



**CITY OF NEW BUFFALO  
PLANNING COMMISSION AGENDA  
February 22, 2023, AT 5:30 PM**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Approval of Previous Minutes – January 18, 2023 (Rescheduled Regular Meeting)
6. Public Comment
7. Public Hearing
  - a. Review of recommendations for zoning amendments for marijuana establishments.
8. New Business
  - a. Zoning Ordinance Amendment (Marijuana)
8. Commissioner Comments
9. Adjournment

The Rescheduled Regular Planning Commission Meeting on January 18, 2023, was called to order by Chair Billingslea at 5:33 p.m.

The Pledge of Allegiance was led by the Planning Commission.

**Roll Call:** Member Schmidt, Rau, McCollum, Chair Billingslea

**Absent:** Member Joseph

**Staff Present:** City Manager; Darwin Watson, City Clerk; Amy Fidler

**Approval of Agenda:** Motion by Member Rau, seconded by Member Schmidt to approve the agenda:

Voice Vote, Motion Carried.

**Approval of Previous Minutes: November 15, 2022:** Motion by Member McCollum, seconded by Member Rau to approve the November 15, 2022, Special Planning Commission meeting minutes.

Voice Vote, Motion Carried.

**Public Comment:**

Vance Price

**New Business**

**Election of Officers (Chairman, Vice-Chairman):**

Motion by Member Rau, seconded by Member McCollum to appoint Member Billingslea as Chairman of the Planning Commission:

Roll Call Vote:

AYES: Rau, McCollum, Schmidt

NAYES:

ABSENT: Joseph

ABSTAINED: Billingslea

Motion Carried, 3-0.

Motion by Member Rau, seconded by Member McCollum to table appointing Member Joseph as Vice-Chairman of the Planning Commission until next meeting:

Roll Call Vote:

AYES: McCollum, Rau, Schmidt, Billingslea

NAYES:

ABSENT: Joseph

ABSTAINED:

Motion Carried, 4-0.

**Year End Report:** City Manager Watson wanted to make the board aware that the End of the Year Report is due. City Manager Watson informed the board that the city staff will prepare this for the next meeting.

**Draft Zoning Ordinance Amendments:** Chair Billingslea asked that the Planning Commission and City Council have a joint meeting to go over the draft Zoning Ordinance Amendments as soon as possible.

**Zoning Ordinance Amendment (Marijuana):** City Attorney John Weiss was present at the meeting to answer any questions that the board might have regarding the Draft Zoning Ordinance Amendment (Marijuana).

City Attorney Weiss will revise the document.

**Adjournment:** Motion by Member McCollum, seconded by Member Rau to adjourn the meeting at 6:13 p.m.

Voice Vote  
Motion Carried.

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Paul Billingslea, Chair

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Amy Fidler, City Clerk

[DRAFT FOR REVIEW – 1/20/2023]

CITY OF NEW BUFFALO  
BERRIEN COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND APPENDIX A “ZONING ORDINANCE”  
OF THE CODE OF THE CITY OF NEW BUFFALO, MICHIGAN IN  
ORDER TO REGULATE MARIHUANA RETAILERS

THE CITY OF NEW BUFFALO ORDAINS:

**Section 1. Amendment.** Section 2-3, “Definitions,” of Article 2, “Definitions and Interpretations,” of Appendix A, “Zoning Ordinance,” of the Code of Ordinances, City of New Buffalo, Michigan, is hereby amended to include new definitions, to be inserted in alphabetical order, and which read as follows:

**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 ESTABLISHMENT**

A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.

**MARIHUANA LICENSEE**

A person holding a valid license for an adult use marihuana establishment issued by the State of Michigan.

**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.

**Section 2. Amendment.** Section 11-2, “Uses permitted by right and special use permit,” of Article 11, “GCD General Commercial District,” of Appendix A, “Zoning Ordinance,” of the Code of Ordinances, City of New Buffalo, Michigan, is hereby amended in its entirety to read:

**Section 11-2. Uses permitted by right and special use permit.**

Land or buildings in the GCD District may be used for the following uses "by right" or by "special use permit" as identified. Those uses permitted by special use permit shall be reviewed in accordance with provisions contained in Article 17.

<b>Land Use</b>	<b>Permitted by Right</b>	<b>Special Use</b>
<b>GROCERY, FOOD STUFFS; PHARMACIES AND RELATED USES</b>		
1. Grocery store	X	
2. Convenience store selling foods, without gasoline sales	X	
3. Specialty food stores including: meat market, bakery, produce, candy/nuts, and health food store	X	
4. Bulk food sales (retail)	X	
5. Pharmacy (without drive-through service)	X	
6. Pharmacy (with drive-through service)	X	
7. Medical supplies	X	
8. Liquor sales	X	
<b>AUTOMOTIVE, GASOLINE, AND MARINE SALES AND SERVICE</b>		
9. Automotive parts	X	
10. Automotive sales and service, including used car dealerships and motorcycle dealerships		X
11. Light truck sales and service		X
12. Mobile/modular home sales and service		X
13. Recreational vehicle sales and service		X
14. Gasoline sales (may include convenience sales or auto repair)		X
15. Automobile related repair or service businesses		X
16. Car wash, automatic or manual		X
17. Marine supplies (not including watercraft sales and service)	X	
18. Marine supplies (including watercraft		

sales and service) X

**OFFICES**

- 19. Executive, professional, and administrative offices X
- 20. Medical offices, out-patient clinics, and emergency medical center X
- 21. Real estate and insurance X
- 22. Veterinary office (but not including outdoor kennels, run, or exercise facilities) X
- 23. Government and community service facility (but not including penal institutions, halfway houses, work release facilities, or facilities of a similar character) X
- 24. Financial institutions including: banks, credit unions, savings and loan, mortgage, stock brokerage, and investments, but without drive-through facilities X
- 25. Financial institutions including: banks, credit unions, savings and loan, mortgage, stock brokerage, and investments, with drive-through facilities X
- 26. Construction-related contractors offices (without outdoor storage of construction equipment or materials) X
- 27. Construction-related contractors offices (with outdoor storage of construction equipment or materials) X

**RESTAURANTS, LOUNGES, BARS, AND PUBS**

- 28. Restaurants, cafes, coffee shops and ice cream shops (without drive-through service) X
- 29. Restaurants, cafes, and ice cream shops (with drive-through service) X
- 30. Bars, lounges, or pubs (not including adult entertainment) X

Outdoor seating/service

X

## GENERAL AND SPECIALTY RETAIL AND PERSONAL SERVICES

- |  |   |   |
|--|---|---|
| 31. Sporting goods (not including recreational vehicle sales and service)  | X |   |
| 32. Bait shops   | X |   |
| 33. General merchandise stores limited to new merchandise and entirely within an enclosed building (includes department and variety stores)  | X |   |
| 34. Used retail merchandise sales conducted entirely within an enclosed building and handling product lines classified as antiques, used, second-hand, surplus or factory seconds and pawn shops   | X |   |
| 35. Stores selling small appliances, computers/software, office equipment, camera/photo supplies, and electronics  | X |   |
| 36. Printing and mailing services (not including commercial delivery services having a fleet of more than 2 trucks, vans, or cars)   | X |   |
| 37. Personal services including: hair salons, beauty/barber shops, florists, health and fitness clubs, photographic studios, travel agencies, locksmith, tax services, video rental (non-adult), dry cleaners (non-industrial), pet grooming and commercial day care | X |   |
| 38. Massage services   |   | X |
| 39. Specialty retail stores including: books/news/magazine (non-adult), stationery, jewelry, hobby/toys, gift/novelty, luggage/leather, sewing/needlework, tobacco, music/compact discs/tapes, and musical instruments   | X |   |
| 40. Apparel, including shoes and clothing accessories  | X |   |
| 41. Hardware stores  | X |   |

- |   |   |   |
|---|---|---|
| 42. Home furnishings, wall and floor coverings, and draperies | X |   |
| 43. Marihuana retailers                                       |   | X |

**RECREATION, LEISURE, HOTELS, AD MOTELS**

- |  |   |   |
|--|---|---|
| 44. Bowling alley, with or without the sale of food and alcoholic beverages  | X |   |
| 45. Miniature golf   | X |   |
| 46. Indoor movie theater or performing arts theater (non-adult)  |   | X |
| 47. Lodge halls, social clubs, fraternal organizations, banquet halls, and other similar uses not involving residential occupancy or adult entertainment |   | X |
| 48. Municipal parks  | X |   |
| 49. Hotels   | X |   |
| 50. Motels   | X |   |
| 51. Bed-and-breakfast  |   | X |

**MISCELLANEOUS**

- |  |   |   |
|--|---|---|
| 52. Public utility buildings and uses, but not including storage yards |   | X |
| 53. Educational institution offices or facilities                      |   | X |
| 54. Open air businesses  |   | X |
| 55. Parking structures   |   | X |
| 56. Residential dwellings  | X |   |
| 57. Religious institutions   |   | X |

**Section 3. Amendment.** Section 17-8, “Specific design standards for individual uses,” of Article 17, “Special Land Uses,” of Appendix A, “Zoning Ordinance,” the Code of Ordinances, City of New Buffalo, Michigan, is hereby amended to add the following subsection M:

**Section 17-8. Specific design standards for individual uses.**

- M. Marihuana retailer.



(1) *Purpose and intent.* The purpose of this section is to protect the public health, safety, and welfare, protect neighborhood character, minimize negative community impacts, and enact effective regulatory and enforcement controls through minimum land use requirements for marihuana establishments in the City. Marihuana establishments, as defined pursuant to Section 3 of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), include a marihuana retailer permitted by applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by the State of Michigan Department of Licensing and Regulatory Affairs (LARA).

(2) *License required.*

(a) In addition to the special land use permit required by this section, a license issued by the City pursuant to Chapter 22 of the City Code shall be required prior to operating any marihuana retailer in the City, along with any other licenses or permits required by any other federal, state, or local agency having jurisdiction.

(b) The issuance of a special land use permit pursuant to this section does not create an exception, defense, or immunity to any person in regard to any potential civil or criminal liability.

(c) It shall be unlawful for any person to operate a marihuana retailer in the City without both obtaining a license pursuant to the requirements of Chapter 22 of City Code, and a special land use permit pursuant to the requirements of this section.

(d) A separate special land use permit shall be required for each geographic location.

(e) The planning commission may approve a special land use permit for multiple marihuana retailers at the same geographic location and/or in one building, provided that all appropriate licenses are obtained.

(3) *Application requirements.* An application for a marihuana retailer special land use shall be accompanied by a site plan pursuant to Article 19 of the City of New Buffalo Zoning Ordinance, along with any additional information necessary to describe the proposed establishment. At a minimum, the following materials shall be submitted as part of an application, in addition to the special land use application requirements of Article 17 of the City of New Buffalo Zoning Ordinance.

(a) *Verification.* A signed statement by the applicant indicating the proposed establishment type, including any requested special licenses, provided that such special licenses are authorized by the City of New Buffalo and by applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

(b) *Consent.* A notarized statement by the property owner that acknowledges use of the property for a marihuana retailer and agreement to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising out of, or in connection to, the operation of a marihuana establishment. Written consent shall also include approval of the owner and operator for the City to inspect the establishment at any time during normal business hours to ensure compliance with applicable laws and regulations.

(c) State license. A copy of official paperwork issued by LARA indicating that the applicant has successfully completed the application for a state operating license. Copies of all documents submitted to LARA in connection with the initial license application, subsequent renewal applications, or investigations conducted by LARA shall be provided to the City.

(d) A provisional license issued by the City pursuant to Chapter 22 of the City Code is not required in order to apply for special land use approval for a marihuana retailer. When a license from the City has not yet been obtained prior to applying for a special land use, the planning commission shall require a license from the City as a condition of special land use approval.

(4) *Additional site plan requirements.* In addition to the site plan requirements in Article 19 of the City of New Buffalo Zoning Ordinance, the following information shall also be submitted:

(a) A map, drawn to scale, containing all preschools, K-12 public or private schools, and religious institutions near the proposed marihuana establishment location and a 1,000-foot isolation radius drawn around the proposed location to show an appropriate setback distance.

(b) A narrative describing how the enclosed areas with marihuana have been secured and how permitted individuals will be given access.

(c) A detailed security plan that addresses all security measures of the marihuana retailer in compliance with all applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

(d) A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with any other applicable City requirements.

(e) Existing and proposed building elevations, including building materials, window calculations, descriptions of glass to be used, and other pertinent information that describes building construction or structural alterations.

(f) A floor plan of the marihuana establishment detailing the locations of the following:

- (i) All entrances and exits to the establishment;
- (ii) The location of any windows, skylights, and roof hatches;
- (iii) The location of all cameras, and their field of view;
- (iv) The location of all alarm inputs (door contacts, motion detectors, duress/hold up devices) and alarm sirens;
- (v) The location of the digital video recorder and alarm control panel, including the location of the off-site storage or network service provider for storage of the required copies of surveillance recordings; and
- (vi) Restricted and public areas.

(g) The applicant's procedures for accepting delivery of marihuana at the marihuana retailer, including procedures for how and where it is received, where it is stored, and how the transaction is recorded.

(5) *General provisions.* Marihuana retailers shall be subject to the following requirements:

(a) *Security.* The marihuana retailer shall comply with all applicable security requirements contained in applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

- (i) All marihuana and marihuana accessories shall be located within an enclosed, locked area, inaccessible on all sides, and equipped with locks that permit access only by the licensed operator or their employees, agents of LARA, law enforcement officers, emergency personnel, and other authorized individuals, as reviewed and approved by the City.
- (ii) Marihuana retailers shall use commercial-grade, nonresidential door locks on all points of entry and exit to the permitted premises.
- (iii) Security cameras are required to be installed and operated in marihuana retailers twenty-four (24) hours per day, three hundred sixty-five (365) days per year, and shall be directed to record only the subject property. Required security cameras may not be directed to public rights-of-way as applicable, except as required to comply with applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

(b) *Buffering.* The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment. The following minimum-distancing regulations shall apply to all marihuana retailers. A marihuana retailer shall not be located

- (i) within 1,000 feet of a preschool or child care center, whether or not it is in the City;
- (ii) within 1,000 feet of a public or private K-12 school, whether or not it is within the City;
- (iii) within 1,000 feet from the Central Business District as illustrated on the City of New Buffalo Zoning Map;
- (iv) within 1,000 feet from a religious institution, whether or not it is located within the City; or
- (v) directly adjacent to an R-1, R-2, or R-3 Zoning District.

*Exception.* The requirements above do not apply if the marihuana retailer was lawfully established prior to the location of an establishment or zoning district specified in items (i)-(v). For purposes of this subsection, directly adjacent parcels do not include parcels separated by a city street.

(c) *Odors.* The marihuana retailer shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside is not detected outside the building in which it operates, on adjacent public rights-of-way, private road

easements, or within other units located within the same building as the marihuana retailer if it occupies only a portion of the building.

(d) The marihuana retailer shall be operated and maintained at all times so that any by-products or waste of any kind shall be properly and lawfully kept and disposed of so as to preclude any risk of harm to the public health, safety, or welfare.

(e) The marihuana retailer shall not be operated out of a residence or any building used wholly or partially for residential purposes.

(f) A marihuana retailer shall not be operated from a business which also sells alcoholic beverages or tobacco products.

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

(h) The marihuana retailer shall comply at all times and in all circumstances with the MRTMA and the Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

(i) The owner and/or licensee shall maintain clear and adequate records and documentation demonstrating that all cannabis or cannabis products have been obtained from permitted and licensed cannabis operations. The City shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the City upon request.

(j) In the event of any conflict, the terms of this ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

(6) *Effect of Permit.*

(a) A special land use permit for a marihuana retailer is valid only for the location identified on the license and cannot be transferred to another location within the City without a new special land use permit.

(b) A special land use permit does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the MRTMA or other violations not protected by the MRTMA.

(c) Compliance with the City Code and state law is a condition of maintenance of a special land use permit, and a license may be suspended or revoked if such ordinances and statutes are violated.

(d) Nothing contained herein is intended to limit the City's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by the MRTMA.

(7) *Violations.* Failure to comply with the requirements of this section shall be considered a violation of the zoning ordinance.

(a) Request for revocation of state operating license. If at any time an authorized marihuana retailer violates this section or any other applicable City ordinance, the City may request that LARA revoke or refrain from renewing the marihuana retailer’s state operating license.

(b) A new special land use application shall be required for a marihuana retailer to commence operation at the same location after an automatic revocation of a special land use approval. Any approval granted for a marihuana retailer shall be revoked automatically for the following reasons:

- (i) Revocation or suspension of the licensee’s authorization to operate by LARA.
- (ii) A finding by LARA that a rule or regulation has been violated by the licensee.
- (iii) Other violations of the City’s zoning ordinance, special land use permit, or conditions imposed thereon by the planning commission.

**Section 4. Publication and Effective Date.** This Ordinance shall be published in a newspaper of general circulation in the City, and shall be effective 20 days after its enactment or upon publication, whichever is later.

YEAS: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT \_\_\_\_\_

**ORDINANCE DECLARED ADOPTED.**

**CERTIFICATION**

This is a true and complete copy of an ordinance adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a meeting held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
John Humphrey, Mayor

\_\_\_\_\_  
Ann M. Fidler, Clerk