

AGENDA
WYOMING CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
MONDAY, JANUARY 7, 2019, 7:00 P.M.

- 1) Call to Order**
- 2) Invocation** – Pastor Mark Van Drunen, Calvary Christian Reformed Church
If you wish and are able, please stand for the invocation. The Pledge of Allegiance will immediately follow the invocation.
- 3) Pledge of Allegiance**
- 4) Roll Call**
- 5) Student Recognition**
- 6) Approval of Minutes**
From the December 17, 2018 Regular Meeting
- 7) Approval of Agenda**
- 8) Public Hearings**
If you wish to speak to an item during a public hearing you are welcome to do so. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Comments made during a public hearing may become part of the meeting's permanent record. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.
- 9) Public Comment on Agenda Items**
This public comment period is reserved for comment on agenda items only. If you wish to speak about an item that is not on the agenda, please hold your comments until the acknowledgement of visitors at the end of the meeting. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.
- 10) Presentations and Proclamations**
 - a) Presentations
 - b) Proclamations
- 11) Petitions and Communications**
 - a) Petitions
 - b) Communications
- 12) Reports from City Officers**
 - a) From City Council
 - b) From City Manager
- 13) Budget Amendments**
- 14) Consent Agenda**
All items under this section are considered to be routine and will be enacted by one motion with no discussion. If discussion is desired by a Councilmember, that member may request removal from the Consent Agenda.
 - a) To Reappoint Charis Austin as a Representative of the City of Wyoming on the Interurban Transit Partnership Board
 - b) To Reappoint Members to the Greater Wyoming Community Resource Alliance for the City of Wyoming

15) Resolutions

- c) To Authorize the Mayor and City Clerk to Accept a Donation of Funds from the Wyoming Senior Fellowship Club, Inc. and to Authorize the Related Budget Amendment (Budget Amendment No. 45)

16) Award of Bids, Contracts, Purchases, and Renewal of Bids and Contracts

17) Ordinances

- 1-19 To Amend Chapter 14, Article VI, of the City Code to Prohibit Marihuana Establishments and Facilities in the City (First Reading)
- 2-19 To Amend Chapter 50, Article V, Division 2, of the City Code by Amending Sections 50-188 and 50-190, and Adding Section 50-191 to Prohibit Driving Under the Influence of Marihuana, to Provide Penalties for Violations of that Division, and to Address Potential Conflicts Between that Provision and Applicable State Laws IMMEDIATE EFFECT

18) Informational Material

19) Acknowledgment of Visitors

This public comment period is an opportunity to share concerns or present topics to the City Council that were not part of this meeting's agenda. This is not an opportunity for dialog with Council, but Council may make referrals or request staff to follow up. Please provide your name and address when approaching the podium. There is a 3 minute limit per person.

20) Closed Session (as necessary)

21) Adjournment

RESOLUTION NO. _____

RESOLUTION TO REAPPOINT CHARIS AUSTIN AS A REPRESENTATIVE OF THE
CITY OF WYOMING ON THE INTERURBAN TRANSIT PARTNERSHIP BOARD

WHEREAS:

1. The term of Charis Austin as a Wyoming representative on the Interurban Transit Partnership Board, expired on December 31, 2018.
2. It is the desire of the Wyoming City Council to reappoint Charis Austin as a Wyoming representative to the Interurban Transit Partnership Board.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council for the City of Wyoming, Michigan, does hereby designate Charis Austin as a representative of the City of Wyoming on the Interurban Transit Partnership Board for a two-year term expiring December 31, 2020.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on January 7, 2019.

Kelli A. VandenBerg, Wyoming City Clerk

RESOLUTION NO. _____

RESOLUTION TO REAPPOINT MEMBERS TO THE GREATER WYOMING
COMMUNITY RESOURCE ALLIANCE FOR THE CITY OF WYOMING

WHEREAS:

1. The term of office for some members of the Greater Wyoming Community Resource Alliance expired on January 1, 2019.
2. It is the desire of the City Council that members be reappointed to serve on the Greater Wyoming Community Resource Alliance for the City of Wyoming.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council for the City of Wyoming, Michigan, does hereby reappoint the following named persons to serve on the Greater Wyoming Community Resource Alliance for the City of Wyoming for the terms so stated.

<u>BOARD, COMMISSION OR COMMITTEE</u>	<u>TERM ENDING</u>
<u>Greater Wyoming Community Resource Alliance</u>	
Kimberly Koster	01/01/22
Jennifer Franson	01/01/22
Emil Hannesson	01/01/22

Moved by Councilmember:
 Seconded by Councilmember:
 Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on January 7, 2019.

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

RESOLUTION NO. _____

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT A
DONATION OF FUNDS FROM THE WYOMING SENIOR FELLOWSHIP CLUB, INC.
AND TO AUTHORIZE THE RELATED BUDGET AMENDMENT

WHEREAS:

1. The Wyoming Senior Fellowship Club (WSFC) is a nonprofit affiliate of the City of Wyoming chartered to support the City's Wyoming Senior Center (WSC), located at 2380 DeHoop Ave, SW, Wyoming, Michigan.
2. On November 19, 2018 the City Council, via Resolution No. 26235, accepted a proposal from Store Fronts, Inc. for the replacement of doors at the Wyoming Senior Center.
3. The WSFC desires to contribute towards their purchase and has agreed to donate funds to the City for this purpose in the amount of \$7,191.
4. A budget amendment is necessary to recognize this donation.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept the donation of \$7,191 from the Wyoming Senior Fellowship Club.
2. The City Council does hereby authorize the attached budget amendment.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on January 7, 2019.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Budget Amendment

WSFC Correspondence

Resolution No. _____

December 6, 2018

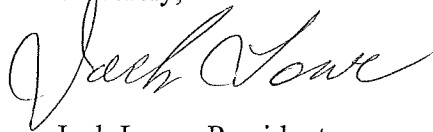
Rebecca Rynbrandt, Director of Community Services
City of Wyoming
1155 – 28th St SW
Wyoming, MI 49509

Dear Rebecca:

I am pleased to inform you that the Wyoming Senior Fellowship Club Activities Committee, Finance Committee, and general membership have voted in the affirmative to approve the financial support of \$7191.00 for the Door Replacement project at the Wyoming Senior Center, 2380 DeHoop SW.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jack Lowe". The signature is written in a cursive style with a large, prominent initial "J".

Jack Lowe, President
Wyoming Senior Fellowship Club

ORDINANCE NO. 1-19

ORDINANCE TO AMEND CHAPTER 14, ARTICLE VI, OF THE CITY CODE TO
PROHIBIT MARIHUANA ESTABLISHMENTS AND FACILITIES IN THE CITY

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 14, Article VI of the Code of the City of Wyoming, Michigan is amended to read as follows:

ARTICLE VI. – MARIHUANA ESTABLISHMENTS AND FACILITIES.

Sec. 14-451. - Definitions.

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

- (a) *IHRA* means the Industrial Hemp Research Act, 2014 PA 547, MCL 286.841 *et seq.*
- (b) *Marihuana establishment* means that term as defined in the MRTMA.
- (c) *Marihuana facility* means that term as defined in the MMFLA.
- (d) *MMFLA* means the Medical Marihuana Facilities Licensing Act, 2016 PA 281, MCL 333.27101 *et seq.*
- (e) *MMMA* means the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 *et seq.*
- (f) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 *et seq.*

Sec. 14-452. – Marihuana Establishments and Facilities Prohibited.

- (a) Pursuant to section 6 of the MRTMA, MCL 333.27956, marihuana establishments are prohibited within the boundaries of the city.
- (b) Marihuana facilities are prohibited within the boundaries of the city.

Sec. 14.453. – Rights Unaffected by Article.

- (a) Except as specifically provided in section 14-452 prohibiting marihuana establishments, this article shall not affect the rights or privileges of any individual or other person under the MRTMA.
- (b) This article does not affect the rights or privileges of a marihuana facility outside the boundaries of the city to engage in activities within the boundaries of the city that it is allowed to engage in under the MMFLA within a municipality that has not authorized marihuana facilities to operate within the municipality.
- (c) This article does not affect any rights or privileges of registered qualifying patients or registered primary caregivers under the MMMA or the MMFLA.
- (d) This article does not affect any rights or privileges of any individual or other person under the IHRA.
- (e) This article does not affect any rights or privileges of any individual or other person under any other federal or state law, rule or regulation related to the medical use of marihuana.

Section 2. This ordinance shall take effect on _____, 2019, upon the later of 15 days after its adoption or upon publication as required by applicable law.

Kelli A. VandenBerg
Wyoming City Clerk

December 20, 2018

Ms. Kelli A. VandenBerg
City Clerk
Wyoming, MI

Subject: Proposed Zoning Ordinance Text Amendments to prohibit marihuana establishments and facilities within all zoning districts (new *Section 90-330 Marihuana Establishments and Facilities Prohibited* added to Chapter 90, Article VI)

Recommendation: To approve the subject Zoning Ordinance amendment.

Dear Ms. VandenBerg,

The above referenced request was reviewed by the Wyoming Planning Commission at its regular meeting on December 18, 2018. A motion was made by Smart, supported by Arnoys, to recommend to the City Council adoption of the recommended *Sec. 90-330. – Marihuana Establishments and Facilities Prohibited* Zoning Ordinance text amendment. The motion passed unanimously following discussion. A detailed review of the request is available in the attached Planning Commission minutes. Following please find some background and other pertinent information.

On November 6, 2018 the Michigan electorate voted to legalize recreational marihuana. Following that vote, City Council took action to set a policy to opt-out of recreational marihuana establishments in the City until the state adopts licensing regulations for recreational marihuana establishments and the regulations can be thoroughly reviewed. On December 3, 2018 Chapter 14, Article VI, of the City Code was amended to *Prohibit Recreational Marihuana Establishments and Medical Marihuana Facilities in the City*. This ordinance took immediate effect.

While recreational marihuana establishments and facilities are not expressly permitted under the City's zoning ordinance, such businesses would likely be treated under the zoning ordinance just like other industrial and commercial uses. Therefore, to align the Zoning Ordinance with the action taken by City Council, the following zoning text amendment is proposed:



CITY COUNCIL

Sheldon DeKryger

Dan Burrill

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

Jack A. Poll, Mayor

Sec. 90-330. - Marihuana Establishments and Facilities Prohibited.

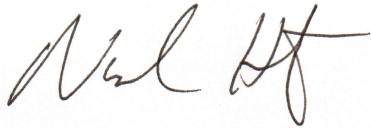
(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Marihuana establishment* means that term as defined in the MRTMA.
- (b) *Marihuana facility* means that term as defined in the MMFLA.
- (c) *MMFLA* means the Medical Marihuana Facilities Licensing Act, 2016 PA 281, MCL 333.27101 et seq.
- (d) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, 2018 IL __, MCL ____ et seq.

(b) Pursuant to Section 6 of the MRTMA marihuana establishments are prohibited in all zoning districts.

(c) Marihuana facilities are prohibited in all zoning districts.

Respectfully submitted,



Nicole Hofert, City Planner
Department of Community Services

Cc: Curtis Holt, City Manager
Rebecca Rynbrandt, Director of Community Services

THESE MINUTES ARE SUBJECT TO FORMAL APPROVAL BY THE WYOMING PLANNING COMMISSION AT ITS REGULAR MEETING OF JANUARY 15, 2019

PLANNING COMMISSION
MEETING MINUTES OF DECEMBER 18, 2018
CITY COUNCIL CHAMBERS
CITY OF WYOMING, MICHIGAN

MEMBERS PRESENT: Arnoys, Bueche, DeLange, Goodheart, Hegyi, Micele, Smart, Weller

MEMBERS ABSENT: Spencer

STAFF PRESENT: Hofert, City Planner
Dent, Acting Recording Secretary

Acting Chair DeLange called the meeting to order at 7:00 PM.

Motion by Micele, supported by Heygi, to excuse Spencer. Motion carried unanimously.

APPROVAL OF MINUTES

The minutes of November 20, 2018 were approved as written.

APPROVAL OF AGENDA

The agenda was approved as presented.

PUBLIC COMMENT ON NON-PUBLIC HEARING AGENDA ITEMS

There was no public comment.

AGENDA ITEM NO. 1

Request to approve proposed Zoning Ordinance Text Amendments to prohibit marihuana establishments and facilities within all zoning districts (new Section 90-330 Marihuana Establishments and Facilities Prohibited)

Hofert noted the City Council has in recent weeks taken action to respond at a policy level to the recent approval of recreational marihuana by the Michigan electorate. Following Council's action, it is recommended that the Planning Commission also take steps to address the new legislation in the Zoning Ordinance.

On November 6, 2018, the state's electorate approved Proposal 1 that enacted the Michigan Regulation and Taxation of Marihuana Act, 2018 IL ___ (the "MRTMA"). The MRTMA allows

personal possession and use of marihuana by persons of at least 21 years of age, provides for growing and sale of marihuana and industrial hemp by persons of at least 21 years of age, and permits the taxation of revenue derived from commercial marihuana facilities.

It joins a few other state statutes to provide a fairly, but not entirely, consistent approach to the availability of marihuana to varying persons for varying uses, but which may prove to be fairly complex in administration and enforcement. The following are previous acts of note:

- The Medical Marihuana Facilities Licensing Act, 2016 PA 281, MCL 333.27101 et seq. (the “MMFLA”), was enacted to provide certain requirements for and state regulation of “marihuana facilities,” i.e. facilities for growing, processing, testing, transporting, and dispensing marihuana for medical uses.
- The Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 et seq. (the “MMMA”), was another initiated law that provided for the registration of qualifying patients and primary caregivers.
- The Industrial Hemp Research Act, 2014 PA 547, MCL 286.841 et seq. (the “IHRA”), provides for the growing and use of hemp for industrial and commercial uses.

History of Medical Marihuana:

The City of Wyoming has previously acted to “opt-out” of allowing facilities that grow or distribute medical marihuana. In December 2010, *Section 90-327 Medical Marihuana Facilities* was added to the Wyoming Zoning Ordinance. For reference that section reads:

“Secs. 90-327 MEDICAL MARIJUANA FACILITIES {Ord. No. 11-10, 12-6-10}
Medical marijuana provisioning centers and medical marijuana safety compliance facilities as defined in Chapter 14 of this Code or any other facility to distribute medical marijuana shall not be allowed in any zone in the City. This section shall not apply to a location used by a primary caregiver to assist a qualifying patient as allowed in the Michigan Medical Marihuana Act as amended.”

Until the electors’ November 6, 2018 enactment of the MRTMA, marihuana was legally available only for medical use by registered qualifying patients who could possess up to 2.5 ounces of marihuana and who could grow up to 12 plants. Registered caregivers could grow up to 12 plants for each of 5 registered qualifying patients and, if the caregiver is also a registered qualifying patient, up to 12 additional plants for the caregiver/patient’s own use. In addition, medical marihuana facilities could be licensed by the state to operate in a city, township or village that “opted-in” in accordance with state regulations and any local regulations addressing the numbers and locations of each type of medical marihuana facilities. While a secured transporter can transport medical marihuana through a city, township or village that had not opted-in, neither that secured transporter nor any other medical marihuana facility could be located or operating within a city, township or village that had not opted-in.

Why Amend the Zoning Ordinance:

Following the vote to legalize recreational marihuana, City Council took action to set a policy to opt out of recreational marihuana establishments in the City until the state adopts licensing regulations for recreational marihuana establishments and the regulations can be thoroughly reviewed.

The MRTMA allows unlimited numbers of businesses called “marihuana establishments” that include recreational marihuana growers, safety compliance facilities, processors, microbusinesses (i.e., businesses growing up to 150 plants, processing, packaging and selling marihuana to persons over 21 years in age), retailers, and secured transporters in all cities, townships or villages unless they adopt an ordinance limiting the numbers or prohibiting marihuana establishments. Under the MRTMA the City must opt-out if it wishes to preclude any recreational marihuana establishments or, if it wishes to limit the numbers of any recreational marihuana establishments, it must adopt one or more ordinances regulating them.

The MRTMA allows personal possession and use of 2.5 ounces of marihuana (up to 10 ounces at home and up to 12 plants at home) by persons 21 years of age and older. A local government may not adopt more strict personal use and possession regulations.

While recreational marihuana establishments and facilities are not expressly permitted under the City’s zoning ordinance, such businesses would likely be treated under the zoning ordinance just like other industrial and commercial uses.

Proposed Ordinance Amendment:

Staff recommended the following ordinance amendment:

That Chapter 90, Article VI of the Code of the City of Wyoming, Michigan is amended by adding Section 90-330 to read as follows:

Sec. 90-330. - Marihuana Establishments and Facilities Prohibited.

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

- (a) *Marihuana establishment* means that term as defined in the MRTMA.
- (b) *Marihuana facility* means that term as defined in the MMFLA.
- (c) *MMFLA* means the Medical Marihuana Facilities Licensing Act, 2016 PA 281, MCL 333.27101 et seq.
- (d) *MRTMA* means the Michigan Regulation and Taxation of Marihuana Act, 2018 IL __, MCL ____ et seq.

(b) Pursuant to Section 6 of the MRTMA marihuana establishments are prohibited in all zoning districts.

(c) Marihuana facilities are prohibited in all zoning districts.

Planning Commission Action:

The Development Review Team recommended that the Planning Commission adopt the recommended *Sec. 90-330. - Marihuana Establishments and Facilities Prohibited* text amendment and recommend the same to Council.

Since there was no one present for the public hearing Acting Chair DeLange opened and closed the public hearing.

Motion by Smart, supported by Arnoys, to recommend to City Council adoption of the recommended *Sec. 90-330. – Marihuana Establishments and Facilities Prohibited Zoning Ordinance* text amendment. Discussion followed.

Staff confirmed that nurseries would be prohibited from growing and selling Marijuana.

A vote on the motion carried unanimously.

AGENDA ITEM NO. 2

Form Based Code Presentation

Hofert gave a presentation on the Form Based Code, including explanations on when the code applies and which body is responsible for reviewing submittals.

Arnoys requested staff give regular updates on Form Based Code projects that do not come before the Planning Commission.

Micele asked about the plan review process of Form Based Code. Hofert explained the process to Commissioners.

Weller inquired if developers had been challenged by navigating the new code. Hofert noted that the process of submitting plans for review remains the same, any site plans that are submitted may need adjustments; it is up to the developer if they want to continue the project. Further, Hofert noted that all applicants, whether building in Form Based Code areas or not, are encouraged to have pre-consultation meetings to work through the nuances of the code and site plan process.

PUBLIC COMMENT

There was no public comment.

The board expressed season's greetings and gratitude toward City staff for their hard work during the past year.

ORDINANCE NO. 2-19

ORDINANCE TO AMEND CHAPTER 50, ARTICLE V, DIVISION 2, OF THE CITY CODE
BY AMENDING SECTIONS 50-188 AND 50-190, AND ADDING SECTION 50-191 TO
PROHIBIT DRIVING UNDER THE INFLUENCE OF MARIHUANA, TO PROVIDE
PENALTIES FOR VIOLATIONS OF THAT DIVISION, AND TO ADDRESS POTENTIAL
CONFLICTS BETWEEN THAT PROVISION AND APPLICABLE STATE LAWS

(Adopted as an Emergency Ordinance to Take Immediate Effect)

THE CITY OF WYOMING ORDAINS:

Section 1. That Sections 50- 188 and 50-190 of the Code of the City of Wyoming, Michigan, are amended to read as follows:

Sec. 50-188. – Other Persons – Prohibited Acts.

(a) It is unlawful to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this article or other applicable law.

(b) It is unlawful to deliver or possess with intent to deliver drug paraphernalia knowing, or under circumstances where one should reasonably know, that it will be used plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this article or other applicable law.

(c) It is unlawful to deliver or possess with intent to deliver marihuana, marihuana-infused products, marihuana concentrate or marihuana accessories to any person under 21 years of age. However, it shall not be a violation of this subsection for a registered primary caregiver to deliver or possess with intent to deliver marihuana, marihuana-infused products, marihuana concentrate or marihuana accessories to a registered qualifying patient as provided in the MMMA.

(d) It is unlawful to consume marihuana in a public place.

(e) It is unlawful to smoke marihuana where prohibited by the individual or other person who owns, occupies, or manages the property.

(f) Except as otherwise provided by applicable law, it is unlawful to cultivate marihuana plants where the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area.

(g) It is unlawful to consume marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat.

(h) It is unlawful to smoke marihuana within the passenger area of a vehicle upon any public way.

(i) It is unlawful to possess marihuana accessories or to possess or use marihuana on the grounds of any public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility.

(j) It is unlawful to separate marihuana concentrate by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of a residential structure.

(k) Except as otherwise provided by applicable law, it is unlawful to possess more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the container or area.

(l) It is unlawful to operate, navigate, or be in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.

Sec. 50-190. – Penalties.

(a) Acts that are violations of provisions of this division that are classified as misdemeanors under section 15 or other sections of the MRTMA shall be misdemeanors. Acts that are violations of provisions of this division that are classified as civil infractions under section 15 or other sections of the MRTMA shall be civil infractions.

(b) Persons violating provisions of this division for which punishment is specified in or limited by section 15 of the MRTMA, MCL 333.27965, shall be subject the punishment stated in or limited by that section of the MRTMA.

(c) If a state law other than section 15 of the MRTMA, MCL 333.27965, requires the classification of an act violating this division as a misdemeanor, it shall be a misdemeanor. If a state law other than section 15 of the MRTMA, MCL 333.27965, requires the classification of an act violating this division as a civil infraction, it shall be classified as a civil infraction. If a state law other than section 15 of the MRTMA, MCL 333.27965, specifies or limits the punishment for an act violating this division, the punishment for that act shall be as limited or specified in that state law.

(d) Acts violating this division that are not addressed by subsections (a), (b) or (c) are misdemeanors that, except as provided in subsection (e), are punishable as provided in section 1-26 of this Code of Ordinances, City of Wyoming, Michigan.

(e) If not specified in or limited by subsection (b) or (c), if any person who has not previously been convicted of or found responsible for any offense under (i) this division, (ii) sections 50-161 or 50-163 of division 1 of this article, (iii) article 7 of the Public Health Code, 1978 PA 368, MCL 333.7101 through 333.7545, or (iv) any statute of the United States or of any state relating to narcotic drugs, cocoa leaves, marihuana, or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or use of a controlled substance or marihuana in violation of this division, the court, may sentence that person in accordance with the terms and conditions of section 7411 of the Public Health Code, 1978 PA 368, MCL 333.7411.

Section 2. That Chapter 50, Article V, Division 2, of the Code of the City of Wyoming, Michigan is amended by adding Section 50-191 to read as follows:

Sec. 50-191. – Conflict with Other Laws.

It is the intention that this division be harmonious with applicable state law. This division is intended to supplement state law and to provide a local ordinance consistent with state law as an additional law enforcement option. If any provision of this division conflicts with any provision of the MMFLA, the MMMA, the MRTMA or the IHRA, the provision in the MMFLA, the MMMA, the MRTMA or the IHRA shall govern.

Section 3. This ordinance shall take immediate effect, having been declared by a 2/3 vote of the City Council to be an emergency in order to comply with the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 27951 *et seq.* enacted by the state's electors on November 6, 2018, certified by the State Board of Canvassers on November 26, 2018, and taking effect on December 6, 2018.

Kelli A. VandenBerg
Wyoming City Clerk

STAFF REPORT

Date: January 2, 2018
Subject: Drug Ordinance Amendment – Ordinance No. 2-19
From: Scott Smith, City Attorney
Meeting Date: January 7, 2018

Background:

On December 3, 2018, the Council adopted Ordinance 20-18 to amend the City's drug-related ordinances to conform with the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 *et seq.* (the "MRTMA"). Communications with other municipal attorneys and with our police leaders resulted in reexamination of the penalty provisions in light of the MRTMA, portions of the Revised Judicature Act, portions of the Public Health Code, parts of the Michigan Vehicle Code and other applicable law.

The draft penalty table that is attached shows the complexity of the MRTMA penalty provisions. It is not clear how the MRTMA will interact with other state laws and local ordinances. Therefore, in an attempt to avoid additional amendments to comply with interpretations of or possible changes to state law, we have incorporated provisions deferring to state law as it may from time-to-time be construed or amended.

While in the course of preparing that amendment, it was not clear that driving under the influence of marihuana will, at least in the short run, be covered by the locally-adopted Michigan Vehicle Code. Therefore, a separate provision is included.

Recommendation:

Adopt proposed Ordinance No. 2-19 to Amend Chapter 50, Article V, Division 2, of the City Code by Amending Sections 50-188 and 50-190, and Adding Section 50-191 to Prohibit Driving under the Influence of Marihuana, to Provide Penalties for Violations of that Division, and to Address Potential Conflicts Between that Provision and Applicable State Laws.

We are also recommending approval by a 2/3 vote to give it immediate effect as an emergency ordinance so our ordinance complies with the MRTMA and other applicable laws.

Sustainability Criteria:

Environmental Quality – Approval will not affect environmental quality.

Social Equity – Approval will ensure marihuana violations are treated in accordance with state law despite any changes in its interpretation or its amendment.

Economic Strength – Approval is unlikely to affect economic strength.

Quality Customer Service – Approval will ensure the City is not attempting to penalize persons in ways inconsistent with state law.

MARIHUANA VIOLATIONS & PENALTIES

<u>Prohibited Act</u>	<u>Section to Cite in Violation</u>		<u>Section Classifying & Setting Penalty</u>		<u>Comments</u>
	<u>City Code §</u>	<u>State Law §</u>	<u>City Code Penalty</u>	<u>State Law Penalty</u>	
<p>A person who is at least 21 & who:</p> <ul style="list-style-type: none"> - Outside the person's residence, possesses not more than 2.5 oz of marihuana (or 15 grams of concentrate) - Possesses not more than 10 oz. in residence - Cultivates not more than 12 plants in residence - Delivers without any remuneration not more than 2.5 oz of marihuana or not more than 15 grams of marijuana concentrate to a person at least 21 - Possesses with intent to deliver not more than 2.5 oz of marihuana or not more than 15 grams of marijuana <p>BUT IS NOT:</p> <ul style="list-style-type: none"> - Operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence - Transferring marihuana or accessories to someone under 21 - Separating resin by butane or other low flashpoint substance - Consuming marihuana while operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat - Smoking marihuana while in the passenger area of a vehicle on a public way - Possessing accessories on PK-12 school grounds, in school bus or at correctional facility - Possessing or consuming marihuana on PK-12 school grounds, in school bus or at correctional facility 	<p>50-188(d) 50-188(e)</p> <p>50-188(f) 50-188(f)</p> <p>50-188(k)</p>	<p>MCL 333.27965(1)</p>	<p>Civil infraction – same as state law - §50-190(a)&(b)</p>	<p>MCL 333.27965(1) classifies as a civil infraction and limits the penalty to \$100 max. plus marihuana forfeiture</p>	
<p>A person who is at least 21 & who:</p> <ul style="list-style-type: none"> - Outside the person's residence, possesses not more than 5 oz of marihuana (or 30 grams of concentrate) - Possesses not more than 20 oz. in residence - Cultivates not more than 24 plants in residence - Delivers without any remuneration not more than 5 oz of marihuana or not more than 30 grams of marijuana concentrate to a person at least 21 - Possesses with intent to deliver not more than 5 		<p>MCL 333.27965(2)</p>		<p>MCL 333.27965(2): 1st violation – civil infraction with up to \$500 fine & marihuana forfeiture 2nd violation – civil infraction with up to \$1,000 fine & marihuana forfeiture 3rd violation –</p>	

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<p>oz of marihuana or not more than 30 grams of marijuana BUT IS NOT:</p> <ul style="list-style-type: none"> - Operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence - Transferring marihuana or accessories to someone under 21 - Separating resin by butane or other low flashpoint substance - Consuming marihuana while operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat - Smoking marihuana while in the passenger area of a vehicle on a public way - Possessing accessories on PK-12 school grounds, in school bus or at correctional facility - Possessing or consuming marihuana on PK-12 school grounds, in school bus or at correctional facility - Consuming marihuana in a public place - Smoking marihuana where prohibited by the owner, occupant or manager - Cultivating marihuana in a visible location - Cultivating marihuana outside of a secured area - Possessing more than 2.5 oz. at residence outside a secured area or container 				misdemeanor with up to \$2,000 fine and marihuana forfeiture	
<p>A person who is under 21 & who:</p> <ul style="list-style-type: none"> - Possesses not more than 2.5 oz. of marihuana - Cultivates not more than 12 plants <p>BUT IS NOT:</p> <ul style="list-style-type: none"> - Operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence - Separating resin by butane or other low flashpoint substance - Consuming marihuana while operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat 	50-187(a) &/or (b)	MCL 333.27965(3)	Same as state law - §50-190(a)&(b)	MCL 333.27965(3): 1 st violation is a civil infraction: - If under 18 - up to \$100 fine or community service, marihuana forfeiture, & 4 hrs. drug education or counseling - If over 18, up to \$100 fine & marihuana forfeiture 2 nd violation is a civil infraction	This provision may limit the penalties for all violations by persons under 21 to the stated ones.

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				<ul style="list-style-type: none"> - If under 18 - up to \$500 fine or community service, marihuana forfeiture, & 8 hrs. drug education or counseling - If over 18, up to \$500 fine & marihuana forfeiture 	
<p>A person who is at least 21 & who:</p> <ul style="list-style-type: none"> - Except within the person's residence, possesses more than 5 oz of marihuana (or 30 grams of concentrate) - Possesses more than 20 oz. at residence - Cultivates more than 24 plants at residence - Delivers without any remuneration more than 5 oz of marihuana or not more than 30 grams of marijuana concentrate to a person at least 21 years old <p>BUT IS NOT:</p> <ul style="list-style-type: none"> - Operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence - Transferring marihuana or accessories to someone under 21 - Separating resin by butane or other low flashpoint substance - Consuming marihuana while operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat - Smoking marihuana while in the passenger area of a vehicle on a public way - Possessing accessories on PK-12 school grounds, in school bus or at correctional facility - Possessing or consuming marihuana on PK-12 school grounds, in school bus or at correctional facility - Consuming marihuana in a public place - Smoking marihuana where prohibited by the owner, occupant or manager - Cultivating marihuana in a visible location 		MCL 333.27965(4)		MCL 333.27965(4) classifies the act as a misdemeanor but imprisonment is not permitted unless the violation was (i) habitual, willful, & for a commercial purpose or (ii) involved violence	

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- Cultivating marihuana outside of a secured area - Possessing more than 2.5 oz. at residence outside a secured area or container					
A person who is: - Operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence - Separating resin by butane or other low flashpoint substance - Consuming marihuana while operating, navigating or in physical control of a motor vehicle, aircraft, snowmobile, ORV, or motorboat	50-188(l) 50-188(j) 50-188(g)	MVC	50-190(c) – MVC penalties 50-190(d) – Misdem. §1-26 50-190(d) - Misdem. §1-26	MVC penalties	
A person over 21 who is: - Transferring marihuana or accessories or possessing with intent to transfer to someone under 21 marihuana or accessories - Separating resin by butane or other low flashpoint substance - Smoking marihuana while in the passenger area of a vehicle on a public way - Possessing accessories on PK-12 school grounds, in school bus or at correctional facility - Possessing or consuming marihuana on PK-12 school grounds, in school bus or at correctional facility - Consuming marihuana in a public place - Smoking marihuana where prohibited by the owner, occupant or manager - Cultivating marihuana in a visible location - Possessing more than 2.5 oz. at residence outside a secured area or container	50-188(c) 50-188(j) 50-188(h) 50-188(i) 50-188(i) 50-188(d) 50-188(e) 50-188(f) 50-188(f) 50-188(k)		50-190(d) – Misdemeanor punishable under §1-26		Note provision in §50-190(e) allowing for possible sentencing alternative.
Non-marihuana drug violations: - Use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this	50-188(a)		50-190(d) – Misdemeanor punished as provided in §1-26		Note provision in §50-190(e) allowing for possible sentencing alternative.

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article or other applicable law. - Deliver or possess with intent to deliver drug paraphernalia knowing, or under circumstances where one should reasonably know, that it will be used plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this article or other applicable law.	50-188(b)				