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ORDINANCE NO. 2022-034

AN ORDINANCE AMENDING PART SEVEN - BUSINESS REGULATION CODE OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS, OHIO WITH THE ESTABLISHMENT OF CHAPTER 759 CAPTIONED “MEDICAL MARIJUANA LICENSURE” AND DECLARING AN EMERGENCY.

WHEREAS, the Administration deems it necessary to review, amend and update the Codified Business Regulations Ordinances of the City to modernize and improve the City’s business uses and relevant regulations related thereto; and

WHEREAS, the City in its commitment to modernize and improve its Business Regulations Code hereby establishes Chapter 759 titled “Medical Marijuana Licensure” under the following terms and conditions:

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. That Chapter 759 captioned Medical Marijuana Licensure of the Codified Ordinances of the City of Willoughby Hills, Ohio, is hereby established and adopted to read as follows:

CHAPTER 759 MEDICAL MARIJUANA LICENSURE

759.01 TITLE, PURPOSE AND OBJECTIVES.

(a) **Title.** This Chapter shall be known as Medical Marijuana Licensure.

(b) **Purpose.** The purpose of this Chapter is to establish standards for licensing, regulation and control of Medical Marijuana Businesses as permitted by Ohio House Bill 523 and The State of Ohio's Medical Marijuana Control Program and the premises upon which they are located and operated for the cultivation and processing and dispensing of medical marijuana to serve registered patients. The objectives of this Chapter are to prevent safety and fire hazards, disturbances, odors, disruption, theft of property, and other such nuisances or dangers within the City. The purpose of this Chapter is also to exercise the authority of the City of Willoughby Hills to allow Medical Marijuana businesses in accordance with applicable state law and regulations.

(c) **Authority.** The City Council hereby declares that this Chapter shall be deemed an exercise of the police powers of the City Council of Willoughby Hills, Ohio, for the furtherance and protection of the health, safety, and general welfare of the citizens of Willoughby Hills.

759.02 CONSTRUCTION, SEVERABILITY AND APPLICABILITY OF CHAPTER.

(a) **Construction.** This chapter shall be liberally construed and applied to promote its purpose and objectives.

(b) **Severability.** If any provision of this Chapter, or the application thereof to any person or circumstances, is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(c) Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in the Ohio Medical Marijuana Program. In the event of any conflict between the provisions of this Chapter and the provisions of the Ohio Medical Marijuana Program or any other applicable state or local law or regulation, the more restrictive provision shall control.

759.03 DEFINITIONS.

Unless otherwise defined herein, the terms in this Chapter shall have the same meaning as set forth in Section 3796.01 of the Ohio Revised Code, the Ohio Medical Marijuana Control Program, and any rules promulgated pursuant thereto. The following words and phrases, when used in this Chapter, shall have the meanings respectively assigned to them.

(a) "Academic Medical Center" has the same meaning as in Section 4731.297 of the Ohio Revised Code.

(b) "Applicant" means the business entity applying for licensure per this Chapter.

(c) "Board of Zoning Appeals" means the City of Willoughby Hills Board of Zoning Appeals.

(d) "Cultivator" means an entity that has been issued a license by the local licensing authority to grow, harvest, package and transport medical marijuana as permitted under Chapter 3796 of the Ohio Revised Code.

(e) "Dispensary" means an entity that has been issued a license by the local licensing authority to dispense medical marijuana products as permitted under Chapter 3796 of the Ohio Revised Code.

(f) "Drug Database" means the database established and maintained by the state board of pharmacy pursuant to section 4729.75 of the Ohio Revised Code.

(g) "License" means a license or registration granted pursuant to this Chapter.

(h) "Licensed Premises" means the building or portion thereof specified in an application for licensure under this Chapter and used for conducting the operation of a Medical Marijuana Business. The Licensed Premises shall be owned or in possession of the Licensee.

(i) "Licensee" means the person or persons to whom a License is issued pursuant to this Chapter.

(j) "Manufacture" means the process of converting harvested plant material into marijuana extract by physical or chemical means for use as an ingredient in a medical marijuana product.

(k) "Marijuana" means marijuana as defined in Section 3719.01 of the Ohio Revised Code.

(l) "Medical Marijuana" means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

(m) "Medical Marijuana Business" means any individual premises upon which any activity to advance or perform the cultivation or manufacturing/processing or dispensing of marijuana or marijuana products for medicinal purposes as otherwise permitted by Ohio H.B. 523, whether or not such premises have other business purposes of any nature whatsoever.

(n) "Operator" means the person or persons having authority to control the Licensed Premises of a Medical Marijuana Business as authorized by the State Licensing Authority.

(o) "Owner" means any person who possesses a pecuniary interest, either directly or indirectly, of twenty-five percent (25%) or more in a Medical Marijuana Business.

(p) "Person" means any natural person, firm, partnership, association, corporation or any other form of business organization.

(q) "Physician" means an individual authorized under Chapter 4731 of the Ohio Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(r) "Processor" means an entity that has been issued a license by the local licensing authority to manufacture medical marijuana products as permitted under Chapter 3796 of the Ohio Revised Code.

(s) "Qualifying Medical Condition" means any of the following:

- (1) Acquired immune deficiency syndrome;
- (2) Alzheimer's disease;
- (3) Amyotrophic lateral sclerosis;
- (4) Cancer;
- (5) Chronic traumatic encephalopathy;
- (6) Crohn's disease;
- (7) Epilepsy or another seizure disorder;
- (8) Fibromyalgia;
- (9) Glaucoma;
- (10) Hepatitis C;
- (11) Inflammatory bowel disease;
- (12) Multiple sclerosis;
- (13) Pain that is either of the following:
 - (i) Chronic and severe;
 - (ii) Intractable
- (14) Parkinson's disease;
- (15) Positive status for HIV;
- (16) Post-traumatic stress disorder;
- (17) Sickle cell anemia;
- (18) Spinal cord disease or injury;
- (19) Tourette's syndrome;
- (20) Traumatic brain injury;
- (21) Ulcerative colitis;
- (22) Any other disease or condition added by the state medical board under Section 4731.302 of the Ohio Revised Code.

(t) "Safety Director" means the Safety Director of the City of Willoughby Hills.

(u) "School" means any educational institution, public, private, secular or parochial, which offers instruction of high school grade or lower.

- (v) "State University" has the same meaning as in Section 3345.011 of the Ohio Revised Code.

759.04 MEDICAL MARIJUANA BUSINESS LICENSE REQUIRED.

No person shall conduct a Medical Marijuana Business in the City without having first obtained a License therefore as provided in this Chapter, which License shall be designated as a Medical Marijuana Cultivation Business License or a Medical Marijuana Processing Business License or a Medical Marijuana Dispensary License.

759.05 AUTHORITY OF SAFETY DIRECTOR.

(a) Authority is hereby established and vested in the Safety Director or his/her designee to act as the local licensing authority for Medical Marijuana Businesses, consider the applications for Licenses under this Chapter, conduct investigations thereon and issue, suspend, revoke, fine, restrict or deny issuance of such Licenses based upon the criteria set forth in this Chapter.

(b) Nothing in this Chapter shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a license issued pursuant to this Chapter.

(c) The Local Licensing Authority is authorized to issue a Medical Marijuana Business License subject to the provisions and restrictions provided in this Chapter.

759.06 NATURE OF LICENSES.

(a) All Licenses. All licenses issued under this chapter shall have the following characteristics:

(1) Each such license shall be an annual license which covers a period from the date of issuance for one year unless earlier suspended or revoked;

(2) Each such license shall vest a personal privilege but not any property rights in the licensee;

(3) Each such license shall be required to be displayed permanently in a conspicuous place upon the premise for which it is issued;

(4) Each such license shall be in the name of the Applicant;

(5) Each such license shall be neither assignable nor transferable, either as a person or location; and

(6) Each such license, if lost, destroyed or mutilated, upon application within thirty (30) days thereof may be replaced by a replacement license issued by the Safety Director bearing the word "Replacement" across its face and bearing the same license number as the license which it replaces.

(b) Medical Marijuana Cultivation Licenses. All Medical Marijuana Cultivation Licenses shall permit the holders thereof to conduct any activities permitted to a Cultivator under Chapter 3796 of the Ohio Revised Code and any such activities shall be conducted in Commercial and Industrial Districts only.

(c) Medical Marijuana Processing Licenses. All Medical Marijuana Processing Licenses shall permit the holders thereof to conduct any activities permitted to a Processor under Chapter 3796 of the Ohio Revised Code and any such activities shall be conducted in Commercial/Industrial/Manufacturing Districts only.

(d) Medical Marijuana Dispensary Licenses. All Medical Marijuana Dispensary Licenses shall permit the holders thereof to conduct any activities permitted to a Dispensary under Chapter 3796 of the Ohio Revised Code and any such activities shall be conducted in a General Business District only.

759.07 PROCEDURE FOR OBTAINING LICENSES.

(a) Applications for Licenses. All applications for licenses under this chapter shall be in writing on a form approved by and filed with the Safety Director. The application shall be signed by the owner or owners and shall contain information required by this section supplied in detail as to each such person, including general and limited partners, or partnerships, shareholders of corporations and principals of any other type of business entity. In the event that no person owns twenty-five percent (25%) or more of Medical Marijuana Business, such application shall be signed by an authorized representative of the business. Every owner and operator of the business shall be fingerprinted by the City of Willoughby Hills Police Department and said persons shall pay for the costs associated with obtaining said fingerprints.

(b) Contents of Applications. The Application shall contain the following information:

- (1) For each individual owner:
 - (i) True name and all other names used in the past five (5) years;
 - (ii) Date of birth;
 - (iii) Permanent home address and all other home addresses used in the past five (5) years;
 - (iv) Business and home telephone numbers;
 - (v) Employment history for the past five (5) years;
 - (vi) A statement as to whether or not the owner has been convicted of any crime other than traffic offenses and, if convicted, the date and court of conviction, the specific crime convicted of, and the penalty imposed;
 - (vii) A statement as to whether or not the owner has ever had ownership interest in a Medical Marijuana Business, and if so, the specific location of the business and the dates of such operation;
 - (viii) A statement as to whether or not the owner has been denied an application for a marijuana business license in any jurisdiction or has had such license suspended or revoked.

(2) A description of the nature and operation of the main type of business activity to be conducted upon the premises including a description of the products and the services to be provided by the Medical Marijuana Business;

(3) A description of the nature and operation of any other business to be conducted in conjunction with the Medical Marijuana Business, and the anticipated percentage of gross revenue to be derived from each respective business;

(4) The address and telephone number of the premises and the business, if different from the premises;

(5) The name under which the business and premises will be operated and verification of trade name filed with the secretary of state;

(6) A statement as to whether or not the owner will directly operate the Medical Marijuana Business, or whether an operator who is not an owner will operate it, and if the latter, the application shall contain information required by this section supplied in detail as to each such operator;

(7) A floor plan of the premises and the immediate vicinity drawn to scale, showing the square footage, interior dimensions, plans and specifications for the interior of the

building, and layout for the business. Layout shall include, but is not limited to restricted access areas, principal uses for each floor area, areas of ingress and egress, and all security cameras;

(8) A map showing all schools, playgrounds, and public parks within a radius of one thousand (1,000) feet of the premises and all churches within a radius of five hundred (500) feet of the premises;

(9) The name, address and telephone number of the agent of the business upon whom service of process can effectively and validly be made;

(10) A security plan that the business intends to install, employ and operate to meet all requirements of the Ohio Medical Marijuana Program pursuant to Section 3796:2-103(4) of the Ohio Revised Code including policies and procedures to ensure a secure, safe facility to prevent theft, loss, or diversion and protection of facility personnel;

(11) A delivery and transportation plan detailing the method and explanation of delivery and transportation and shipping services to the location in compliance with the Ohio Medical Marijuana Program, which plan shall include the names and registration numbers of the licensed employees transporting medical marijuana or medical marijuana products and proof of compliance with Section 3796:5-3 of the Ohio Revised Code;

(12) A copy of the title or lease to the premises and verification that all activities at the proposed licensed premises are permitted under the City of Willoughby Hills Planning and Zoning Code, Part 13, Codified Ordinances of the City of Willoughby Hills, Ohio;

(13) A copy of the Articles of Incorporation if the owner is a corporation;

(14) A copy of the Operating Agreement if the owner is a limited liability company;

(15) A copy of the Partnership Agreement if the owner is a partnership;

(16) Specification of the days of the week and the hours of the day during which the licensed activity will be conducted;

(17) Statement that the information contained therein is complete, accurate and truthful to the best knowledge of all applicants; and

(18) Any other information which the Safety Director may deem reasonably necessary for the full interest of the public in the application.

(c) Report of the Planning Commission. Upon receipt of an application for a license under this Chapter, the Safety Director shall refer the application to the Planning Commission for a public hearing. The Planning Commission shall make specific findings on their record and issue a written report to the Safety Director within ten (10) days of the hearing, which contains the following information:

(1) Whether the licensed activity will not be materially detrimental to the public welfare, health, safety or morals, or alter the essential character of the locality;

(2) Evidence that the premises and Medical Marijuana Business thereon will create a fire, police, or safety hazard;

(3) Whether any owners and operators have any convictions for any felony or for any misdemeanor involving physical violence, gambling activity, controlled substances, minors or any crime involving moral turpitude; and

(4) Whether the location proposed for licensing complies with any and all zoning and land use laws of the City and any all restrictions on Medical Marijuana Businesses as set forth in this Chapter.

(5) Whether the Planning Commission has issued a Conditional Use Permit for the Medical Marijuana Business.

(d) Determination Process. The process to issue a Medical Marijuana License subsequent to the public hearing and the issuance of the report of the Planning Commission as set forth in this section shall proceed as follows:

(1) Safety Director. The Safety Director shall, within ten (10) days of the receipt of the written report, either issue such license or deny such license. The Safety Director has authority to refuse to issue any license for good cause, subject to judicial review;

(2) Appeal to Board of Zoning Appeals. In the event of the denial of the issuance of a License, the applicant shall be notified of such denial and the specific reasons therefore in writing. Such notice shall be mailed or delivered to the applicant at the address specified in the application. The applicant shall have ten (10) days after receipt of such notice to appeal such denial by filing a written notice of appeal and the fee associated therewith with the Board of Zoning Appeals. Thereafter, the applicant shall have not less than ten (10) days' notice of the date, time and place of the hearing. The appeal shall be heard by the Board of Zoning Appeals, which, after hearing, shall issue a decision as whether to confirm or deny the determination made by the Safety Director. The Board of Zoning Appeals shall, at its discretion, determine to whether to issue a conditional or probationary license;

(3) Appeal to Court. The decision of the Board of Zoning Appeals may be appealed to a court of competent jurisdiction pursuant to Ohio Revised Code Section 2506.

(e) License Conditional on Approval of State Licensing Authority. Each Medical Marijuana Business License shall be approved only conditionally upon approval by the appropriate state licensing authority. Until such time as the appropriate state licensing authority has granted a Certificate of Occupancy to the Medical Marijuana Business, the License granted pursuant to this Chapter shall be considered a Conditional License.

(f) License Renewal. Each Medical Marijuana Business License must be annually renewed. At the time of renewal, a statement shall be filed with the Safety Director that the information listed on the original application for the license is still complete, accurate, and truthful to the best knowledge of all applicants, or a statement shall be filed with the Safety Director listing each and every item of information which has changed since the original application. The Safety Director shall determine whether to accept such statement and issue the license requested, or he may determine to enforce the procedure required for an original license. The local licensing authority may deny the renewal of a license for good cause.

759.08 DENIAL OF MEDICAL MARIJUANA BUSINESS LICENSE.

No Medical Marijuana Business License shall be issued or renewed for any business or premises where any of the following facts or circumstances exist:

(a) The Applicant has been found guilty of any offense set forth in Chapters 2925, 3719, or 4729 of the Ohio Revised Code, the violation of which constitutes a felony or misdemeanor of the first degree.

(b) The Applicant has been found guilty of any theft offense set forth under division (K) in Section 2913.01 of the Ohio Revised Code, the violation of which constitutes a felony.

(c) The Applicant has been found guilty of any violation for which a penalty was imposed under Section 3715.99 of the Ohio Revised Code.

(d) The Applicant has been found guilty of a crime of moral turpitude as defined in Section 4776.10 of the Ohio Revised Code.

(e) A violation of any former law of this state, any existing or former law of another state, any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any of the offenses listed in paragraphs (a) through (d).

Any first-degree misdemeanor offense listed in paragraphs (a) through (e) will not automatically disqualify an applicant from licensure if the applicant was convicted of or pleaded guilty to the offense more than five years before the date the application for licensure is filed. Notwithstanding anything to the contrary in this section, no misdemeanor offense, including misdemeanors of the first degree, related to marijuana possession, marijuana trafficking, illegal cultivation of marijuana, illegal use or possession of drug paraphernalia or marijuana drug paraphernalia, or other marijuana related crimes shall be considered a disqualifying offense.

(f) The premises do not have adequate security installed, employed and operated to address any and all safety concerns of the Safety Director.

(g) The premises are located within one thousand (1,000) feet of any school, playground, public park or within five hundred (500) feet of any church.

(h) The premises or operation thereof would be in violation of any provision of the Building Code, Zoning Code, or Fire Code of the City of Willoughby Hills, or any other pertinent provisions of local, state or federal law.

(i) The applicant made a false statement or misrepresentation as to a material matter upon the application or in a hearing concerning the license.

(j) The application failed to provide all of the required information.

(k) The applicant has failed to demonstrate compliance with this chapter and all other applicable state and local ordinances and statutes.

759.09 LICENSE EXPIRATION, SUSPENSION OR REVOCATION.

(a) Expiration. Any Medical Marijuana Business License issued under this chapter shall expire upon the transfer or sale of a majority interest in the business, or the discontinuation of the business for a continuous period of thirty (30) days. Any Medical Marijuana Business License issued under this chapter shall expire upon the transfer or sale of such business.

(b) Suspension and Revocation. All licenses issued under this chapter shall be suspended or revoked upon recommendation of the Board of Zoning Appeals upon its finding of the occurrence of any of the following events:

(1) A false statement by any licensee as to a material matter made in an application for license or in a hearing concerning the license;

(2) Conviction of any licensee for any crime referenced in Section 759.08.

(c) Hearing. The suspension or revocation of any license under this chapter shall not occur without a hearing. The licensee shall be given at least ten (10) days written notice of the intent to suspend or revoke said license, which shall set forth the date, time and place of the hearing and the specific reasons for such suspension or revocation. The licensee shall have the right at that hearing to present testimony and other relevant evidence and to orally examine any person offering evidence as to the reasons for suspension or revocation.

(d) Appeal. The decision of the Board of Zoning Appeals may be appealed to a court of competent jurisdiction under Ohio Revised Code Section 2506.

759.10 LICENSE FEES.

(a) Medical Marijuana Cultivation Business License. Twenty Thousand Dollars (\$20,000) at application and renewal.

(b) Medical Marijuana Processing Business License. Five Thousand Dollars (\$5,000) at application and renewal.

(c) Medical Marijuana Dispensary Business License. Fifteen Thousand Dollars (\$15,000) at application and renewal.

(d) Replacement License. The fee for a replacement license shall be twenty-five dollars (\$25.00).

(e) Filed with Application. The license fee referenced shall be filed with the application for license.

(f) Return of Fee. In the event an application is denied under this chapter or by the applicable state licensing authority, one-half (1/2) of the license fee shall be returned to the applicant.

(g) Renewal Fee. All license renewal fees shall be due on the first day of each calendar year.

In the event any license is suspended or revoked under this chapter, no portion of the license fee shall be returned to the owner.

759.11 OPERATIONAL REQUIREMENTS FOR MEDICAL MARIJUANA DISPENSARIES.

(a) Any sale of medical marijuana to a qualifying patient shall be made in person, directly to the purchaser, within the restricted area of the Medical Marijuana Dispensary. No sale shall be made by telephone, internet, or other means of remote purchase, nor shall home delivery be permitted. Delivery shall occur only in person to the purchaser at the time of purchase within the confines of the Medical Marijuana Dispensary.

(b) Drive-in or drive-through sales shall not be permitted.

(c) A Medical Marijuana Dispensary must use a commercial-grade filtration system to mitigate the impact of odor at the premises.

(d) A Medical Marijuana Dispensary shall post, in a visible location at its premises, contact information for local drug abuse treatment centers, and shall make available to patients upon request educational materials regarding the hazards of substance abuse.

(e) The interior and exterior of a Medical Marijuana Dispensary shall be designed, constructed and maintained in a manner consistent with its purposes as dispensing a substance to address a medical condition. The interior and exterior shall never be maintained to appear or encourage illicit marijuana use and shall otherwise comply with the following regulations:

(1) There shall be no tinted or darkened windows on the Medical Marijuana Dispensary.

(2) There shall be no moving, flashing or strobing signage or lighting in the interior or exterior of the Medical Marijuana Facility.

(3) There shall be no loitering permitted at or near the entrance to the Medical Marijuana Dispensary.

759.12.PENALTY.

Unless otherwise provided herein, whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed to have been committed each day during or on which a violation occurs or continues.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of the ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 4. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the continuation of the usual daily operation of the municipality and for the further reason to ensure effective operation of the Police Department leadership.

PASSED: _____, 2022

Christopher Hallum
President of Council

Submitted to the Mayor for his approval
on this _____ day of _____, 2022

Approved by the Mayor

ATTEST:

_____, 2022

Karen Mehollin
Clerk of Council

G. Andrew Gardner
Mayor