to provide for the payment of all or any part of the cost of construction, re-construction, repair, operation, or maintenance of any structure or work in the nature of public improvement, by levying and collecting special assessments upon property specially benefitted. Any special assessment levied pursuant to the provisions of this chapter may be made payable in yearly installments for a period not exceeding 20 years. **[Amended 2-16-1959]**

Section 1A. The Commission shall have the power to levy and collect special assessments upon property specially benefitted by existing public improvements originally financed by revenue bonds, for the purpose of providing for the retirement of any such outstanding revenue bonds in whole or in part. Any such special assessment may include the amount of any premium to be paid upon the calling of the bonds to be retired. **[Adopted 2-16-1959]**

Section 2. The Commission in order to ascertain whether or not a reasonable number of property owners to be assessed, desire a public improvement to be made under the provisions of this Chapter, may request that a petition therefore[9] be presented to it, or the property owners to be assessed, may of their own volition file such a petition, but in either of such cases the petition so filed shall be considered as advisory only and shall not be jurisdictional. **[Amended 11-7-1950]**

[9] Editor's Note: So in original.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 3. When the Commission shall determine to make any public improvement, or repairs, alterations or additions to any public improvement, and defray the whole or any part of the cost and expenses thereof by special assessment, they shall so declare by resolution stating the nature of the improvement and what portion of the cost and expenses thereof shall be paid by special assessment, and what portion, if any, shall be borne by the City, and shall designate the district or lands and premises upon which the special assessments shall be levied. **[Amended 9-12-1950]**

Section 4. Before ordering any public improvements or repairs, any part of the expenses of which is to be defrayed by special assessment, the Commission shall cause estimates of the expenses thereof, to be made, and also plats and diagrams, when practicable, of the work and of the locality to be improved, and deposit the same with the Clerk for public examination; and they shall give notice thereof and of the proposed improvements, and of the district to be assessed, and of the time and place when the Commission will meet and consider any objections thereto, by publication once at least five days prior to such meeting in a newspaper published and circulating in the City.

Section 5. When any special assessment is to be made pro rata upon the lots and premises in any special assessment district, according to frontage or benefits, the Commission shall, by resolution, direct the same to be made by the City Assessor and shall state therein the amount to be assessed and whether according to frontage or benefit; and describe or designate an assessment district comprising the lands to be assessed.

Section 6. Upon receiving such orders and direction, the City Assessor shall make out an assessment roll, entering and describing therein all the lots, premises, and parcels of land to be assessed, with the names of the persons, if known, chargeable with the assessment therein; and shall levy thereon and against such property the amount to be assessed, in the manner directed by the Commission and provisions of this Charter applicable to the assessment. In all cases where the ownership of any description is unknown to the City Assessor, he or she shall, in lieu of the name of the owner, insert the word "Unknown" and if by mistake or otherwise, any person shall be improperly designated as the owner of any lot, or parcel of land or premises, or if the same shall be assessed without the name of the owner, or the name of any person other than the owner, such assessment shall not for any cause be vitiated, but shall, in all respects, be as valid upon and against such lot, parcel of land, or premises, as though assessed in the name of the proper owner, and when the assessment shall have been confirmed, it shall be a lien on such lot, parcel of land, or premises, and collected as in this Charter provided.

Section 7. If the assessment is required to be according to frontage, the City Assessor shall assess to each lot or parcel of land such relative portion of the whole amount to be levied, as the length or front of such premises abutting upon the improvement bears to the whole frontage of all lots to be assessed, unless on account of the shape or size of any lot, an assessment for a different number of feet would be more equitable. If the assessment is directed to be according to benefits, then he or she shall assess upon each lot such relative portion of the whole sum to be levied as shall be proportionate to the estimated benefit resulting to such lot from the improvement. When he or she shall have completed the assessment roll, he or she shall report the same to the Commission; such report shall be signed by the City Assessor, and may be in the form of a certificate, endorsed on the assessment roll, as follows:

RECEIVED by MSC 12/10/2025 3:03:01 PM

STATE OF MICHIGAN, CITY OF ROYAL OAK -- SS.

TO THE COMMISSION OF THE CITY OF ROYAL OAK:

I hereby certify and report that the foregoing is a special assessment roll, and the assessment made by me pursuant to a resolution of the Commission of said City, adopted (give date) for the purpose of paying that part of the cost which the Commission decided should be paid and borne by special assessment for the (insert here object of the assessment); that in making such assessment, I have, as near as may be, according to my best judgment conformed in all things to the directions contained in the resolution of the Commission hereinbefore referred to, and the Charter of the City relating to such assessment:

Dated _____

_____
City Assessor

Section 8. When any expense shall be incurred by the City upon or in respect to any separate or single lot, parcel of land or premises, which, by the provisions of this Charter, the Commission is authorized to charge and collect as a special assessment against the same, and not being that class of special assessments required to be made pro rata upon several lots or parcels of land in a special assessment district, an account of the labor, material, or services for which such expense was incurred, verified by the Manager, with a description of the lot or premises, upon or in respect to which the expense was incurred, and the name of the owner or person, if known, chargeable therewith, shall be reported to the Commission in such manner as they shall prescribe. The provisions of the preceding section of this chapter with reference to special assessments generally, and the proceedings necessary to be had before making the improvements, shall not apply to assessments to cover the expenses incurred, in respect to that class of improvements contemplated in this section.

Section 9. The Commission shall determine what amount or part of every such expense shall be charged, and the person, if known, against whom, and the premises upon which the same shall be levied as a special assessment, and as often as the Commission shall deem it expedient they shall require all of the several amounts so reported and determined, and the several lots or premises, and the persons chargeable therewith, respectively, to be reported by the Clerk to the City Assessor for assessment.

Section 10. Upon receiving the report mentioned in the preceding section, the City Assessor shall make a special assessment roll, and levy as a special assessment therein, upon each lot or parcel of land so reported to him or her and against the persons chargeable therewith, if known, the whole amounts of all the charges so directed as aforesaid to be levied upon each of such lots or premises respectively, and when completed he or she shall report the assessment to the Commission, and all the several assessments shall be kept separately.

Section 11. When any special assessment roll shall be reported by the City Assessor to the Commission, as in this Charter directed, the same shall be filed in the office of the Clerk. Before confirming the assessment roll the Commission shall set a date for the review of the same and shall cause a notice to be published once not less than five days prior to the date set

for such review, in a newspaper of general circulation in the City to be designated by the Commission, which notice shall set forth the fact of the filing of the assessment roll with the City Clerk, the time when the Commission and City Assessor will meet to review the assessment roll, and a description of the lots, premises, and parcels of land assessed. Any person objecting to the assessment against lands owned by him or her may file his or her objections thereto in writing with the Clerk. **[Amended 11-7-1950]**

Section 12. At the time and place appointed for the purpose as aforesaid the Commission and City Assessor shall meet and there, or at some adjourned meeting, review the assessment roll, and shall hear any objections to any assessment which may be made by any person deeming himself or herself aggrieved thereby, and the Commission may correct said roll as to any assessment, or description of premises, appearing therein, and may confirm it as reported, or as corrected or they may refer the assessment back to the City Assessor for revision; or annul it and direct a new assessment, in which case the same proceedings shall be held as in respect to the previous assessment. When a special assessment be confirmed, the Clerk shall make an endorsement upon the roll showing the date of the confirmation.

Section 13. When any special assessment roll shall be confirmed by the Commission it shall be final and conclusive.

Section 14. All special assessments shall, from the date of confirmation thereof, constitute a lien upon the respective lots or parcels of land assessed, and shall be a charge against the respective owners of the several parcels as assessed until paid.

Section 15. Upon the confirmation of any special assessment, the amount thereof may be divided into not more than 20 installments, one of which shall be collected each year, at such times as the Commission shall determine, with annual interest at the rate not exceeding 6% per annum, provided no interest shall be charged until 30 days after confirmation; if the last day of any month, falls on Sunday or a legal holiday, or a day when the Treasurer's Office is officially closed, then such payment may be made without interest, or without additional interest, as the case may be, on the next secular day. The whole assessment may be paid to the City Treasurer at any time after confirmation in full with accrued interest thereon. **[Amended 2-16-1959]**

Section 16. All special assessments, except such installments thereof as the Commission shall make payable at a future time, as provided in the preceding section, shall be due and payable upon confirmation.

Section 17. In all cases of special assessments of any kind against any property where such assessments have failed to be valid in whole or in part, the Commission shall have and are hereby authorized to cause to be reassessed such special taxes or assessments, and to enforce their collection. It is further provided that whenever for any cause, mistake, or inadvertence, the amount assessed in any assessment district shall not be sufficient to pay the cost of the improvement for which the assessments were made, that it shall be lawful and the Commission is hereby directed and authorized to cause a reassessment to be made upon all the property in said local assessment district to pay for such improvements and to continue requiring such reassessments until a valid and sufficient assessment shall have been made. It is further provided that if the special assessment collected in any special improvement district shall exceed the full cost of such improvement, including the estimated cost of engineering and all other costs required in connection with the said improvement, by more than 5% of such total

RECEIVED by MSC 12/10/2025 3:03:01 PM

cost, the amount of such excess shall be credited on the assessment roll to the respective properties assessed on said roll, or in case of any assessment which has been paid in full, the amount of such excess shall be refunded to the person paying such assessment. **[Amended and adopted 11-2-1954]**

Section 18. No judgement or decree, nor any act of the Commission vacating a special assessment, shall destroy or impair the lien of the City upon the premises assessed, for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might have been lawfully assessed thereon.

Section 19. Whenever any special assessment shall be confirmed and be payable, the Commission may direct the Clerk to report to the City Assessor a description of such lots and premises as are contained in said roll, with the amount of the assessment levied upon each, and the name of the owner or occupant against whom the assessment was made, and direct said City Assessor to levy the several sums so assessed respectively. The City Assessor shall levy the sums therein mentioned upon the respective lots and premises to which they are special assessed, and against the persons chargeable therewith, as a tax, in the general tax roll next thereafter to be made, in a column for special assessments, and thereupon the amount so levied in said tax roll shall be enforced and collected with the other taxes in the tax roll, and in the same manner; and shall continue to be a lien upon the premises assessed until paid, and when collected shall be paid into the City Treasury.

Section 20. Whenever any special assessment roll shall be confirmed, the Commission instead of requiring the assessments therein to be reported to the City Assessor, as provided in the preceding section, may direct the said assessments to be collected directly from the special assessment roll together with any interest which may become due thereon; and thereupon the Clerk shall attach his or her warrant to said special assessment roll, commanding the Treasurer to collect the amount of money assessed against each lot, premises, or parcel of land described in said roll together with any interest which may become due thereon, at such times and in such manner as prescribed by the City Charter and by resolution of the Commission. Said warrant shall further require the City Treasurer on the first day of April following the date when such assessments, or any installment thereof, have become due, to submit to the Commission a sworn statement setting forth a description of the lots, premises, and parcels of land as to which such delinquency exists, and the amounts of such delinquency, including accrued interest computed to April 1st of such year. **[Amended and adopted 11-7-1950]**

Section 21. Upon receiving said special assessment roll and warrant the Treasurer shall proceed to collect the amount assessed therein. If any person shall neglect or refuse to pay his or her assessment upon demand, the Treasurer shall seize and levy upon any personal property found within the City or elsewhere within the State of Michigan, belonging to such person and sell the same at public auction, first giving six days' notice of the time and place of such sale, by posting such notice in three public places in the City or township where such property may be found. The proceeds of such sale, or so much thereof as may be necessary for that purpose, shall be applied to the payment of the assessment, the costs and expenses of seizure and sale, and the surplus, if any, shall be paid to the person entitled thereto.

Section 22. The Treasurer shall report delinquent assessments or installments thereof, as required in the warrant of the Clerk.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 23. In case the Treasurer, pursuant to the provisions of the warrant of the City Clerk, shall report as delinquent any assessment or installment thereof, the Commission shall certify the same to the City Assessor, who shall reassess the same on the next annual City tax roll, in a column headed "Special Assessments," with interest to April 1st of such year, and an additional penalty of 5% of such total amount, and such total amount when so reassessed upon said tax roll, shall be collected in all respects as provided for the collection of City taxes. Unpaid special assessments reassessed upon the City tax roll shall be returned to the County Treasurer for collection at the same time and in the same manner as City taxes. **[Amended and adopted 11-7-1950]**

Section 24. At any time after a special assessment has become payable, the same may be collected by suit, in the name of the City, against the person assessed, in an action of assumpsit, in any court having jurisdiction of the amount. In every such action a declaration upon the common counts for money paid shall be sufficient. The special assessment roll and a certified order of resolution confirming the same shall be prime[10] facie evidence of the regularity of all the proceedings in making the assessment, of the whole amount due, and of the right of the City to recover judgement therefor.

Section 25. If, in any such action, it shall appear that by reason of any irregularities or informalities, the assessment has not been properly made against the defendant, or upon the lot or premises sought to be charged, the court may nevertheless, on satisfactory proof that expenses have been incurred by the City, which is a proper charge against the defendant, or the lot or premises in question, render judgement for the amount properly chargeable against such defendant, or upon such lots or premises.

Section 26. If the owner or occupant of any lot or premises shall fail to remove the snow, ice, and filth from the sidewalk upon which such property abuts, or to remove and keep the same from obstruction, encroachments, encumbrances, or other nuisances, or fail to perform any other duty required by the City in respect to such sidewalks or the premises of any person within such time and in such manner as the City shall require, the City may cause the same to be done, and the expenses, or such part thereof as the City shall have determined, together with a penalty of 10% may be charged and collected as a special assessment against such property as in this Charter provided.

Section 27. Revenues and moneys raised by taxation in every special assessment district in the City, shall be credited to separate special assessment funds; and money so raised shall be used solely for the purpose specified. Provided, if there be a surplus after paying for the specified improvement such surplus shall be refunded pro rata as follows: By refund where the tax has been paid in full, and by credit on the assessment roll where the tax has not been fully paid.

Section 28. When expenses for any improvement shall be assessed in a special assessment district and there shall be lands belonging to the City school buildings, or other public buildings or public grounds not taxable fronting upon such improvement, such part of the expense of such improvement as in the opinion of the Commission would be justly apportionable to such public grounds, buildings, and City property, and to any interior squares or spaces formed by the intersection of streets, were they taxable, shall be paid from the general City funds, and the balance of such expense shall be assessed upon the taxable lots and premises included in the special assessment district, in proportion to their number of feet frontage upon such

[10] **Editor's Note: So in original.**

improvement. When such assessment is to be made upon lots in proportion to their frontage upon the improvement, if from the shape or size of any lot an assessment thereon in proportion to the frontage would be unjust and disproportionate to the assessment upon other lots, the Commission may assess such lots for such number of feet frontage as in its opinion will be just, or the City may issue bonds or notes therefor as they may determine.

Section 29. Any resolution, notice, or other proceeding under this chapter may relate to one or more improvements, district, or assessment rolls as the case may be. Bonds in anticipation of the collection of special assessments spread upon more than one roll may be included in one issue or series of bonds: provided, that the same shall not obligate one special assessment district to answer for the default of another. **[Amended and adopted 11-7-1950]**

CHAPTER TWELVE
Streets and Sidewalks, Sewers, Drains, and Water Supply

STREETS AND SIDEWALKS

Section 1. The Commission shall have control of and maintain all streets, highways, and alleys in the City and may improve the same by grading, graveling, curbing, paving, repaving, constructing sidewalks or otherwise, and shall have authority to lay out, open, widen, extend, straighten, alter, close, vacate, or abolish any highway, street, or alley in the City, whenever they shall deem the same a public improvement. The expense of such improvement may be paid by special assessment upon the property adjacent to or benefitted by such improvement, in the manner in this Charter provided for levying and collecting special assessments; or in the discretion of the Commission, a portion of such costs and expenses may be paid by special assessment as aforesaid, and the balance by the City.

Section 2. When the Commission shall deem it advisable to vacate, discontinue, or abolish any street, alley, or public ground, or any part thereof, they shall, by resolution, so declare and in the same resolution shall appoint a time, not less than four weeks thereafter, when they shall meet and hear objections thereto. Notice of such meeting, with a copy of said resolution, shall be published once, not less than two weeks before the time appointed for such meeting, in a newspaper published and circulating in the City.

Section 3. The Commission shall have authority to determine and establish the grade of all streets, avenues, alleys, sidewalks, curbs, and public grounds within the City, and may change or alter the grade of any street, sidewalk, curb, alley, or public ground, or any part thereof, whenever in their opinion the public convenience will be promoted thereby, or whenever in their opinion they shall deem the same a public necessity or a public improvement.

Section 4. Whenever the grade of any street or sidewalk shall have been heretofore or shall hereafter be established, and improvements shall thereafter be made by the owner or occupant of the adjacent property in conformity to such grade, such grade shall not be changed without compensation to the owner for all damages to such property resulting therefrom to be ascertained by a jury as provided by the General Laws of the State relating to the appropriation of private property for public use, or said damages may be ascertained and agreed upon by and between the City and the owner or occupant of such premises. Whenever such damage shall be ascertained as herein provided, such damages or such part thereof as the Commission shall deem equitable and just, shall be paid by the City, and the Commission may cause such

RECEIVED by MSC 12/10/2025 3:03:01 PM

damages, or such part thereof as may be just and proper, to be assessed upon such real estate as may be benefitted by reason of the change of such grade; and whenever the Commission shall determine to assess such damages or any part thereof, upon the property benefitted, it shall determine and define a district in the City which in its judgement is benefitted by the improvement out of which such damages arise, and shall cause the same to be assessed upon said district, which said assessment shall be upon the taxable real estate in said district, in proportion as nearly as may be to the advantage or benefit of each lot, parcel, or subdivision is deemed to acquire by the improvement out of which such damages arise. The assessment shall be made, the amount levied and collected in the same manner as other assessments in a district deemed to be benefitted, as provided for in this Charter, and all of the provisions of this Charter relative to special assessments and the collection thereof shall apply thereto. Such damages, when collected as aforesaid or when determined upon by the City shall be paid to the person entitled thereto.

Section 5. Such part of the expense of improving or repairing any street, lane, or alley, by grading, graveling, paving, repaving, curbing, constructing sidewalks or otherwise improving or repairing the same, as the Commission shall determine, and keeping the same free from dust and nuisance, may be paid by the City, or the whole or such part of the expense of such improvement, as the Commission shall determine, may be defrayed by special assessments upon lots and premises included in a special assessment district, to be constituted of the lands fronting upon that part of the street or alley so improved or proposed so to be, or constituted of lands fronting upon said improvement, and such other lands, as in the opinion of the Commission, may be benefitted by the improvement.

Section 6. The City shall build or cause to be built, maintain, and control all sidewalks and crosswalks in the public streets and alleys in the City, and may prescribe the grade thereof, and change the same when deemed necessary, as herein provided.

SEWERS AND DRAINS

Section 7. The Commission may establish, construct, and maintain a sewerage system, sewerage disposal system, sewers, and drains whenever and wherever necessary, and of such dimensions and materials, and under such regulations as they may deem proper.

Section 8. Special assessments for the construction of sewers and drains shall be made in the manner provided in this Charter for making special assessments.

Section 9. The owners or occupants of lots and premises shall have the right to connect the same, at their own expense, by means of private drains, with the public sewers and drains, under such rules and regulations as the Commission shall prescribe.

Section 10. Such part of the expense of providing ditches and drains and improving water courses as the Commission may determine, may be defrayed by a special assessment upon the lands and premises benefitted thereby.

WATER SUPPLY

Section 11. The City Commission shall cause to be maintained, an adequate water works system for the furnishing of sufficient water supply and make all such ordinances, rules, and regulations as are necessary for a safe, economical, and efficient management of the same.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 12. The Commission shall also provide for the improvement and extension of the water works and water system wherever and whenever necessary for the public health and welfare, and for adequate fire protection.

Section 13. The Commission may, by ordinance or resolution, establish a uniform schedule of rates, make such rules and regulations for the use of water and the payment therefor as may be deemed expedient. Unpaid charges for the use of water upon any property within the City shall be a lien upon said property.

Section 14. No person, firm, corporation, or association shall be allowed free use of water, nor shall there be discrimination among water users of like classes, and rebates shall never be allowed, except as an inducement for prompt payment of water rates.

Section 15. The Commission may, by ordinance or resolution, provide for furnishing water to consumers outside of the City limits, provided, that the quantity of water so furnished shall not exceed one-quarter of the total consumption inside the corporate limits.

SEWAGE DISPOSAL

Section 16. The Commission, upon a three-fifths vote of the members elect shall have power to contract from time to time with any city, county, metropolitan district, or other political subdivision, or any agency of the foregoing, for the disposal of sanitary and/or storm water sewage from the City, for a period not to exceed 40 years; provided that before authorizing the execution of any such contract, the Commission shall cause a copy of the same to be deposited with the City Clerk and a notice of such deposit to be published in a newspaper of general circulation in the City at least once not less than 10 days prior to such authorization. The contract as so deposited may be amended before execution without further notice. No such contract after it has become effective shall be declared invalid for want of proper notice. The amounts to be paid from time to time by the City under any such contract shall not constitute an indebtedness of the City within the meaning of any Charter debt limitation. The Commission shall impose rates, charges, and/or assessments upon the users and beneficiaries of sewage disposal services and facilities sufficient to promptly meet the obligations under such contract but in event the receipts therefrom are not sufficient to pay all sums when due under the contract, then the City shall be responsible for any deficit. Such rates, charges, and/or assessments shall be made and the payment thereof enforced by any method permissible by law. The provisions of this section shall not be limited by those of any other section or sections of this Charter. If there be included in this section any provision which is not permissible under the state law at the time of the adoption hereof and which in the future shall become permissible because of subsequent state legislation, then such provision shall automatically become operative without again being readopted. All acts and proceedings within the scope of this section heretofore done or taken, are hereby ratified and confirmed. **[Amended and adopted 11-3-1942]**

CHAPTER THIRTEEN
Condemnation and Appropriation of Property

Section 1. Private property, whether within or without the City limits, may be purchased, condemned, or appropriated for public use for the purpose of opening, widening, altering, or

extending streets, alleys, and avenues; for the construction of bridges, viaducts, grade separations, public buildings, parks, parkways, markets, and market places, sewers, drains, and water courses, public and detention hospitals, public cemeteries, sewage disposal; water supply, water main, water works, and for the protection thereof; or any necessary lawful public use not specifically enumerated herein.

Section 2. If it shall become necessary to condemn or appropriate private property for the public use or purposes specified in the preceding section, the right to occupy and hold the same, and the ownership therein and thereto, may be acquired by the City in the manner and with like effect as provided by the General Laws of this State, relating to the taking of private property for public use.

Section 3. Whenever the Commission shall have decided a public improvement to be necessary, and shall have declared that they deem it necessary to take private property, describing it, for such public improvement, designating it, and that the improvement is for the use or benefit of the municipality, they shall by resolution, direct the City Attorney to institute the necessary proceedings in behalf of the municipality, before the proper court, to carry out the object of the resolution in regard to taking private property by the City for such public use.

CHAPTER FOURTEEN
Miscellaneous

Section 1. The Commission may, from time to time, establish and divide election precincts within the City in accordance with the General Laws of the State, or in accordance with any provisions of this Charter applicable thereto, provided, however, that when such precincts are established within the City, they shall be numbered by the Commission.

Section 2. Any public work or improvement costing more than an amount authorized by the City Commission by resolution adopted at the same time the annual budget is approved, and executed by contract, shall be awarded to a responsible bidder in competition. Bids for such contracts shall be opened not less than three days after advertisement therefore[11] in some newspaper published and circulating in the City, but the Commission shall have power to reject any or all bids and to advertise again, and all advertisements shall contain reservation of this right. Provided, that where the Commission is not satisfied with the bids obtained, it may authorize the doing of such work under the direction of the Manager.

Section 3. Every contract shall reserve to the City the right, when it shall become satisfied that the work provided for in any contract will not be completed within the time limited, to furnish additional labor and material if necessary, and render such other assistance as it may deem advisable, for the completion of such contract, at the expense of the contractor, and retained by the City out of the contract price or recovered by legal proceedings.

Section 4. Every contract to which the City is a party shall reserve to the City the right to determine finally all questions as to the proper performance of such contract, or any unfinished portion thereof, and in case of the improper, dilatory, or imperfect performance thereof, to suspend the work any time and to order the partial or the entire reconstruction of the same; and whenever because of unreasonable delay in the work or for other just cause it shall declare such

[11] **Editor's Note: So in original.**

RECEIVED by MSC 12/10/2025 3:03:01 PM

contract forfeited, it may complete or re-let the work covered by such contract or any unfinished portion thereof. Power is hereby given the City to determine all such questions arising under any such contract, according to the true intent and meaning thereof.

Section 5. When it becomes necessary in the prosecution of any work or improvement under contract to make minor alterations or modifications of such contracts or the plans and specifications thereof, such alterations, changes, or modifications shall be made only on the written order of the Manager.

Section 6. No such order shall be made until the price to be paid for the work or material or both, and the credits, if any, to be allowed by the City under the altered or modified contract, shall have been agreed upon in writing and signed by the contractor and by the Manager.

Section 7. Upon the completion of any public work or improvement, wherein a bond for construction or maintenance has been furnished, the Manager shall, before the payment of the final estimate or balance due thereon, file with the Clerk and the City Attorney a written report, certifying whether such work or improvement has, in his or her judgement, been done in all respects in accordance with the construction specifications. Provided such report shall not waive any right of the City to later complain of noncompliance with such construction specifications.

Section 8. It shall be the duty of the Manager, annually, during the life of all maintenance bonds given to the City, upon public works or improvements, to report in writing to the Commission the defects and costs of repair and maintenance of such work or improvements.

Section 9. The City Commission may require any contractor to furnish a surety bond or bonds for the faithful performance of any contract with the City up to and including $50,000, as adjusted hereafter for inflation, but the City shall require a surety bond or bonds, to be approved by them, for the faithful performance of any contract with the City, in excess of the sum above specified. **[Amended and adopted 11-3-2015]**

Section 10. It shall be the duty of the Commission promptly to institute appropriate proceedings, on behalf of the City, whenever there shall have been default in complying with such construction or maintenance specifications.

Section 11. (Reserved)[12]

Section 12. No member of the Commission, the Manager, or any other officer or employee of the City, shall be personally interested in any contract with or for the City, nor in the expenditures of any money on the part of the City, and every such contract shall be void.

Section 13. The Commission shall have the power to hold hearings and to compel, by subpoena, the attendance of witnesses and the production of books, papers, and data in any proceedings or hearing pending before it. The form of the subpoena shall be prepared by the City Attorney. The Commission shall provide, by ordinance, for the punishment of any person who, having been personally served with subpoena, willfully disobeys same. Such subpoena may be served by any person of lawful age. Each witness shall be entitled to receive the same

[12] Editor's Note: Former Chapter Fourteen, Section 11, which provided that any public improvement costing over $1,000 was to be approved by the Commission, was repealed 7-24-2017.

RECEIVED by MSC 12/10/2025 3:03:01 PM

fees for attendance as is provided by law for the payment of witness fees in the Circuit Courts of this State.

Section 14. The said Commission may by resolution or ordinance prescribe the method to more effectively carry out the foregoing provisions.

Section 15. The City Commission may by ordinance provide for pensioning persons injured by violence, accident, or exposure while employed by the City in the Fire or Police Departments, when such injuries arise out of or in the course of such employment; also for the dependents of the person killed while so employed.

Section 16. The Commission shall have the power to prescribe by ordinance, limits or districts to be known as "Fire Limits" and to prescribe the construction of buildings therein, both as to kind of material and type of construction; to prohibit within such limits or districts, as it shall deem expedient, the location of shops, factories, the prosecution of any trade or business, the keeping of lumber yards, the storing of lumber or other easily inflammable and explosive material in any place, when in the opinion of the Commission the danger from fire is thereby increased, and may pass and enforce such other ordinances and regulations as it may deem necessary for the prevention and suppression of fires.

Section 17. The City shall not be liable for unliquidated damages for personal or other injuries, unless the person suffering the injury or sustaining the damage, or someone in his or her behalf, shall serve a notice in writing upon the City, within 60 days after such injury shall have occurred, which notice shall specify the location and the nature of the defect, the injury sustained, and the names of the witnesses, as to the fact of the happening of the accident complained of, which are known at that time by said claimant. The failure to so notify the City within the time and in the manner specified herein shall exonerate, excuse, and exempt the City from any and all liability on account of any such injury.

Section 18. Service of all process and notice of claims for unliquidated damages against the City shall be made on the Mayor, Manager, or Clerk.

Section 19. Subject to the limitation of this Charter and of the General Laws, the Commission shall have the power to receive devices, bequests, gifts, and donations of all kinds of property within or without the City, in fee simple or in trust, for charitable or other public purposes and to do all things and acts necessary to carry out the purposes of such bequest, gifts, and donations, with power to sell, lease, or otherwise manage or dispose of the same, in accordance with the terms of the bequest or donation.

Section 20. No member of the Commission, the Manager, or other officer or employee of the City shall knowingly accept any gift, frank, free ticket, pass, reduced price, or reduced rate of service from any person, firm, or corporation operating a public utility within said City; or from any person known to him or her to have or to be endeavoring to secure a contract with the City. The provisions of this section shall not apply to the transportation of police officers or firefighter in uniform or wearing their official badges, when the same is provided for by ordinance or otherwise. No member of the Commission shall be eligible to an appointive office within its gift, during the period for which he or she was elected.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Section 21. All officers and employees shall be appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith, or party affiliations.

Section 22. The Commission may by ordinance limit the number of places where intoxicating liquors may be sold and for which licenses may be issued; the terms and conditions upon which such licenses may be granted; restrict the territory within which said places where intoxicating liquors may be sold, shall be located; prescribe rules and regulations for the conducting of said places where intoxicating liquors may be sold, and the conditions upon which said license may be annulled, revoked, or cancelled, and may also, by resolution, prescribe the location of said places where intoxicating liquors may be sold, within the proper territory. All subject to the Constitution and General Laws of the State.

Section 23. When the Commission shall deem it for the public interest, grounds and buildings for necessary public uses, may be purchased, erected, and maintained, beyond the corporate limits of the City, and in such cases the Commission shall have authority to pass and enforce, beyond the City limits, and over such lands, buildings, and property, in the same manner, and to the same extent as if they were situated within the City, all such ordinances and police regulations as may be necessary for the care and protection thereof, and for the management and control of the persons kept or confined in any building maintained upon such property.

Section 24. Where the following specified words are used herein they shall each be construed to mean as follows:

1) "State" shall mean "State of Michigan."

2) "City" shall mean "City of Royal Oak."

3) "Commission" shall mean "City Commission."

4) "Manager" shall mean "City Manager."

5) "Clerk" shall mean "City Clerk," unless from the context the contrary shall plainly appear.

6) "City Attorney" shall mean "Director of the Department of Law."

7) "Treasurer" shall mean "City Treasurer."

Section 25. Words imparting the singular number, only, may extend to and embrace the plural number, and words imparting the plural may be applied and limited to the singular number; words imparting the masculine gender, only, may extend and be applied to females as well as males.

Section 26. Words purporting to give joint authority to two or more public officers or other persons either as a Board or otherwise shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared.

Section 27. The word "person" may extend and be applied to bodies, politic and corporate as well as individuals. The words "written" and "in writing" shall be construed to include printing, engraving, typewriting, and lithographing, except that this rule shall not apply to provisions requiring written signatures, unless it be otherwise expressly herein provided.

Section 28. Eastern standard time is hereby adopted for the City of Royal Oak.

Section 29. Should any portion of this Charter be declared void, illegal, or unconstitutional, such finding shall not invalidate the remainder of the Charter.

CHAPTER FIFTEEN
Civil Service[13]
[Adopted 9-15-1936]

Section 1. The Commission of the City of Royal Oak shall provide by ordinance for a merit system for all positions in the City's service except as hereinafter qualified or exempted. Such ordinance shall provide a professional and impartial approach to municipal personnel problems based solely upon the fitness, training, and experience of the individual with no discriminations on account of political or religious opinions. It is the intent of this Charter amendment to establish a merit system program as an integral part of the administrative service, to the end that the handling of the personnel activities will be done in a manner equitable to the employee, satisfying for the administrative officials to use, and by increased efficiency and improved administration, economical to the citizens.

Section 2. The merit system ordinance shall:

(a) Constitute a Civil Service Board to administer the program and shall delegate to such Board appropriate power required for the effective administration of the merit system. The Civil Service Board shall consist of five electors of the City to be appointed by the City Commission, two to serve for one year, two for two years, and one for three years, to take office on January 1, 1952, or as soon thereafter as appointed and qualified. Thereafter, members of the Civil Service Board shall be appointed to serve for three years and until their successors have been appointed and have qualified. Members of the Board shall serve without compensation and shall not hold any other public City office or serve on any City political committee or take active part in the management of any City political campaign. The Commission may remove any member of the Board upon stating in writing the reasons for removal and allowing him or her an opportunity to be heard in his or her own defense. Any vacancy shall be filled by the Commission for the unexpired term. The City Clerk shall act as Secretary for the Board. **[Amended and adopted 11-6-1951]**

(b) Define the scope of the program except as herein limited and qualified and provide for the establishment of professional standards and methods in obtaining the following objectives:

(1) A duties classification plan based on a study of the duties and responsibilities of all positions in the City's service.

[13] Editor's Note: See also Ch. 33, Civil Service Merit System.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

(2) A compensation plan for positions in the City's service in order that there may be equal pay for equal work, and in order that proper pay differentials may be established between positions which differ materially in duties performed and responsibilities exercised.

(3) Selection, certification, and appointment of qualified candidates seeking employment in or promotion to all positions within the City's service except those positions hereinafter exempted.

(4) The separation of employees from the City's service when for the good thereof there is need for such separation, except as such authority is herein limited and qualified.

(c) Specifically exempt from the jurisdiction of the Civil Service Board, the appointment, discharge, transfer, or promotion of all officials which by other provisions of this Charter are appointed by the City Commission and one deputy or other employee or assistant to each of said officials; the acting heads of the Police and Fire Departments and any other departments created by the City Commission; and all temporary appointments or employments.

(d) Provide that no employee within the civil service shall be demoted or discharged except for cause and provide a means whereby such employee shall be entitled to a hearing and have the right to appeal to the Civil Service Board. Said Board shall have the power to subpoena witnesses for any such hearing and to provide for the punishment of any person who having been personally served with a subpoena refuses or neglects to comply with the same. Nothing herein shall prevent the discharge of any employee, when the position he or she holds has been abolished, or when a reduction of personnel is made necessary by lack of funds.

(e) Delegate to the authority or authorities constituted to administer the merit system the right to formulate, adopt, and administer operating rules and regulations governing the specific administrative matters affecting the operation of the personnel program.

(f) Define the status of present employees and the basis whereby they are to be inducted into the regular civil service.

(g) Provide a means whereby the City Commission may enter into contractual arrangement for securing technical, professional services of persons qualified in the personnel field to assist the Civil Service Board in carrying out the provisions of said ordinance.

CHAPTER SIXTEEN
City of Royal Oak Retirement System[14]
[Adopted 9-14-1948]

Section 1. RETIREMENT SYSTEM: The Commission of the City of Royal Oak shall, by ordinance, establish and maintain a retirement system in lieu of the present retirement system

[14] Editor's Note: See also Ch. 146, Retirement.

established by Ordinance No. 426, which new retirement system shall provide for the retirement of City officers and employees. Said new system shall take effect and shall supersede the present retirement system as of June 1, 1949. The objective of such system shall be the creation of a sound and efficient means of providing retirement annuities for the employees to the end that economy and efficiency in public service may be effected and an orderly method of retiring be furnished without hardship and prejudice to employees who have become aged or incapacitated. The terms and conditions of the ordinance creating such system shall be within the discretion of the Commission, except as herein provided.

Section 2. BOARD: Said system shall be administered by a Board of trustees consisting of two members of the City Commission, the City Manager, one covered member of the retirement system elected by the covered members of the system, and one non-covered member of the retirement system elected by the non-covered members. The election of member trustees shall be in accordance with such rules and regulations as the Board shall from time to time adopt. The Board shall authorize the granting of all benefits provided by the retirement system; determine the amount of service to be credited each member; appoint an actuary to perform the actuarial calculations required for the operation of the retirement system on an actuarial basis; employ such professional and clerical help and make such rules and regulations as may be necessary to operate the retirement system on a sound economical basis in the best interests of the City and the members; hold meetings regularly, at least one in each calendar quarter, keep records of its proceedings; and perform such other duties as may be required for the proper administration of the retirement system. **[Amended and adopted 11-6-1973]**

Section 3. MEMBERSHIP:

(a) All officers and employees of the City, including those on leave of absence to serve in the armed forces of the United States, shall be members of the retirement system: Provided, that the membership of the retirement system shall not include (1) persons whose services are compensated on a fee basis, (2) persons who are employed on a part time basis as determined in the ordinance, (3) the medical director, and (4) the actuary.

(b) A "covered member" shall mean any member who is covered under the Federal Social Security Old-Age and Survivors' Insurance Program on account of his or her City employment. A "non-covered member" shall mean any member who is not covered under the said Old-Age and Survivors' Insurance Program on account of his or her City employment.

(c) In any case of doubt as to an employee's membership status, the Board shall decide the issue. **[Amended and adopted 11-5-1957]**

Section 4. CITY CONTRIBUTIONS: The financial objective of this section is to require City contributions to the retirement system each year which together with the contributions made by members shall be sufficient to: (i) fully fund the cost of benefits likely to be paid on account of service rendered by members during the year, and (ii) finance unfunded costs of benefits likely to be paid on account of service rendered by members prior to the current year over a period of not more than 40 years. Such contributions shall be computed as level percents of member payroll in accordance with generally accepted actuarial principals on the basis of such rates of interest and tables of experience as the Board shall from time to time adopt. The Board shall annually certify to the City Commission the contributions determined according to this section,

RECEIVED by MSC 12/10/2025 3:03:01 PM

and the Commission shall appropriate and pay to the retirement system during the next fiscal year the contributions so certified. **[Amended and adopted 11-5-1957; 11-6-1973]**

Section 5. BENEFIT LIMITATION: **[Amended and adopted 11-6-1973]**

(a) Except as provided in paragraph (c) of this section, in no case shall the annualized amount of a retirement allowance paid a covered member or the annualized amount of all retirement allowances paid on account of the death of a covered member exceed the difference between (i) 80% of the member's annualized final average compensation, as defined by ordinance, and (ii) the member's annualized primary insurance amount under the federal old age, survivors, disability, and health insurance program, or in the event of the death of the member, the annualized periodic benefit paid by the federal old age, survivors, disability, and health insurance program; provided, that the amount of this deduction shall remain at the total primary insurance amount as first received by the retirant, and shall not be affected by any future increases in the primary insurance amount.

(b) Except as provided in paragraph (c) of this section, in no case shall the annualized amount of a retirement allowance paid a non-covered member or the annualized amount of all retirement allowances paid on account of the death of a non-covered member exceed 80% of the member's annualized final average compensation, as defined by ordinance.

(c) Provision may be made for annual or less frequent post-retirement redetermination of retirement allowances. The redetermined amount of retirement allowance shall not exceed the amount of retirement allowance otherwise payable multiplied by the following percent: 100.0% plus 2.5% for each year, and fraction of a year for the period from the effective date of the retirement allowance to the date as of which the redetermination is being made. Any provision of this chapter or the ordinance which limits the amount of a retirement allowance shall not apply to the operation of a redetermination provision. The application of any provision redetermining pension amounts may be restricted to retirement allowances having an effective date either prior to or subsequent to a specified date or dates.

(d) The amount of retirement allowance paid a person who was a member of the retirement system on November 6, 1973, or paid on account of the death of a person who was a member of the retirement system on November 6, 1973, shall not be less than the amount of retirement allowance computed according to the provisions of Chapter 17A of the City Charter and the retirement ordinance as they were in effect November 5, 1973.

Section 6. RETIREMENT SYSTEM DIVISIONS: The retirement system shall consist of two divisions, the police officer and firefighter member division and the general member division, as defined in the ordinance. The ordinance may also provide for subdivisions within each division. Separate accounting of the transactions of the retirement system shall be maintained for each division and shall clearly indicate the equity of each division in the assets of the retirement system. Said account separation shall be effective as of June 1, 1974. Each division shall be regarded as a separate trust fund. The provisions of this section refer only to the

RECEIVED by MSC 12/10/2025 3:03:01 PM

accounting records of the system and shall not be construed as requiring a physical segregation of the assets of the system between the divisions. **[Amended and adopted 11-6-1973]**

(Sections 6.1, 7, 8, 9, and 10 were repealed 11-6-1973.)

Section 11. PREVIOUS RETIREMENT SYSTEM ASSETS AND OBLIGATIONS TRANSFERRED: All assets and funds credited to the retirant system established by Ordinance No. 426 shall be transferred to the retirement system established by this chapter. The said assets and other funds so transferred shall be credited to the pension reserve fund. The benefits allowed and being paid under the provisions of Ordinance No. 426 shall become obligations of the retirement system established by this chapter and shall be paid from the pension reserve fund.

Section 12. INVESTMENT OF ASSETS: The Board of Trustees shall be the trustees of the monies and assets of the retirement system. The Board shall have full power and authority to invest and reinvest such monies and assets subject to all terms, conditions, limitations, and restrictions imposed by the State of Michigan on the investments of public employee retirement systems. The Board shall employ outside investment counsel to advise the Board in the making and disposition of investments. All monies and assets of the retirement system shall be held for the sole purpose of meeting disbursements authorized in accordance with the provisions of this Chapter and shall be used for no other purposes. **[Amended and adopted 11-6-1973]**

Section 13. BENEFITS NOT ASSIGNABLE: No pensions or allowances payable under the provisions of this chapter, nor any credits of employees in the system, shall be assigned, nor subject to assignment, nor shall they, or any of them, be subject to execution, garnishment, or attachment.

Section 14. REPEAL CLAUSE: Section 1 to 12, inclusive, of Chapter XVII of the City Charter, existing prior to the adoption of this amendment shall be repealed as of June 1, 1949.

I hereby certify that the foregoing is a correct and accurate copy of the Charter of the City of Royal Oak, Michigan, adopted by a vote of the electors on November 8, 1921, as amended.

_____
City Clerk

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 770. Zoning

Article III. Administration and Enforcement

§ 770-11. Special land uses; permit procedures.

A. Application. Applications for special land use permits authorized in this chapter shall be submitted to the Zoning Administrator on a form provided by the City. In addition to a complete application form, the applicant is required to submit a site plan, building floor plans and elevations prepared in accordance with § **770-12**, Site plan review, and pay all associated fees. Incomplete submittals shall not be accepted by the Zoning Administrator.

B. Procedures.

(1) Special land use permits may be granted by the Plan Commission at its discretion.

(2) The Zoning Administrator shall review the proposed application and site plan pursuant to § **770-12**, Site plan review, to determine if all required information has been supplied, and forward the complete application, site plan, and supporting data to the Plan Commission.

(3) Prior to a decision by the Plan Commission, a public hearing shall be held in accordance with § **770-13**, Public hearings.

(4) Following the public hearing the Plan Commission may deny, approve, or approve with conditions a request for a special land use. The decision of the Plan Commission shall be incorporated in a statement of conclusions relative to the special land use under consideration. Any decision which denies a request or imposes conditions upon its approval shall specify the basis for the denial or the conditions imposed. The Plan Commission may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the purposes of this chapter and the general spirit and purpose of the district in which the special land use is proposed will be observed.

C. Basis of determinations. The Plan Commission shall review the proposed special land use in terms of the standards stated within this chapter and shall establish that such use and the proposed location:

(1) Will be harmonious and in accordance with the general objectives or any specific objectives of the Master Plan.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(3) Will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

(4) Will be an improvement in relation to property in the immediate vicinity and to the City as a whole.

(5) Will be served adequately by essential public services and facilities or that the persons responsible for the establishment of the proposed use will provide adequately any such service or facility.

(6) Will not create excessive additional public costs and will not be detrimental to the economic welfare of the City.

(7) Will be consistent with the intent and purposes of this chapter, and comply with all applicable provisions and standards which are established for said use by this chapter and other applicable codes.

D. Duration, voiding and extensions of permit.

(1) Unless otherwise specified by the Plan Commission, any special land use permit granted under this section shall be null and void unless the development proposed shall have its first building permit within one year from the date of granting of the permit. The Zoning Administrator may grant an extension thereof for good cause.

(2) The Zoning Administrator may suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued erroneously on the basis of incorrect information supplied by the applicant or his agent and is in violation of any of the provisions of this chapter or of any other ordinances or regulations of the City.

E. Reapplication. No application for a special land use permit which has been denied wholly or in part shall be resubmitted until the expiration of one year or more from the date of such denial, except on grounds of newly discovered evidence or change of conditions found to be sufficient as determined by the Zoning Administrator to justify a new application being considered by the Plan Commission.

§ 770-12. Site plan review.

The Plan Commission shall have the authority to review and to approve, approve with conditions or reject all site plans.

A. Where required.

(1) Site plan review is required for all proposed uses and certain existing uses within the City where an alteration, addition, expansion, change or conversion constitutes an increase or reduction to the existing structure or use. Site plan review shall also be required for the paving of any off-street parking for any use for which off-street parking is required by this chapter.

(2) Site plan review shall not be required for one- and two-family residential, or their customary accessory storage buildings.

(3) The City shall not issue a building permit until a site plan has been approved and is in effect. A use, not involving a building or structure, shall not be commenced or expanded, nor shall the Zoning Administrator or duly appointed agent issue an occupancy permit for such use until a site plan has been approved and is in effect.

B. Site plan.

(1) Application. An applicant shall submit a request for site plan review by filing with the Zoning Administrator the required number of copies of a site plan as well as the data and exhibits required in the application, the review fee, and a complete application form. The Administrator, upon receipt of the complete application, shall transmit the site plan drawing(s) to the Plan Commission prior to its next regular meeting.

(2) Information required. A site plan submitted for review and approval shall contain all of the

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

information identified on the site plan review data check list prior to its submission to the City for review. Site plans shall consist of an overall plan for the entire development. Sheet size shall be 24 inches by 36 inches with plan view drawn to a scale of no greater than one inch equals 50 feet. The Zoning Administrator may also request copies of all plans and drawings in electronic form and at a reduced size format.

(3) Standards for review. In reviewing the site plan, the Plan Commission shall determine whether the plan meets the following specifications and standards:

(a) The plan conforms to the approved preliminary site plan, when applicable, and with all Zoning Ordinance regulations;

(b) All required information is provided;

(c) The proposed use will not be injurious to the surrounding neighborhood and protects the general health, safety, welfare and character of the City;

(d) There is a proper relationship between major thoroughfares and proposed service drives, driveways and parking areas. Proper access to all portions of the site and all sides of any structure is provided. All structures or groups of structures shall be so arranged as to permit emergency vehicle access by some practical means to all sides;

(e) The location of buildings is such that the adverse effects of such uses will be minimized for the occupants of that use and surrounding areas;

(f) Natural resources will be preserved to the maximum extent possible in the site design;

(g) Sites which include storage of hazardous materials or waste, fuels, salt, or chemicals will be designed to prevent spills and discharges of polluting materials to the surface of the ground, groundwater or nearby water bodies in accordance with Article **VII**, county and state standards;

(h) Landscaping, including grass, trees, shrubs and other vegetation, are provided to maintain and improve the aesthetic quality of the site and area; and

(i) The proposed use is in compliance with all City ordinances and any other applicable laws.

C. Supplemental information requirements.

(1) The following supplemental information shall be submitted in connection with all site plan applications for nonresidential uses:

(a) A scaled drawing of the interior layout, showing the total square footage of floor space, and the location and use of all rooms. If the use has several floors or areas with typical design, such design may be submitted along with an explanation of its general application in specified areas of the building.

(b) On the drawing, or on separate sheets that may be referenced to particular areas of the drawing, for each use there shall be a description with regard to the specific services provided and/or goods to be stored, sold or displayed, and a specification relative to each type of services or goods as it relates to each type of services or goods:

[1] The approximate percentage of the total square footage space to be used for each type of service and goods; and

[2] The approximate percentage of total gross receipts anticipated to be generated with regard to each type of service and goods.

(c) A written business plan, which shall be in narrative or other format, describing all uses

and business activities to be undertaken on the premises.

(d) Additional reasonable information required by the Planning Department for the purpose of determining the nature of the use planned for the premises.

(2) Following submission and approval of the site plan based upon the information provided in accordance with this subsection, the Planning Department shall retain the supplemental application on file in connection with the property. In the event there is a material change in the information that would indicate a new or different use, a different percentage of space or receipts, or otherwise alter the understanding of the various aspects of the use and/or business, the applicant shall provide the Planning Department with a revision of the earlier submission so as to ensure a file that is current in its reflection of the use of the property. The revised information shall be filed with the Planning Department within 30 days following the applicant's knowledge of such change.

(3) Plan Commission action. The Plan Commission shall study the site plan and shall determine whether the site plan be approved, approved with conditions or denied. The Plan Commission may suggest and/or require modifications to the proposed site plan as are needed to gain approval. The Plan Commission shall state in the record of its proceedings the grounds for the action taken upon each site plan submitted for its approval.

(4) Effect of approval. Approval of a site plan authorizes issuance of a building permit or, in the case of uses without buildings or structures, issuance of a certificate of zoning compliance. All plans submitted for building permit review shall incorporate all contingencies required by the Plan Commission as part of its approval. No plans shall be accepted by the Building Department that do not contain all site plan contingencies.

(5) Expiration of approval. Unless otherwise specified by the Plan Commission, any site plan approved or approved with contingencies under this section shall be null and void unless the development proposed shall have its first building permit within one year from the date of the granting of the permit. The Zoning Administrator may grant an extension(s) thereof for good cause.

D. Administrative review for site plans involving minor modifications. Administrative review may be conducted by the Zoning Administrator for site plans that involve minor modifications, as defined herein. Such minor modifications shall constitute an alteration, addition or expansion to the existing structure and/or use of less than 500 square feet or 10% of the gross floor area, whichever is less. Minor modifications involving the change or conversion of a use shall be allowed if determined to be less intense by the Zoning Administrator. All plans submitted for administrative review shall comply with § **770-12B**, Site plan, and § **770-12C**, Supplemental information requirements. However, the Zoning Administrator shall have the authority to take any site plan before the Plan Commission.

E. Amendment of approved site plan. The Zoning Administrator shall have the authority to determine if a proposed change requires an amendment to an approved site plan. A site plan may be amended upon application and in accordance with the procedure herein for a site plan. The Zoning Administrator may approve minor changes in an approved site plan, provided that a revised site plan drawing(s) be submitted showing such minor changes, for purposes of record.

F. Modification of site plan during construction. All improvements shall conform to the site plan. It shall be the responsibility of the applicant to notify the Zoning Administrator of any such changes. If the applicant makes any changes during construction in the development in relation to the approved site plan, such changes are at the applicant's risk without any assurances that the Zoning Administrator or Plan Commission will approve the changes. The Plan Commission or Zoning Administrator may require the applicant to correct the changes so as to conform to the approved site plan.

G. Phasing of development. The applicant may, at his or her discretion, divide the proposed development into two or more phases. In such case, the site plan shall cover the entire property

RECEIVED by MSC 12/10/2025 3:03:01 PM

involved and shall clearly indicate the location, the size, timing, and character of each phase.

H. Inspection. The Building Inspector shall be responsible for inspecting all improvements for conformance with the approved site plan. All subgrade improvements such as utilities, a subbase installation for drives and parking lots, and similar improvements shall be inspected and approved prior to covering. The applicant shall be responsible for requesting the necessary inspection.

I. Violations. The approved site plan shall regulate development of the property and any violation of this article, including any alteration or improvement not in conformance with the approved site plan, and any use of the property inconsistent with the file information provided as required under § **770-12C**, Supplemental information requirements, above, shall be deemed a violation of this chapter as provided in § **770-18**, Violations and penalties; abatement of nuisances, and shall be subject to all penalties specified therein.

J. Public hearing requests. A public hearing for a site plan shall be established in accordance with Public Act 110 of 2006,[1] as amended, or in either of the following events:

(1) When at least three members of the Plan Commission deem it necessary; or

(2) When requested by the applicant seeking site plan review and approval.

[1] *Editor's Note: See MCLA § 125.3101 et seq.*

§ 770-13. Public hearings.

A. A public hearing plan shall be established as permitted by this chapter and in accordance with Public Act 110 of 2006, as amended.[1]

[1] *Editor's Note: See MCLA § 125.3101 et seq.*

B. Procedures for public hearings. A public hearing date shall be set and a notification published in at least one newspaper of general circulation within the City and sent by mail or personal delivery to the owners of the property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance of the structure. The notice shall be given not less than 15 days before the date of the public hearing. The notice shall:

(1) Describe the nature of the request.

(2) Indicate the property which is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exists within the property. If there are no street addresses, other means of identification may be used.

(3) State when and where the request will be considered.

(4) Indicate when and where written comments will be received concerning the request.

RECEIVED by MSC 12/10/2025 3:03:01 PM

RECEIVED by MSC 12/10/2025 3:03:01 PM

Chapter 770. Zoning

Article V. Special Provisions

§ 770-52.1. Marihuana establishments.

[Added 7-27-2020 by Ord. No. 2020-07]

A. Purpose and intent. It is the general purpose and intent of the City to authorize marihuana establishments in a manner that will ensure compatibility with adjacent land uses, maintain the integrity of neighborhoods, and retain the character, property values and aesthetic quality of the community at large. Regulation of the locations of these uses is necessary to ensure that any negative secondary impacts that such businesses may have will not cause or contribute to the blighting or downgrading of the City's residential neighborhoods, community uses which support a residential environment, and commercial centers. The regulations in this section are for the purpose of locating these uses in areas where the adverse impacts of their operations may be minimized by the separation of such uses from one another and from schools. It is neither the intent nor effect of this section to deny the medical use of marihuana as defined by and in accordance with the Michigan Medical Marihuana Act (MCLA 333.26421 et seq.), as amended.

B. General standards. These provisions are intended to allow marihuana establishments within appropriately zoned properties as special land uses in accordance with the standards and procedures set forth in § **770-11**, Special land uses; permit procedures, provided the final determination of approval, approval with conditions, or denial shall be made by the City Commission following a recommendation from the Planning Commission. Furthermore, all marihuana establishments shall be subject to the following:

(1) An application for a marihuana establishment shall include a site plan prepared in accordance with § **770-12**, Site plan review, along with documentation that:

(a) The petitioner has prequalification status for an applicable license with the State of Michigan; and

(b) A complete application for an applicable license with the City of Royal Oak has been accepted and awarded a municipal license slot in accordance with Chapter **435**, Marihuana, as amended.

(2) No marihuana establishment shall be permitted unless the City Commission determines it will not be detrimental to the neighborhood based upon the following criteria:

(a) The establishment is designed and will be constructed to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

(b) The establishment will not be hazardous or disturbing to existing uses or uses reasonably anticipated in the future.

(3) No marihuana establishment shall be permitted within a 1,000-foot radius of any existing

public or private school with a curriculum equivalent to kindergarten through 12th grade. No marihuana retailer or marihuana microbusiness shall be permitted within a 1,000-foot radius of any existing retailer or microbusiness within the City of Royal Oak. Measurement of either radius shall be made from the outermost boundaries of the lot or parcel upon which the respective establishments are or would be situated.

(4) Designated consumption establishments and excess marihuana growers shall be specifically prohibited in any zoning district. Marihuana event organizers and temporary marihuana events shall be specifically prohibited in any zoning district, unless otherwise approved by the City Commission in accordance Chapter **435**, Marihuana, as amended.

(5) Marihuana establishments shall be prohibited at any location that was conditionally zoned to an appropriate zoning district within which such uses are allowed, or a property that is zoned "planned unit development" (PUD), unless they are specifically permitted under the applicable conditional zoning agreement or development agreement.

(6) Drive-through lanes and windows and walk-up windows shall be prohibited.

(7) Each marihuana establishment shall be permitted one wall sign, as defined in Chapter **607**, Signs, with a maximum area not to exceed 50 square feet or 5% of the building facade area, whichever is less. All other signs, including, but not limited to, freestanding signs, window signs, and electronic message centers, shall be prohibited.

(8) Unshielded luminous tubes (i.e., neon or argon lights), fluorescent light fixtures, fiber optic lights, light emitting diodes, bare light bulbs, or similar lighting, shall be prohibited as permanent architectural details or enhancements on any building facade or the exterior of any structure, including, but not limited to, windows and window openings, doors and door openings, rooflines, cornices, and eaves.

(9) Architectural enhancements that are designed to accent, emphasize, feature, highlight, or draw attention to a building but are neither required nor recommended in accordance with § **770-30**, General building design and project compatibility, shall be prohibited.

(10) Security devices, such as security curtains, steel bars, metal gates, and similar apparatus, shall be prohibited on the exterior of a building. Security devices may be permitted inside a building, provided that the device is:

(a) Retractable so it is not visible from the sidewalk or public right-of-way during regular business hours; and

(b) Equipped with an emergency release device approved by the Royal Oak Fire Department.

(11) Site plans for marihuana establishments shall incorporate low-impact development techniques or green infrastructure that significantly reduces stormwater runoff and/or the need for stormwater detention, such as, but not limited to, rain gardens, bioswales, green roofs, and permeable or pervious pavement surfaces. The Planning Commission and City Commission may determine alternate requirements as deemed necessary and advisable during the course of their special land use permit and site plan review process.

(12) Applicable licenses with the State of Michigan and the City of Royal Oak shall be maintained.

(13) The City Commission may impose such reasonable conditions and safeguards as it deems necessary to protect the public health, safety and general welfare from excessive noises, traffic, obnoxious and unhealthy odors and any detrimental effects from the general operation of any marihuana establishment and to minimize any adverse effect on the character of the surrounding area.

(14) Deviations from applicable setback, parking, and other requirements may be granted by the

RECEIVED by MSC 12/10/2025 3:03:01 PM

City Commission, provided there are features or elements demonstrated by an applicant and deemed adequate by the City Commission upon the recommendation of the Planning Commission that are designed into the site plan for purpose of achieving the objectives of this section.

RECEIVED by MSC 12/10/2025 3:03:01 PM