

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

CRYSTAL LOWE,
an individual,

Plaintiff,

v

CITY OF DETROIT,
a Michigan municipal corporation,

Defendant.

Case No.

-CZ

Hon.

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COMPLAINT

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

NOW COMES Plaintiff, by her attorneys, HONIGMAN LLP, and for her Complaint against Defendant, CITY OF DETROIT, states as follows:

Introduction

1. Plaintiff Crystal Lowe is 33 years old and has lived in the metro Detroit area almost her entire life. She has significant experience in the cannabis industry and she wants to own and operate an adult-use marijuana retail store in her hometown of Detroit. But Defendant has almost certainly denied Plaintiff the opportunity to compete for an adult-use retail establishment license

because Defendant's unconstitutional licensing scheme unfairly favors certain Detroit residents over other Michiganders based on the duration of their residency in the city.

The Parties

2. Plaintiff Crystal Lowe is a longtime Detroit resident who seeks to open an adult-use retail establishment in Detroit.

3. Defendant City of Detroit is a Michigan municipal corporation located in Wayne County.

Jurisdiction and Venue

3. This is an action for a permanent injunction and a declaratory judgment under MCR 2.605. This Court has jurisdiction because this is a civil action, no other court has exclusive jurisdiction over this action, and no law denies the circuit court's jurisdiction over this action. Jurisdiction is also proper under MCL 600.605 because Plaintiff seeks equitable remedies.

4. Venue in this county is proper under MCL 600.1615 because the Defendant is a municipality located within the county.

Background and Common Allegations

5. Plaintiff currently lives in the City of Detroit, and has lived in Detroit for approximately 11 out of the past 30 years.

6. Plaintiff lived just outside of the Detroit city lines, in River Rouge, Michigan, for approximately 2 out of the past 30 years.

7. Plaintiff lived outside of Michigan for approximately 6 out of the past 30 years. Specifically, she lived in Georgia for approximately four years during elementary/middle school, and, when she was about 20 years old, she lived in the State of Washington for approximately 2 years, while her then-husband was stationed there for military duty.

8. Plaintiff has worked in Michigan’s marijuana industry since 2012.

9. Plaintiff wants to own and operate an adult-use marijuana retail store in Detroit.

10. Until recently, Defendant City of Detroit had prohibited adult-use marijuana businesses in the city. Starting in April 2021, however, Defendant plans to begin accepting applications for a limited number of licenses to operate adult-use retail establishments.

11. Plaintiff plans to apply and compete for an adult-use retail establishment license.

12. Defendant, however, has almost certainly denied Plaintiff the opportunity to compete for an adult-use retail establishment license because Defendant’s licensing scheme favors certain Detroit residents over other Michiganders based on the duration of their residency in the city.

13. As explained below, this licensing scheme violates Michigan’s Constitution in multiple ways. It also violates the United States Constitution.

Detroit Initially Opts Out of Adult-Use Marijuana Before Creating a Licensing Scheme

14. In November 2018, Michigan voters passed the Michigan Regulation and Taxation of Marihuana Act, or MRTMA, for short. This voter-initiated law establishes a system to license and regulate businesses that grow, process, and sell adult-use marihuana.

15. Under MRTMA, recreational marijuana is legal in municipality unless it affirmatively enacts an ordinance to “completely prohibit or limit the number of marihuana establishments within its boundaries.” MCL 333.27956(1).

16. A municipality may “adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license. . . .” MCL 333.27956(3).

17. If a municipality chooses to implement a licensing system, it “may not impose qualifications for licensure that conflict with this act or rules promulgated by the [Marijuana Regulatory Agency].” *Id.*

18. 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 this act within the municipality.” MCL 333.27959(4).

19. After MRTMA became law, Defendant initially opted out of allowing adult-use establishments in the city.

20. In November 2020, the Detroit City Council decided to opt back into allowing such businesses and passed the Medical Marijuana Facilities and Adult-Use Marijuana Establishments ordinance (“the Ordinance”).

21. Because Defendant has decided to cap the number of licenses available for adult-use retail establishments, it has set up a competitive licensing scheme.

22. The Ordinance creates a discriminatory licensing scheme that, upon information and belief, is unlike any other in the State.

Defendant’s Discriminatory Licensing Scheme

23. Defendant’s licensing scheme revolves around the concept of “Detroit legacy” status, which the Defendant uses to discriminate against all nonresidents and even many longtime Detroit residents like Plaintiff.

24. Under the Ordinance, a “Detroit legacy applicant or licensee” is defined to mean an individual who has, or an entity that is at least 51% owned and controlled by one or more individuals who has been a City of Detroit resident at the time of application for at least one year, and additionally has been:

- a. a City of Detroit resident for 15 of the past 30 years preceding the date of application and continues to so reside throughout the period of licensure: or
- b. a City of Detroit resident for 13 of the past 30 years preceding the date of application, and continues to so reside throughout the period of licensure, and is a low income applicant at the time of application, as defined in this Section; or
- c. a City of Detroit resident for the 10 of the past 30 years preceding the date of application, and continues to so reside throughout the period of licensure, and has a prior controlled substance record, as defined in this section, or a parent with a prior controlled substance record as defined in this section under the following circumstances:
 - (i) the parent is named on the applicant's birth certificate, and the parent's conviction took place before the applicant's 18th birthday; or
 - (ii) the parent has claimed the applicant as a dependent regularly on federal income tax filings, and the parent's conviction took place before the applicant's 18th birthday.

25. The Ordinance sets up a system that almost certainly guarantees that in practice only Detroit legacy applicants will receive the adult-use retail establishment licenses.

26. The Ordinance provides for a maximum of 75 adult-use retail establishment licenses.

27. It provides that no less than 50% of the 75 available licenses for adult-use retail establishments shall be granted to Detroit legacy applicants. Critically, though, there is no cap on the number of licenses that will be awarded to Detroit legacy applicants.

28. It further provides that City shall not issue a license for an adult-use retail establishment if such issuance would cause the number of licenses held by Detroit legacy licensees to be less than 50% of the total licenses for this category.

29. Thus, Detroit legacy applicants can compete for 75 licenses, whereas applicants without Detroit legacy status can only compete for a potential maximum of 37 licenses, a number that will shrink depending on how many Detroit legacy applicants succeed in obtaining licenses.

30. It seems almost certain that Detroit legacy applicants will greatly outnumber the total maximum licenses available.

31. Given how Defendant has staggered its review process, this almost certainly means that applicants without Detroit legacy status will not receive adult-use retail establishment licenses.

32. From April 1, 2021, until April 30, 2021, Defendant will accept applications for adult-use marijuana establishment licenses from all applicants.

33. From May 1, 2021 through June 15, 2021, Defendant will only review and approve applications from Detroit legacy applicants.

34. From June 16, 2021 through July 31, 2021, if there are any remaining licenses, Defendant will consider applications from non-Detroit legacy applicants that already have a state operating license for a medical marijuana facility in Detroit.

35. After July 31, 2021, if there are any remaining licenses, Defendant will consider applications from any other applicants who do not qualify for the two “reserved review period[s]” described above.

36. Upon information and belief, it seems almost certain that Defendant will award all 75 adult-use retail establishment licenses to Detroit legacy applicants before it even considers any non-legacy applicants.

37. This creates a significant and long-lasting hurdle preventing non-Detroit legacy applicants from obtaining a license because when a business is owned by a Detroit legacy applicant and licensed under the Ordinance, it cannot be transferred, sold, or conveyed to anyone other than another Detroit legacy applicant for a period of five years from the date the initial license is granted or else the business will lose its Detroit legacy status and must re-apply and be approved for a license as a general applicant before operating.

Plaintiff Cannot Qualify as a Detroit Legacy Applicant

38. Despite being a longtime Detroit resident, Plaintiff does not qualify as a Detroit legacy applicant.

39. Plaintiff has lived in Detroit for approximately 11 of the past 30 years.

40. A resident who has lived in Detroit for 11 of the past 30 years can only qualify for Detroit legacy status if they have “a prior controlled substance record” or “a parent with a prior controlled substance record” under certain circumstances. Plaintiff does not satisfy these requirements.

41. The Ordinance thus treats Plaintiff differently from Detroit residents of the same duration who have, or whose parents have, a prior controlled substance record.

42. The Ordinance also treats Plaintiff differently from Detroit residents who have lived in Detroit for 13 of the past 30 years and have a low income.

43. The Ordinance further treats Plaintiff differently from Detroit residents who have lived in Detroit for 15 of the past 30 years, irrespective of income or prior controlled substance record.

44. If the Ordinance counted towards Detroit legacy status the years Plaintiff lived just outside the city’s lines, in River Rouge, Plaintiff would qualify as a Detroit legacy applicant.

45. The Ordinance thus treats Plaintiff differently than other Detroit residents based on her residency in River Rouge.

46. If the Ordinance counted towards Detroit legacy status the years Plaintiff lived out-of-state, Plaintiff would qualify as a Detroit legacy applicant.

47. The Ordinance thus treats Plaintiff differently than other Detroit residents based on her out-of-state residency.

48. Because Plaintiff cannot qualify as a Detroit legacy applicant, she will almost certainly not even have a chance to obtain an adult-use retail establishment license.

49. At a minimum, the scheme significantly reduces the number of adult-use retail establishment licenses for which she can compete.

Defendant's Licensing Scheme Violates the Michigan Constitution

50. The Michigan Constitution provides that "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection." Const 1963, art 1, § 1.

51. It further guarantees that "No person shall be denied the equal protection of the laws. . . ." Const 1963, art 1, § 2.

52. The Michigan Constitution also provides that "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17.

53. These provisions guarantee, among other things, a right to intrastate travel, a right to interstate travel, a right to pursue one's livelihood, and right to be free from arbitrary or impermissible discrimination.

54. The Ordinance violates these provisions because its preferences for Detroit legacy applicants in awarding adult-use retail establishment licenses punish Plaintiff for exercising her

rights to intrastate and interstate travel, violate her right to pursue her livelihood, and draw distinctions between her and other Detroit residents that are not rationally related to any legitimate government purpose.

Defendant's Licensing Scheme Violates the United States Constitution

55. The United States Constitution empowers the federal Congress “To regulate Commerce . . . among the several States.” US Const, art I, § 8, cl 3.

56. 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 & n4 (1951).

57. 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 U.S. 328, 338 (2008) (internal quotation marks and citations omitted).

58. The Ordinance violates the Commerce Clause because it discriminates against out-of-state residents and punishes people for moving between states. Its preferences for Detroit legacy applicants do not advance a legitimate local purpose—and, even to the extent they do, that interest could be adequately served by reasonable nondiscriminatory alternatives.

COUNT I (Declaratory Judgment and Injunctive Relief)

59. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

60. Under MCR 2.605, in “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.”

61. There is an actual case or controversy here because Plaintiff contends that the process utilized to award the licenses to operate adult-use retailer establishment licenses violates the Equal Protection and Due Process Clauses of the Michigan Constitution.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. order a speedy hearing of this action and advance it on the calendar in accordance with MCR 2.605(D);
- B. issue a declaratory judgment that the Ordinance is invalid, at least with respect to the provisions related to favoring Detroit legacy applicants in awarding adult-use retail establishment licenses;
- C. enjoin the Defendant from using Detroit legacy status in evaluating applications and awarding adult-use retail establishment licenses;
- D. grant such other relief as is just and appropriate.

COUNT II
(Declaratory Judgment and Injunctive Relief)

62. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

63. Under MCR 2.605, in “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.”

64. There is an actual case or controversy here because Plaintiff contends that the process utilized to award the licenses to operate adult-use retailer establishment licenses violates the Commerce Clause of the United States Constitution.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. order a speedy hearing of this action and advance it on the calendar in accordance with MCR 2.605(D);
- B. issue a declaratory judgment that the Ordinance is invalid, at least with respect to the provisions related to favoring Detroit legacy applicants in awarding adult-use retail establishment licenses;
- C. enjoin the Defendant from using Detroit legacy status in evaluating applications and awarding adult-use retail establishment licenses;
- D. grant such other relief as is just and appropriate.

Respectfully submitted,

Dated: March 2, 2021

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