



AGENDA
CHARTER TOWNSHIP OF MERIDIAN
TOWNSHIP BOARD – STUDY SESSION
February 16, 2021 6:00 pm

1. CALL MEETING TO ORDER
2. PLEDGE OF ALLEGIANCE/INTRODUCTIONS
3. ROLL CALL
4. CITIZENS ADDRESS AGENDA ITEMS AND NON-AGENDA ITEMS
5. APPROVAL OF AGENDA
6. BOARD DISCUSSION ITEMS
 - A. Recreational Marihuana

7. COMMENTS FROM THE PUBLIC
8. OTHER MATTERS AND BOARD MEMBER COMMENTS
9. ADJOURNMENT

All comments limited to 3 minutes, unless prior approval for additional time for good cause is obtained from the Supervisor.
Appointment of Supervisor Pro Tem and/ or Temporary Clerk if necessary.

Individuals with disabilities requiring auxiliary aids or services should contact the Meridian Township Board by contacting:
Township Manager Frank L. Walsh, 5151 Marsh Road, Okemos, MI 48864 or 517.853.4258 - Ten Day Notice is Required.
Meeting Location: 5151 Marsh Road, Okemos, MI 48864 Township Hall



To: Township Board

From: Mark Kieselbach, Director of Community Planning and Development
Peter Menser, Principal Planner

Date: February 4, 2021

Re: Recreational Marihuana

The Township Board on July 9, 2019 voted to adopt an ordinance to prohibit recreational marihuana establishments within the Township. The Board cited additional time was needed to see how medical marihuana facilities were developed and the impact of those facilities before allowing recreational marihuana establishments. It also cited by the Board the proper regulations must be considered and adopted prior to allowing recreational marihuana.

The medical marihuana non-zoning and zoning ordinances were adopted in May 2019. Since that time six applicants received conditional approval and of those four have received special use permit approval for provisioning centers. None of the provisioning centers have been granted a permit to open the facility.

As requested informational articles have been provided.

Attachments

1. Letter from Township Attorney Matthew A. Kuschel dated February 4, 2021.
2. Draft recreational marihuana ordinance template.
3. Michigan Marijuana Regulatory Agency Municipal Guide.
4. The Market for and Economic Impact of the Adult-Use Recreational Marijuana Industry in Michigan.
5. Taxation of Adult-Use Recreational Marihuana.
6. How state marijuana legalization became a boon for corruption.
7. Marijuana: Making the Right Choice for your Community.

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February 4, 2021

Ron Styka, Supervisor
Charter Township of Meridian
5151 Marsh Road
Okemos, MI 48864

Dear Mr. Styka and Township Board Members:

Re: *The Michigan Regulation and Taxation of Marihuana Act*

The Charter Township of Meridian currently permits commercial medical marihuana facilities and, based on feedback from members of the community, has recently considered expanding its regulations to embrace the newer adult-use or recreational marihuana establishments. This legal opinion will cover several aspects of the marihuana laws in Michigan and also the challenges and opportunities for expanding operations.

Following an overview of the marihuana laws, we will consider the commercial aspects of the 2018 Michigan Regulation and Taxation of Marihuana Act in depth, including the types of establishments currently authorized, how the Township could regulate their activities, and the differences and distinctions between these adult-use establishments and medical facilities. Chief among them is the requirement to adopt a competitive review process if the number of applications exceeds available permits, and to what extent to consider current medical facility applicants as a factor.

Finally, we will review some of the existing litigation surrounding adult-use establishments and some of the remaining questions surrounding implementation of the Act. Such litigation includes medical permit holders who did not secure a recreational permit as well as the implications of co-locating an adult-use establishment at a medical facility. Lastly, we will briefly note the zoning amendments that would be required if the use is authorized. Zoning regulation under the 2008 Michigan Medical Marihuana Act and individual, non-commercial MRTMA growing will also be briefly considered.



MARIHUANA LAWS

Michigan has three statutes and various administrative rules governing marihuana cultivation, production, and use:

1. The 2008 Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* (“Caregiver Act”);
2. The 2016 Medical Marihuana Facilities Licensing Act, MCL 333.27101 *et seq.* (“MMFLA”) for commercial medical use; and
3. The 2018 Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq.* (“MRTMA”) for adult or recreational use.
4. The Marihuana Regulatory Agency has issued unified rules covering MMFLA facilities and MRTMA establishments.

2008 Caregiver Act (MMA)

The 2008 Caregiver Act was the first Michigan marihuana legalization statute. It allows approved “patients” to use medical marihuana and allows “caregivers” to grow medical marihuana for patients. MCL 333.26421, *et seq.* Each patient can keep 12 marihuana plants in an enclosed, locked facility and can possess 2.5 ounces of marihuana. MCL 333.2424. A medical marihuana “caregiver” under the 2008 Act can grow and have up to 72 plants—five patients plus themselves as a patient. MCL 333.26426(d) and MCL 333.26424(a). The Township cannot completely prohibit these marihuana activities. *Ter Beek v City of Wyoming*, 495 Mich 1, 19-24 (2014). However, the Township *may impose* location and land use restrictions, along with some permitting requirements. *DeRuiter v Twp of Byron*, 505 Mich 130, 147-148 (2020). The Township should consider reviewing its zoning regulations to capture this newly affirmed authority.

2016 Commercial Medical Marihuana (MMFLA)

The 2016 MMFLA created five different types of commercial operations to serve the medical marihuana market for approved medical marihuana patients. See MCL 333.27101, *et seq.* This Act still relies on the 2008 Caregiver Act to control who may purchase or use marihuana and limits it to medical use. To lawfully operate, these five commercial medical marihuana operations require: (1) a permit from a municipality who allows the operations; and (2) a license from Michigan’s Marijuana Regulatory Agency. MCL 333.27205(1). The MMFLA gave local government a strong role in regulating commercial medical marihuana, and municipalities must “opt-in” to permit the activities.

The Township can and does charge the maximum \$5,000 for a local permit fee to defray administrative and enforcement costs associated with medical facilities. The 2016 MMFLA authorized the following types of medical facilities:

1. **Medical Provisioning Center:** Sells marihuana to medical marihuana patients or caregivers.
2. **Medical Processor:** Creates marihuana products for sale to provisioning centers.
3. **Medical Secure Transporter:** Transports medical marihuana between facilities for a fee.
4. **Medical Grower:** Cultivation of 500, 1,000, or 1,500 marihuana plants, depending on the class of the permit.
5. **Medical Safety Compliance Facility:** Tests medical marihuana from other commercial medical marihuana operations.

Each of these medical marihuana facilities are authorized under Ordinance § 40-28. Only Provisioning Center applications have been submitted or received. Currently, there is a pending application in each overlay district.

2018 RECREATIONAL MARIHUANA ACT (MRTMA)

A. Commercial Adult Use or Recreational Establishments

The most recent marihuana statute addressed both commercial operations and individual use. On the commercial side, several types of business establishment are allowed. Consistent with the medical statute, the Township may charge up-to \$5,000 for a local permit fee to defray application, administrative, and enforcement costs associated with adult-use establishments. The 2018 MRTMA authorized the following types of recreational or adult-use establishments:

1. **Recreational Growers:** A licensed business that cultivates marihuana to sell to other commercial recreational marihuana operations. MCL 333.27953(i). These operations can grow 100 (Class A), 500 (Class B), or 2,000 (Class C) marihuana plants, depending on the class of the permit. MCL 333.27959(2).
2. **Recreational Microbusiness:** A licensed business that grows no more than 150 marihuana plants to process, package, and sell to adults. MCL 333.27953(k). This is similar in concept to a “brew pub” where the marihuana is grown, processed, and sold all on-site.
3. **Recreational Processor:** A licensed business that can obtain marihuana from other commercial recreational marihuana operations and can package/sell marihuana products to other commercial recreational marihuana operations. MCL 333.27953(k).
4. **Recreational Retailer:** A licensed business that can obtain marihuana products from other establishments and can sell marihuana products to adults in the general public. MCL 333.27953(m).
5. **Recreational Safety Compliance Facility:** A licensed business that can test recreational marihuana products. MCL 333.27953(o).
6. **Recreational Secure Transporter:** A licensed business that can transport marihuana to commercial recreational marihuana facilities. MCL 333.27953(n). As in the medical context,

a secure transporter may transport marihuana in or through municipalities that prohibit adult-use establishments.

The adult-use statute also authorized the state regulator, the Marihuana Regulatory Agency (“MRA”) to create new license types outside the statute. They have created four new types of marihuana recreational establishment licenses: (1) Excess Marihuana Grower, (2) Marihuana Event Organizer, (3) Temporary Marihuana Event, and (4) Designated Consumption Establishment. Just as with the other establishment types, these must be permitted at the local level.

7. **Designated Consumption Establishment:** This license allows the consumption of marihuana in a designated area by adults 21 years of age and older. Such an area must have a smoke-free area for employees to monitor consumption and a ventilation system that directs air outside the building through a filtration system sufficient to remove visible smoke, among other requirements.
8. **Excess Marihuana Grower:** This license sets the total marihuana count for an excess marihuana grower license in increments of 2,000 plants. They are issued only to persons holding five stacked class C marihuana grower licenses and at least two grower class C licenses under the MMFLA. An excess grower cannot exceed the total number of marihuana plants permitted under the class C licenses held under the MMFLA.
9. **Marihuana Event Organizer:** This license allows a person to be issued a temporary marihuana event license. It **does not** authorize an organizer to engage in the operations of a Retailer or other marihuana establishment licensee without first obtaining the appropriate licenses.
10. **Temporary Marihuana Event License:** This license is only issued to Marihuana Event Organizer License holders and authorizes organization of marihuana events, including onsite sale or consumption of marihuana products. It is only issued for 1-7 days and the events may be held only at a venue expressly approved by the Township.

Even though many of these commercial recreational marihuana operations are similar to commercial medical marihuana operations, all of the uses must be separately authorized in the Township. The market for medical marihuana has been declining while the adult-use market is expanding. Currently, Township Ordinance § 40-54 prohibits commercial recreational marihuana operations within the Township; this ordinance would be repealed if the Township were to permit any commercial adult-use establishments.

B. Individual Adult Use

On the individual side, MRTMA generally allows individuals over 21 years old (“adults”) to use and possess marihuana for recreational use. Adults may possess 2.5 ounces of marihuana, store not more than 10 ounces of marihuana, have not more than 12 marihuana plants in their residence, and give away (but not sell) marihuana to another adult. MCL 333.27955(1). Similar to activity under

the Caregiver Act, the Township could also consider reviewing its zoning regulations regarding this individual activity.

State law **prohibits** consuming marihuana in public, operating a vehicle while using or under the influence of the drug, cultivating marihuana plants that are visible to the public, and possessing marihuana or drug paraphernalia at a school. See MCL 333.27954(1). The Court of Appeals has also held that a person may not use marihuana in their vehicle while in a parking lot, see *People v Carlton*, 313 Mich App 339, 349 (2015), and that the use of marihuana in a parked vehicle provides probable cause for law enforcement to search the vehicle, see *People v Anthony*, 327 Mich App 24, 44-45 (2019).

C. Excise Tax

Both the MMFLA and MRTMA promised revenue sharing from taxed marihuana sales. The MMFLA contained a 3% tax on gross retail receipts. However, that provision was automatically repealed with the passage of the MRTMA. See MCL 333.27601(1). Thus, medical marihuana sales at a provisioning center are no longer subject to an excise tax.

MRTMA authorizes a 10% excise tax on sales of marihuana at a retail establishment or microbusiness. MCL 333.27963(1). This tax remains effective and is distributed differently than the prior MMFLA tax. Recreational marihuana taxes are distributed with the first funds going to regulation costs and \$20 million for clinical medical trials for veterans. MCL 333.27964(3). Once those obligations are met, the school aid fund and the transportation fund will be the biggest beneficiaries. MCL 333.27964(3)(c), (d). Only 15% of the recreational marihuana tax revenue will be distributed to municipalities and then **only** to those in which “a [recreational] marihuana **retail store** or a marihuana **microbusiness is located.**” MCL 333.27964(3)(a) (emphasis added). The ultimate tax collection and revenue sharing is unclear. The Michigan Treasury currently has not posted a summary of adult-use marihuana revenue sharing and, in the face of anticipated budget shortfalls, 2020 PA 170 diverted \$17 million of marihuana regulatory funds to the general fund.

D. State Regulation

With the expansion to adult-use, additional regulations were put in place to protect the public, particularly children. For example, MRTMA restricts candy shapes, candy-like packaging, and requires child-resistant packaging. MCL 333.27961(i), (j). These are further reinforced in the regulations, which require label warnings, Mich Admin Code, R 420.504(1)(k), and incorporate federal standards for child resistant containers, Mich Admin Code, R 420.403(9)(c), for edible marihuana.

TOWNSHIP REGULATION

The Township's authority to regulate marihuana establishments comes from MRTMA itself. The administrative rules further recognize that an applicant is ineligible to receive a state license if the applicant's proposed marihuana establishment is noncompliant with an ordinance adopted by the municipality. While the MMFLA has a different "opt-in" regulatory stance, the Township also may regulate recreational establishments.

Under the MRTMA, a municipality "may completely prohibit or limit the number of marijuana establishments within its boundaries." MCL 333.27956(1). Further, the Township may "regulate the time, place, and manner of operation of marihuana establishments" MCL 333.27956(2)(d). It also states that a municipality may adopt ordinances that "authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time." MCL 333.27956(2)(c).

We would anticipate that a recreational marihuana ordinance would contain similar compliance and application requirements. Thus, many of the benefits and challenges facing medical marihuana in the Township are likely to be present with recreational marihuana, especially from the administrative standpoint of the Township. However, under MRTMA individuals may also "petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality." MCL 333.27956(1). This would not affect medical facilities. Since a petition would impact one regime but not the other, we recommend adopting a separate ordinance. Whether adopting a distinct ordinance or passing an ordinance amendment, the timing and notice requirements are the same. Further, there are differences between the two statutes which require different provisions at the local level. Finally, of course, the recreational establishment would serve not just medical patients but the much larger general adult public.

MRTMA Distinctions – Violation Structure

The MRTMA caps civil fines at \$500 per day, while the MMFLA has no limit on fines. This presents a difference in enforcement power from the current MMFLA ordinance. Under the current ordinance, several layers of fines are provided to discourage repeat or continuing violations of the ordinance. Further, misdemeanor prosecution is also available for exceptional circumstances. Neither option will be available for MRTMA enforcement. The civil component is removed, the misdemeanor option is removed, and the fine limit does not allow escalating violations. However, local violations could still play a role in the annual state and local renewal process (thus the risk of losing a local license remains and may continue to be the most appropriate avenue for obtaining or maintaining compliance).

MRTMA Distinctions – Competitive Review

Additionally, where there are more applications than licenses available, the MRTMA requires that the municipality use a competitive process to select applicants best suited to operate in the municipality. There are no factors or guidance regarding how a municipality may structure its competitive process. This will be different than a lottery approach (although the lottery approach may still be used for the medical marijuana facilities permits).

If the Township limits the number of marijuana establishments and that limit prevents the state from issuing a license to all applicants that comply with certain sections of MRTMA, then “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). Neither the Marijuana Regulatory Agency nor the courts have expounded on the “competitive process” and thus the Township retains local control to determine which applicants “are best suited to operate” in the Township. *Id.*

Communities generally consider several factors, including compliance, community impact, business factors, and their permit history. For example:

- The thoroughness of the Application.
- Whether the Applicant holds a state operating license pursuant to the MMFLA or MRTMA.
- Whether to give state licensed operations a preference over new Applicants.
- History of non-compliance with the Township’s ordinances or other laws.
- Prior failure to pay taxes, special assessments, or other payments due to the Township.
- Impact to the character, aesthetics, safety, or welfare of surrounding businesses and neighborhoods.
- Location and proximity to densely populated areas or to other proposed or approved, non-co-located Establishments.
- Whether a building is already constructed and available.
- The architectural and engineering design of the proposed Establishment.
- Proper identification and mitigation of potential environmental issues.
- Knowledge and ties to the local community.
- Effective control against diversion of Marijuana products.
- The capital available to the Applicant for compliance with ordinance requirements.
- The Applicant’s general business history.
- Experience in the Marijuana industry.
- Preparedness to provide appropriate employee working conditions, benefits, and specialized training.

- Experience using inventory tracking and seed to sale systems.
- Participation in or qualification for social equity aspects under MRA procedures.
- Other relevant experience, training, or certification.
- Receipt of a permit to operate a Medical Marihuana Facility within the Township.
- Application for a permit to operate a Medical Marihuana Facility within the Township.
- Receipt of a SUP to operate a Medical Marihuana Facility within the Township.
- Application for a SUP to operate a Medical Marihuana Facility within the Township.
- Anticipated colocation with a Medical Marihuana Facility.

Since the competitive process may be set by the Township, some, all, other, or none of the factors above may be considered in a final ordinance.

A. Permit History

To take one example, the Township may—but is not required to—consider an Applicant’s prior local permit, local marihuana SUP, or state licensure status. Although the medical permits are awarded under a lottery system, considering a current permit would not import the lottery into the competitive review process. Rather, any current local permit would be one of many factors. Further, such consideration would be justified because it would show an ability to operate an establishment, submit successful permit and zoning applications, as well as operational and compliance history with Township requirements in the universe of marihuana sales.

Consideration of the local permit would also be in line with the structure of MRTMA. The MRTMA initially gave special consideration to MMFLA licensees. When the state began accepting recreational marihuana establishment applications, the statute directed that for the first 24 months only current medical marihuana facilities licensees will be considered for most licenses, including retailer licenses. MCL 333.27959(6). Therefore, the Township would be in line with the structure of MRTMA by considering its current Permit Holders at an advantage, if any.

However, consistent with the statute, the MRA waived this requirement starting on March 1, 2021.¹ Further, the Township ordinance provides that medical permit holders do not have “any vested rights or reasonable expectation of subsequent renewal.” Ordinance § 40-28(g). Thus, the Township would be in line with the current state application process and its ordinance if it declined to consider medical permits or licenses as part of its review.

If the Township were to automatically advance all current medical facility applicants, it would be closer to situations where litigation has arisen. (We discuss this in more detail below.) The

¹ https://www.michigan.gov/documents/mra/MRA_Advisory_Bulletin_-_MRTMA_Eligibility_10-6-2020_704379_7.pdf

Township could move all those permits forward if it created an additional six recreational permits to provide opportunities for potential adult-use applicants who were not selected in the medical facility lottery. At the other extreme, the Township does not need to ignore or discount the existing permit and application history from its current applicants. I also note that the Township could consider both the completeness of a recreational application as well as the completeness of a medical application as part of the competitive review, even if that medical application was not ultimately selected in the lottery.

We would recommend including some aspect of an applicant's current medical status as a factor in the competitive review but not make this determinative. Additional consideration may be given to an applicant's history in the SUP process as well. The permit and compliance history from a medical perspective does give the Township insight into whether a party would be best suited to operate from an adult use perspective without being outcome determinative.

B. Social Equity

Recently, there has been significant public discussion regarding minority participation within the marijuana industry. In December 2020, an MRA commissioned survey found that only 3.8% of license holders were black or African American and only 1.5% were of Hispanic or Latino origin. The MRA established a Racial Equity Advisory Workgroup to develop policy ideas and recommendations to address disparities in ownership and participation in the marijuana industry by people of color and establish leadership on diversity, equity, and inclusion in the industry.² The Workgroup suggested several options to advance Social Equity, including establishing a Social Equity Employment to Ownership ("SEEO") program and creating municipal materials to assist local governments in implementing Social Equity goals. The MRA has issued a general municipal handbook but has not yet developed a manual on Social Equity. The Township can work with the MRA on these programs and be an early adopter of recommendations.

Although a complex area of law (courts have both upheld and struck down various preference categories in different contexts), the Township may explore further promotion of minority representation and could incorporate existing factors from the MRA to promote social equity.

Minority representation may take several forms, from socio-economic status, to race, to sex, to disparate impact of marijuana enforcement. Generally, a distinction based on sex is subject to intermediate scrutiny while a distinction based on race is subject to strict scrutiny. A strict quota regime based on racial characteristics is disfavored. See *City of Richmond v J.A. Croson Company*, 488 US 469, 470-71, 497 (1989) (30% of city construction contracts designated to "minority business enterprises"). In other contexts, a government entity considering race as a factor has been upheld.

² https://www.michigan.gov/documents/mra/MRA_REAWG_Report_713275_7.pdf

In higher education, race or ethnicity can be considered a “plus” on an individual application. *Grutter v Bollinger*, 539 US 306, 334 (2003).

In Michigan, affirmative action provisions are also subject to constitutional analysis. Const 1963, art I, § 26. The state or a political subdivision of the state “shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in . . . public contracting.” *Id.* It is unclear whether a municipal license qualifies as a “public contract” under the provision. The Michigan Attorney General has opined that the provision applies to city bidding processes for city construction projects. See OAG No. 7202 (April 9, 2007). In that opinion, the city utilized a “Disadvantaged Business Enterprise” category that the Attorney General believed was ultimately defined in terms of race, sex, ethnicity, and national origin. The opinion also notes that economic disadvantage could be defined through race-neutral and sex-neutral financial or economic factors. Although programs giving race- and sex-based preferences in contracting have been upheld as constitutional under equal protection principles, additional analysis may be needed under the Michigan constitutional provision. We are happy to expand this analysis and consider specific concerns from the Township beyond this general review.

Still, the Township may utilize the Social Equity Program of the MRA which may promote diversity in applicants along several factors. In MRTMA, the state promoted and encouraged the “participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition.” MCL 333.27958(j). To advance this objective, the MRA introduced a “Social Equity Plan” to give reduced state license fees to certain individuals. Under the MRA’s Social Equity Plan, individuals can qualify for reduced fees if:

- They have resided in a disproportionately impacted community for at least 5 cumulative years within the past 10 years;
- They have a conviction for a marihuana conviction; or
- They were registered as a primary caregiver under the Michigan Medical Marihuana Act (MMMA) for at least two years between 2008 and 2017.

A “disproportionately impacted community” is determined using two criteria: 1) marijuana-related convictions, and 2) poverty rate. In Ingham County, included communities are Lansing and East Lansing. Although not classified as an impacted community, the Township may be able to increase diversity of MRTMA license holders by crediting an applicant for qualifying for the MRA Social Equity Program. This would be in line with the state goals as well as closer to the more permissive “plus” factor review.

In addition, the Township could adopt a fee reduction schedule for impacted individuals or applicants to promote social equity and diverse ownership. The MRA provides a 25% fee reduction for having been convicted of a marijuana-related misdemeanor, a 40% fee reduction for having been

convicted of certain marijuana-related felonies, and a 10% fee reduction for registration as a primary caregiver under the 2008 Caregiver Act.³

In summary, although challenges would face the Township in developing its own social equity program or diversity ownership incentives, a carefully considered program may be developed to address specific Township concerns and goals. Additionally, significant advancement could be made by including various aspects of the existing state Social Equity Program and considering it as a favorable factor within competitive review.

EVALUATING APPLICATIONS AND LITIGATION RISK

The competitive review process allows the Township to select and evaluate criteria important to the local community. It also brings additional challenges outside the Township's existing medical marijuana scheme.

First, the initial administrative time and energy required to organize and review the applications for completeness remains. Second, the applications will have to be evaluated based on the selected competitive review factors. There are several different models available to the Township to undertake this review, whether by administrative staff, a committee of the Township Board, or a new committee empowered to make recommendations and staffed by stakeholders located throughout the community, potentially including businesses, residents, law enforcement, zoning, and the Township Board. Again, although there is flexibility to establish the exact procedure, it represents an additional departure from the current administration of medical marijuana.

Finally, even with a fair and balanced review of competing applications, there exists a risk of litigation from applicants who do not receive a permit or whose applications are rejected. This risk can be mitigated somewhat by adopting an ordinance that tracks the medical marijuana ordinance in terms of zoning authorization and equaling or exceeding the number of available permits.

Representative Litigation

As the adult-use market has begun issuing licenses, litigation has increased. Often litigation is sparked by a disparity in the number of available recreational permits versus the number of existing or available medical facility permits. However, the litigation claims do not remain limited to that realm. A number of cases remain ongoing and their ultimate disposition and the interplay of the MMFLA and the MRTMA remain unclear.

For example, Traverse City granted 12 MMFLA provisioning center permits, which they allocated with a lottery. But then the City allowed only four retail establishments under MRTMA. When the City denied permits to applicants who already operated medical marijuana retail facilities, some of

³ <https://www.michigan.gov/lara/0,4601,7-154-89505-529549--,00.html>

the businesses sued the city. The plaintiffs in that case brought several causes of action arguing 1) the Traverse City ordinances enacting the MRTMA legislation violated state law by not allowing co-location of MMFLA and MRTMA businesses; 2) violations of substantive due process and equal protection because the City was arbitrary and capricious, 3) an injunction should issue preventing the City from handing out permits to other businesses before the legal issues are resolved, and 4) a request for declaratory relief on the stated claims.

Although the City was clear it would not consider MMFLA capital expenditures in its competitive review, the plaintiff asserted it made an investment and improvement in anticipation of co-locating with an adult-use establishment. Currently, the case has been assigned to a mediator and the outcome is unclear. Although the case began because of a disparity in available permits, the requested relief goes beyond that concern and attacks the ordinance as a whole.

The complaint in Traverse City also references that MRTMA provides priority to businesses that already have a license under the MMFLA. As noted above, the presumption was waived by the MRA and does not bind local municipalities but only the state. See MCL 333.27959(6). Although we do not read any provision in MRTMA to require municipalities to give priority to MRTMA applicants who have already received a local license under the MMFLA, the litigation remains ongoing.

Meridian Township's regulatory scheme is different and distinct from Traverse City in a number of important ways. Most importantly, no medical permits have been issued by the Township. Our ordinance language also restricts reliance interests based on the medical permit, should one be issued. Although several applicants were selected in the lottery, only a handful have received special use permits and several have not yet completed the required zoning compliance. Additionally, Meridian Township has not determined its review criteria or the number of available recreational permits, if any.

Co-Location of Facilities and Establishments under MRTMA Section 6(5)

The Traverse City litigation rests on a reading of MCL 333.27956 ("Section 6") that restricts municipal control. Under Section 6(5) of the MRTMA, the Township may ***not*** adopt an ordinance that "restricts the transportation of marihuana through the municipality or ***prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility*** operating pursuant to the [MMFLA]." Section 6(5) (emphasis added).

In addition to clarification of terms themselves (for example, what constitutes a "shared location" is unclear), several interpretations of this section are possible:

- I. Recreational marihuana establishments must be allowed at any medical marihuana facility, regardless of local ordinances; or

2. Recreational marihuana establishments may be allowed at any medical marihuana facility, but subject to available local licenses; or
3. Recreational marihuana establishments may be co-located, regardless of local ordinances; or
4. Recreational marihuana establishments may be co-located, subject to available local licenses.

In the most expansive reading, Section 6(5) controls over Section 6(1) and any recreational grower, processor, or retailer establishment may be located at any medical marihuana facility. This is what the marihuana applicant / plaintiff is arguing in the Traverse City litigation. Although the Township is empowered to limit the number of establishments and require a municipal license, those general provisions could be read to be in conflict with Section 6(5) and its specific provision allowing operation of a recreational establishment at a location shared with a medical marihuana facility (subject to applicable state licensing).

In scenario 2, Sections 6(1) and 6(3) giving local control takes precedence over Section 6(5). Here, any recreational grower, processor, and retailer establishments could operate at any medical marihuana facility, but subject to available permits. Interpreted this way, if the Township allowed six municipal recreational establishment licenses, then the holder of those municipal licenses could locate either at a medical marihuana facility or at a separate recreational establishment-only location, but only six recreational establishments would operate in the Township.

Scenarios 3 and 4 follow the same analysis, but in the context of recreational establishments operating together rather than with a medical marihuana facility.

The scope of this provision is unclear but indicates that municipalities that have already allowed medical marihuana facilities will likely be unable to prevent the co-location of recreational marihuana establishments in those medical marihuana facilities. The type of medical marihuana facility eligible for co-location is not listed, so it is entirely possible that this provision applies to any facility. If that is the case, municipalities with medical marihuana facilities will face an uphill battle to prevent the co-location of recreational marihuana establishments. Although we are aware of the litigation in this area and are following it closely, to our knowledge there is no judicial decision from a Circuit Court or otherwise interpreting the statutory language.

ZONING CONSIDERATIONS

If a regulatory ordinance is adopted permitting recreational marihuana, then additional zoning will need to be provided for those uses. Currently the zoning ordinance, §§ 86-2, 86-445, provide only for medical facilities. At a minimum, the zoning ordinance will need to be amended to include adult-use establishments within the overlay districts. As discussed above, any authorized recreational establishments will likely be permitted in these districts by operation of MRTMA. However, the Township could establish additional zoning districts for adult-use establishments. The Township

should consider whether to wholly review its authorized zoning or whether it will make more targeted definition amendments to allow adult-use in the existing overlays.

Finally, as noted under the summary of the 2008 Caregiver Act, the Michigan Supreme Court has affirmed that caregiver operations are subject to zoning and other land use restrictions, including permitting regimes. We have been successful incorporating awareness permit requirements to provide a baseline of regulation for these uses. Additionally, the Township should consider where to permit these uses. For example, some communities restrict caregiver activities as a home occupation and thus residential districts while other communities opt to only allow them in industrial or commercial districts. We can also consider how to address concerns from individual patient grows or, more likely, individual adult use grows under MRTMA. Whether or not the Township authorizes adult-use establishments, for Primary Caregivers, it should consider a special use, awareness permit, and zoning district limitations.

CONCLUSION

Adult-use or recreational marihuana presents additional challenges and opportunities distinct from the commercial medical marihuana authorized in the Township. Several commercial establishments are similar and overlap familiar categories found in the medical regime, but new uses such as consumption establishments can also be considered. Recreational marihuana sales are taxed at a 10% rate and a municipality with a retail establishment or a microbusiness is eligible for some revenue sharing from the excise tax. At the same time, the initial funds are ear-marked, and the current timing or amount of disbursements is unclear. Additional state regulations have been adopted seeking to shield children from accidental exposure to marihuana.

The Township may adopt its own regulations and likely will follow similar provisions found in its current medical marihuana regulations. There are differences, however. Any recreational ordinance is subject to a petition provision, allowing final decisions to ultimately rest with voters. The penalty provisions available to the Township are lower than for medical marihuana.

Most importantly, the application review process must follow a “competitive review” which will require development of factors for consideration and also additional energy to vet and evaluate the applications against the final rubric. Existing medical applicants or permit holders will of course take a view that their prior involvement should be included and favorably evaluated while new applicants will seek to have an application process not influenced by the prior medical lottery. Finally, although the industry has matured since the MRTMA became effective more than two years ago, there remain significant unresolved questions—such as what rights, if any, the operation of a medical facility provides for the operation of an adult-use establishment.

We look forward to assisting the Township's review of these developments and advancing the Township's goals.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Kuschel".

MATTHEW A. KUSCHEL
ASSOCIATE

Direct: 517.381.3162

mkuschel@fsbriaw.com

MAK/sap

**CHARTER TOWNSHIP OF MERIDIAN
INGHAM COUNTY, MICHIGAN
ORDINANCE AUTHORIZING AND PERMITTING
ADULT-USE MARIHUANA ESTABLISHMENTS**

ORDINANCE NO. ____

At a regular meeting of the Township Board of the Charter Township of Meridian, Ingham County, Michigan, held at the Meridian Municipal Building on _____, 2020, at ____ p.m., Township Board Member _____ moved to adopt the following Ordinance, which motion was seconded by Township Board Member _____:

An Ordinance to implement the provisions of the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, which authorizes the licensing and regulation of Marihuana Establishments and affords the Township the option whether or not to allow Marihuana Establishments; to regulate Marihuana Establishments by requiring a Permit and compliance with requirements as provided in this Ordinance, in order to maintain the public health, safety and welfare of the residents and visitors to the Township.

THE CHARTER TOWNSHIP OF MERIDIAN ORDAINS:

SECTION 1. TITLE. This ordinance shall be known as, and may be cited as, the Meridian Township Michigan Regulation and Taxation of Marihuana Ordinance.

SECTION 2. DEFINITIONS. The following words and phrases shall have the following definitions when used in this Ordinance:

1. “*Application*” means an Application for a Permit under this Ordinance and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the “*Applicant*.”
2. “*Cultivate*” means as that term is defined in Initiated Act 1 of 2018, MCL 333.27951, et seq, Michigan Regulation and Taxation of Marihuana Act (“MRTMA”).
3. “*Marihuana Establishment*” or “*Establishment*” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, designated consumption establishment, excess marihuana grower, marihuana event organizer, temporary marihuana event license, or any other type of marihuana-related business Licensed by the department.
 - a. “*Marihuana grower*,” as that term is defined in the MRTMA; and
 - b. “*Marihuana microbusiness*,” as that term is defined in the MRTMA; and
 - c. “*Marihuana processor*,” as that term is defined in the MRTMA; and

- d. “*Marihuana retailer*,” as that term is defined in the MRTMA; and
 - e. “*Marihuana secure transporter*,” as that term is defined in the MRTMA; and
 - f. “*Marihuana safety compliance facility*,” as that term is defined in the MRTMA; and
 - g. “*Designated consumption establishment*,” as that term is defined by the Department or as may be defined in the MRTMA; and
 - h. “*Excess marihuana grower*,” as that term is defined by the Department or as may be defined in the MRTMA; and
 - i. “*Marihuana event organizer*,” as that term is defined by the Department or as may be defined in the MRTMA; and
 - j. “*Temporary marihuana event*” as that term is defined by the Department or as may be defined in the MRTMA.
4. “*Department*” means the Michigan State Department of Licensing and Regulatory Affairs or any designated Michigan agency authorized to regulate, issue or administer a Michigan License for a Marihuana Establishment.
 5. “*Director of Community Planning and Development*” means the Charter Township of Meridian Director of Community Planning and Development or his/her designee.
 6. “*License*” means a current and valid License for a Marihuana Establishment issued by the State of Michigan.
 7. “*Licensee*” means a Person holding a current and valid Michigan License for a Marihuana Establishment.
 8. “*Permit*” means an approval issued by the Township pursuant to the MRTMA that allows a Person to operate an Establishment in the Township under this Ordinance, which Permit may be granted to a Permit Holder only for and limited to a specific Permitted Premises and a specific Permitted Property.
 9. “*Permit Holder*” means the Person that holds a current and valid Permit issued under this Ordinance.
 10. “*Permitted Premises*” means the particular building or buildings within which the Permit Holder will be authorized to conduct the Establishment’s activities pursuant to the Permit.
 11. “*Permitted Property*” means the real property comprised of a lot, parcel or other designated unit of real property upon which the Permitted Premises is situated.

12. “*Marihuana*” means that term as defined Section 7106 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106 and as defined in the MRTMA.
13. “*Person*” means a natural person, company, partnership, trust, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.
14. “*Process*” or “*Processing*” means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.
15. “*Public Place*” means any area to which the public is invited or generally permitted in the usual course of business.
16. “*Township*” means the Charter Township of Meridian, a charter township located in Ingham County, Michigan.
17. “*Township Clerk*” means the Meridian Charter Township Clerk or his/her designee.

SECTION 3. PERMIT REQUIRED; NUMBER OF PERMITS AVAILABLE; ELIGIBILITY; GENERAL PROVISIONS.

1. The Township hereby authorizes the operation of the following types of Marihuana Establishments, subject to the number of available Permits issued in this Section:
 - a. *[All permitted establishments would be listed here]*
2. The number of Marihuana Establishment Permits in effect at any time shall not exceed the following maximums within the Township:
 - a. Marihuana Grower Permits, Class A: []
 - b. Marihuana Grower Permits, Class B: []
 - c. Marihuana Grower Permits, Class C: []
 - d. Marihuana Processor Permits: []
 - e. Marihuana Safety Compliance Facility Permits: []
 - f. Marihuana Secure Transporter Permits: []
 - g. Marihuana Retailer Permits: []
 - h. Marihuana Microbusiness: []
 - i. Excess Marihuana Grower Permits: []

- j. Designated Consumption Establishment: []
- k. Marihuana Event Organizer: []
- l. Temporary Marihuana Event: []

The Township Board may review and amend the above maximums by resolution annually or as it determines to be advisable. Such revisions shall not be the basis for termination or non-renewal of a Permit previously issued.

- 3. It shall be unlawful for any person to engage in, or be issued a Permit for, the operation of the following Marihuana Establishments:
 - a. [*Specifically prohibited establishments would be listed here*]
- 4. No Person shall operate a Marihuana Establishment at any time and at any location within the Township unless an effective Permit for a Marihuana Establishment for that Person at that location has been issued under this Ordinance.
- 5. Marihuana Establishments shall operate only as expressly allowed under this Ordinance.
- 6. The requirements set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing or permitting requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances. All permit approvals under this Ordinance are contingent upon the issuance of a Special Use Permit under the township zoning ordinance.
- 7. At the time of Application, each Applicant shall pay applicable fees, including Application fees, annual fees, renewal fees, transfer fees, and inspection fees for Permits to the Township to defray the costs incurred by the Township for inspection, administration, review, oversight, and enforcement of the local regulations regarding Marihuana Establishments. The application fee shall be \$5,000.00. The Township Board shall by resolution set all remaining fees in an amount not to exceed any limitations imposed by Michigan law.
- 8. A Permit or Renewal Permit shall not confer any vested rights or reasonable expectation of subsequent renewal on the Applicant or Permit Holder, and shall remain valid only until the June 1 immediately following its approval. A completed Application or Renewal Application must be received by the Director of Community Planning and Development no later than March 31 of each year in order to grant or renew the Permit effective on June 1 of that year.
- 9. Each year, any pending Applications for renewal or amendment of existing Permits shall be reviewed and granted or denied before Applications for new Permits are considered.
- 10. It is always the exclusive responsibility of each Permit Holder, Applicant, owner, partner, director, officer, or manager at all times during the Application period and during its operation to immediately provide the Township with all material changes in any information submitted on an Application and any other changes that may materially affect any state License or Township Permit.

11. No Permit issued under this Ordinance may be assigned or transferred to any Person unless the assignee or transferee has submitted an Application and all required fees under this Ordinance and other applicable Ordinances and the transfer has been authorized under this Ordinance by the Township Board. No Permit issued under this Ordinance is transferrable to any other location except for the Permitted Premises on the Permitted Property, except for a change in location requested as part of a renewal application.
12. No change in control of a business organization or any attempted transfer, sale, or other conveyance of an interest of more than 1% in a Permit, whether through a single transaction or the combined sum of multiple transactions, is permitted unless the transferee has submitted an appropriate Application and all required fees under this Ordinance.
13. The Permit issued under this Ordinance shall at all times be prominently displayed at the Permitted Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.
14. Acceptance by the Permit Holder of a Permit constitutes consent by the Permit Holder and its owners, officers, managers, agents and, employees, for any state, federal or local fire, emergency, or law enforcement agency to perform background investigations and conduct random and unannounced examinations of the Establishment and all records, materials, and property in that Establishment at any time to ensure compliance with this Ordinance, state law, any other local regulations, and the Permit.
15. A Permit Holder may not engage in any other Marihuana Establishment in the Permitted Premises or on the Permitted Property, or in its name at any other location within the Township, without first obtaining a separate Permit.

SECTION 4. OTHER LAWS AND ORDINANCES. In addition to the terms of this Ordinance, any Marihuana Establishment shall comply with all state and local laws, regulations, and Ordinances, including without limitation the Township Zoning Ordinance and the MRTMA to the extent such ordinances do not create obligations in conflict with this Ordinance.

SECTION 5. APPLICATION FOR, RENEWAL OF, AND TRANSFER OF PERMITS.

1. **Application.** An Application must be submitted for each and every single Permit or Establishment type which may be operated within the Township. An Application for a Permit for an Establishment shall be submitted to the Director of Community Planning and Development, and shall contain the following information:
 - a. The name, address, phone number and e-mail address of the Applicant or Permit Holder and the proposed Marihuana Establishment;

- b. The names, home addresses and personal phone numbers for all owners, partners, directors, officers and managers of the Permit Holder and the Marihuana Establishment;
- c. One (1) copy of all the following:
 - 1) To encourage both local industry and also well-qualified applicants, at least two of the following items:
 - i. An official statement issued by the Department indicating that the applicant has successfully completed prequalification for a license, if any. Copies of entity/individual prequalification packets and supplemental applicant prequalification packets or investigations conducted by the Department (if available) shall be provided.
 - ii. Proof that the applicant or owners of at least 75% of the applicant are current Township residents and were residents for at least 12 months prior to filing the application. Any proof of residency must be satisfactory to the Township and must include more than one of the following: residential leases, tax or special assessment bills, utility bills (water, sewer, electric, gas, cable, Internet, etc.), credit card bills, voter registration, driver's license, tax returns, or homeowner insurance policies, showing current and at least 12 months' prior residence in the Township. The applicant's majority shareholders, managing members, or managing partners must submit the same information.
 - iii. The applicant's certification on a form provided by the Township restricting transfer of the permit and subsequent renewed permits, and restricting the transfer of any interest in the permit holder for a period of not less than 30 months after issuance of the permit and license. This commitment shall be enforceable severally or jointly by the Township against the applicant, permit holder, and any members or shareholders thereof.
 - 2) All documentation showing the Applicant's valid tenancy, ownership or other legal interest in the proposed Permitted Property and Permitted Premises. If the Applicant is not the owner of the proposed Permitted Property and Permitted Premises, a notarized statement from the owner of such property authorizing the use of the property for a Marihuana Establishment.
 - 3) If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, it shall indicate its legal status, attach a copy of all company formation documents (including bylaws and amendments), identify all owners and their percentage of ownership in the entity accounting for 100% of the ownership interest in the Applicant, proof of registration with the State of Michigan, and a certificate of good standing.
 - 4) A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed Establishment.
 - 5) Evidence of a valid sales tax license for the Applicant if such a license is required by state law or local regulations.

- 6) Application for Sign Permit, if any sign is proposed.
- 7) Non-refundable Application fee.
- 8) Business and Operations Plan, showing in detail the Marihuana Establishment's proposed plan of operation, including without limitation, the following:
 - i. A description of the type of Establishment(s) proposed and the anticipated or actual number of employees.
 - ii. A security plan meeting the requirements of this Ordinance, which shall include a general description of the security systems(s), current centrally alarmed and monitored security system service agreement for the proposed Permitted Premises, and confirmation that those systems will meet State requirements and be approved by the State prior to commencing operations.
 - iii. A description by category of all products proposed to be sold.
 - iv. All Material Safety Data Sheets for any nutrients, pesticides, and other chemicals proposed for use in the Marihuana Establishment.
 - v. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no nuisance odor will be detectable at the property line of the Permitted Property.
 - vi. A plan for the disposal of Marihuana and related byproducts that will be used at the Establishment.
- 9) Site plan and interior floor plan of the Permitted Premises and the Permitted Property lawfully signed and sealed by a Michigan registered architect, surveyor or professional engineer.
- 10) Identify any business that is directly or indirectly involved in the growing, processing, testing, transporting or sale of Marihuana for the Establishment.
- 11) Whether any Applicant, owner, partner, director, officer, or manager of the Applicant or any entity owned or controlled by any owner, partner, director, officer, or manager of the Applicant has ever applied for or been granted, denied, restricted, suspended, revoked, or not renewed any commercial license, permit, or certificate issued by a licensing authority in Michigan or any other jurisdiction, and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

- 12) A complete list of all marihuana Permits and Licenses held by the Applicant (including permits or licenses from other states or countries), or any owner, partner, director, officer, or manager of the Applicant or any entity owned or controlled in whole or part by any owner, partner, director, officer, or manager of the Applicant whether Commercial Medical Marihuana Facilities or Marihuana Establishments, including complete copies of the issued Permits and Licenses.
 - 13) Information regarding any other Marihuana Establishment, Commercial Medical Marihuana Facility, similar Permit or License, or any other marihuana business or venture that the Applicant, or any owner, partner, director, officer, or manager of the Applicant or any entity owned or controlled in whole or part by any owner, partner, director, officer, or manager of the Applicant is authorized to operate in any other jurisdiction within the State, or another State, and their involvement in each.
- d. Any other information reasonably requested by the Township to be relevant to the processing or consideration of the Application.
 - e. Information obtained from the Applicant or Permit Holder is exempt from public disclosure under state law.
 - f. Applicant and all related persons acknowledge and consent to a background check and investigation by the Township as a condition of the Township processing and reviewing the application for approval or denial of a permit, including providing their Social Security numbers or other personal identifying information to the Township or their agents for a background check or any other purpose permitted under this Ordinance. Such information is confidential and shall not be disclosed except as permitted or required under this Ordinance.
 - g. A Renewal Application or Co-location Application may expressly incorporate by reference information or documentation contained in the original Permit Application or prior Permit Renewal Application, making it clear where such information or documentation can be found, provided that the information or documentation has not changed.
 - h. Prior to the approval or renewal of an Application for a Marihuana Grower Permit, an Applicant may amend the Class of the Marihuana Grower Permit Application by submitting an application form and expressly incorporating by reference the information or documentation contained in the original Permit Application. The Township may impose a fee as established by resolution. The Applicant will be required to show proof of a valid state License allowing operation of the new class of Marihuana Grower Permit prior to operation.
2. **Renewal Application.** The same requirements that apply to all new Applications for a Permit apply to all Renewal Applications. Renewal Applications shall be submitted to and received by the Director of Community Planning and Development not less than ninety (90) days prior to the expiration of the annual Permit, except that an Application requesting a change in the location of the Permitted Premises shall be submitted and received not less than one hundred

twenty (120) days prior to the expiration of the Permit. A Permit Holder whose Permit expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Permit under this Ordinance. The Township may not accept Renewal Applications after the expiration date of the Permit.

3. **Transfer Application.** Any unauthorized transfer or attempted transfer of a Permit or ownership interest in a Permit Holder constitutes a violation of this Ordinance.
 - a. The same requirements that apply to all new Applications for a Permit apply to all Applications to transfer, sell, or otherwise convey an existing Permit to a new legal entity or individual(s), as well as a certified copy of the meeting minutes of the board of directors or members authorizing the transfer, sale, or conveyance of the Permit or, if the Permit Holder is a natural person, a notarized statement or other proof satisfactory to the Township authorizing the transfer. Only after the transferee has applied for and obtained approval for the transfer, including without limitation the payment of the same fees for the transferred Permit as applies for a new Permit, may the Permit be transferred.
 - b. No Permit Holder shall transfer, sell, or otherwise convey more than 1% of the ownership interest in the entity holding the Permit, whether in a single transaction or the sum of multiple transactions, without the express approval of the Township Board after submitting a transfer application under this Ordinance. The transferee applicant and Permit Holder must submit a change in control transfer Application to the Director of Community Planning and Development prior to any sale or transfer of stock or membership interest. The Application shall include all of the following:
 - 1) The names, home addresses and personal phone numbers for all owners, directors, officers and managers of the Permit Holder, the Marihuana Establishment, and Applicant;
 - 2) If the Permit Holder is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, attach a copy of all company formation documents (including bylaws and amendments), purchase agreement for stock or membership interest, and a certified copy of the meeting minutes of the board of directors or members authorizing the sale of stock or membership interest.
 - 3) If the Applicant is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, it shall indicate its legal status, attach a copy of all company formation documents (including bylaws and amendments), identify all owners and their percentage of ownership in the entity accounting for 100% of the ownership interest in the Applicant, proof of registration with the State of Michigan, and a certificate of good standing.
 - 4) A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the Applicant.

- 5) Whether any Applicant, or any owner, partner, director, officer, or manager of the Applicant or any entity owned or controlled by any owner, partner, director, officer, or manager of the Applicant has ever applied for or has been granted any commercial License or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.
 - 6) Information regarding any other Marihuana Establishment or Commercial Medical Marihuana Facility, similar Permit or License, or any other marihuana business or venture that the Applicant, owner, partner, director, officer, or manager of the Applicant, or any entity owned or controlled by any owner, partner, director, officer, or manager of the Applicant is authorized to operate in any other jurisdiction within the State, or another State, and their involvement in each.
 - 7) A non-refundable Application fee, as set by resolution by the Board.
 - 8) Any documents required to reflect that the Marihuana Establishment will be operated and managed consistent with the current filings provided to the Township.
 - 9) Any other information reasonably requested by the Township to be relevant to the processing or consideration of the Application.
- c. If, prior to the approval of an Application, an individual Applicant wishes to substitute a different Person as Applicant; or an Applicant that is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, seeks to undergo a change in ownership greater than 1%, the current Applicant may submit a written request to the Director of Community Planning and Development to amend the Application. Upon approval by the Director of Community Planning and Development, the current Applicant may amend the Application to reflect such a change in identity or ownership, provided that the substituted Applicant(s) submits any documents required for a new Permit under this Ordinance. The Township Board may set a fee by resolution for such a change.
- d. The following actions constitute transfer of ownership and require a transfer application, application fee, and Township Board approval:
- 1) *Persons*. Any transfer of more than 1% of an ownership interest in an Applicant or Permit Holder between Persons constitutes a transfer of ownership.
 - 2) *Corporations*. Any transfer of more than 1% of stock or any change in principal officers or directors of any corporation holding a Permit constitutes a transfer of ownership.
 - 3) *Limited Liability Companies*. Any transfer of more than 1% of membership interest or any change in managing members or change in the interest held by any managing

members(s) of any limited liability company holding a Permit constitutes a transfer of ownership.

- 4) *Partnerships*. Any transfer of more than 1% of a partnership interest or any change in general or managing partners of any partnership holding a Permit constitutes a transfer of ownership.
- 5) *Assets*. Any transfer of more than 1% of the assets held by an Applicant or Permit Holder within the Township constitutes a transfer of ownership.

4. **Approval, Issuance, Denial and Appeal.**

- a. All inspections, review and processing of the Application, including transfer Applications, shall be completed within ninety (90) days of receipt of a complete Application and all required fees. The Township Board shall approve or deny the Permit within one hundred twenty (120) days of receipt of the completed Application and fees, or within one hundred fifty (150) days if the location of the Permitted Premises is proposed to be amended. If the Application is approved, then the Permit shall be issued to the Applicant as the Permit Holder. All permit approvals under this Ordinance are contingent upon the issuance of a Special Use Permit under the Township zoning ordinance.
- b. The processing time may be extended upon written notice by the Township for good cause, and any failure to meet the required processing time shall not result in the automatic grant of the Permit. Any denial must be in writing and must state the reason(s) for denial.
- c. The Township has no obligation to process or approve any incomplete Application, and any times provided under this Ordinance shall not begin to run until the Township receives a complete Application, as determined by the Director of Community Planning and Development. A determination of a complete Application shall not prohibit the Township from requiring supplemental information.
- d. If more complete applications are submitted for an Establishment than available Permits (more than zero) under this Ordinance, the Township will decide among competing applications by a competitive review process intended to select applicants who are best suited to operate in compliance with MRTMA and this Ordinance within the Township. Factors considered in the competitive review process include, but are not limited to:

1) **Compliance Factors**

- i. The thoroughness of the Application, including compliance with all requirements established in this Ordinance, or any other regulation established by the Township.

- ii. Whether the Applicant holds a state operating license pursuant to the MMFLA or MRTMA. Current licensees shall generally be given a strong preference over new Applicants.
- iii. Whether the Applicant has a history of non-compliance with the Township's ordinances or with other local, state, or federal laws.
- iv. Whether the Applicant has previously failed to pay taxes, special assessments, or other payments due to the Township.

2) **Community Factors**

- i. Whether the proposed Establishment will negatively impact the character, aesthetics, safety, or welfare of surrounding businesses and neighborhoods.
- ii. The geographic location of the proposed Establishment, including its proximity to densely populated areas or to other proposed or approved, non-located Establishments.
- iii. The suitability of the architectural and engineering design of the proposed Establishment.
- iv. Whether the Applicant has appropriately identified potential environmental issues, including steps to prevent or mitigate those issues.

3) **Business Factors**

- i. The ability of the Applicant to maintain effective control against diversion of Marihuana and Marihuana products.
- ii. The capital available to the Applicant for compliance with the requirements of this Ordinance, including the need to install additional equipment, hire additional employees, or otherwise expend monies as unanticipated issues arise in connection with the proposed Establishment.
- iii. The Applicant's general business history, including any history with a pharmaceutical or retail sales environment, or, in the case of an application for a Grower's Permit, experience with horticulture or agriculture. Experience in the Marihuana industry, including experience in the growth, manufacturing, or transportation of Marihuana or Marihuana products is particularly relevant, and will generally be viewed favorably.
- iv. The Applicant's demonstrated preparedness to provide appropriate employee working conditions, benefits, and specialized training.
- v. The Applicant's experience using inventory tracking systems, including seed to sale systems, as well as any recordkeeping experience.

- vi. Other experience, training, or certification, possessed or undertaken by the Applicant that may be relevant to the operation of the proposed Establishment.
 - vii. Whether the Applicant has already applied for or received a permit to operate a Commercial Medical Marijuana Facility within the Township.
 - viii. Whether the Applicant intends to collocate an Establishment with an existing Commercial Medical Marijuana Facility or Marijuana Establishment within the Township.
- e. Any final denial of a Permit may be appealed to a court of competent jurisdiction, provided that: (1) with respect to a denial of a new Permit, an appeal shall not grant any rights to an Applicant, subject to an order of the court; and (2) with respect to denial of a Renewal Application, if the Applicant has paid all required fees (and any additional fees due during the pendency of the appeal), the Township may grant a temporary extension of the pre-existing Permit to allow continued operation during the pendency of the appeal, unless otherwise ordered by a court.
5. **No Building Currently Existing.** Any new Applicant for a Marijuana Establishment Permit whose building is not yet in existence at the time of the Township's initial approval shall have one year immediately following the date of the Township's initial approval to commence construction of the building, in accordance with applicable zoning ordinances, building codes, and any other applicable state or local laws, rules or regulations. Start of construction means the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, construction of columns, or other work beyond the stage of excavation. The Applicant shall thereafter complete construction and commence business operations without unreasonable delay.
6. **Effect of Transfer.**
- a. Immediately following the approval of a transfer by the Township Board, the transferee(s) will obtain all the interests, rights, obligations, and responsibilities of the previous Permit Holder. Once a Permit Holder has transferred his or her ownership interest, any privileges enjoyed by that Permit Holder under this Ordinance are terminated.
 - b. For transfers where no building is yet in existence, the deadline for construction shall be extended to one year immediately following the date the transfer is approved, but construction must commence within three years after the Township's initial approval of the Permit, regardless of any subsequent transfers.
7. **Duty to Supplement.**
- a. If, at any time before or after a Permit is issued pursuant to this Ordinance, any information required in the Permit Application, the MRTMA, or any rule or regulation promulgated thereunder, changes in any way from what is stated in the Application, the Applicant or Permit Holder shall supplement such information in writing within ten (10) days from the date upon which such change occurs.

- b. An Applicant or Permit Holder has a duty to notify the Township Board in writing of any pending criminal charge or indictment, and any criminal conviction of a felony or other offense involving a crime of moral turpitude by the Applicant, the Permit Holder, or any owner, officer, partner, director, manager, or employee within ten (10) days of the date when the Applicant, Permit Holder, owner, officer, partner, director, or manager has notice of the event.
 - c. An Applicant or Permit Holder has a duty to notify the Township Board in writing of any pending criminal charge or indictment, and any criminal conviction, whether a felony, misdemeanor, or any violation of a local law or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing or consumption of any form of marihuana, the Michigan Medical Marihuana Act, the MMFLA, the MRTMA, any building, fire, health, or zoning statute, code or ordinance related to the cultivation, processing, manufacture, storage, sale, distribution, testing, or consumption of any form of marihuana by the Applicant, Permit Holder, any owner, officer, partner, director, manager, or employee within (10) ten days of the date when the Applicant, Permit Holder, any owner, principal officer, director, or manager has notice of the event.
8. *Permit Forfeiture.* In the event that an Establishment does not commence operations within one year from the time the Township grants the special use permit or start of construction, any Permit, conditional approval, or application shall be deemed forfeited and the Facility may not commence operations and the Permit, conditional approval, application, and any lottery selection is not eligible for renewal.

SECTION 6. OPERATIONAL REQUIREMENTS–MARIHUANA ESTABLISHMENT. A Marihuana Establishment issued a Permit under this Ordinance and operating in the Township shall at all times comply with the following operational requirements, which the Township Board may review and amend from time to time as it determines reasonable.

1. *Scope of Operation.* Marihuana Establishments shall comply with all applicable codes, including local zoning, building, and health departments, except to the extent that they are inconsistent with the MRTMA or this Ordinance. The Establishment must hold a valid local Permit and Michigan Marihuana Establishment License for the type of Marihuana Establishment intended to be carried out on the Permitted Property. The Establishment must also hold both a valid state License under the MRTMA. The Establishment operator, owner, Licensee or Permit Holder must have documentation available that demonstrates full compliance with all local and State sales tax requirements, including holding any permits or licenses, if applicable.
2. *Required Documentation.* Each Marihuana Establishment shall be operated from the Permitted Premises on the Permitted Property. No Marihuana Establishment shall be permitted to operate from a moveable, mobile, or transitory location, except for a Permitted and Licensed Marihuana Secure Transporter when engaged in the lawful transport of Marihuana. No person under the age of eighteen (18) shall be allowed to enter the Permitted Premises without a parent or legal guardian.

3. *Security.* Permit Holders shall at all times maintain a security system that meets State law requirements, and shall also include the following:
 - a. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the Permitted Premises; and
 - b. Robbery and burglary alarm systems that are professionally monitored and operated 24 hours a day, 7 days a week; and
 - c. A locking vault permanently affixed to the Permitted Premises that shall store all Marihuana and cash remaining in the Establishment overnight, except for Marihuana actively grown in a Grower Establishment; and
 - d. All Marihuana in whatever form stored at the Permitted Premises shall be kept in a secure manner and shall not be visible from outside the Permitted Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Permitted Premises; and
 - e. All security recordings and documentation shall be preserved for at least seven (7) days by the Permit Holder and made available to any law enforcement agency upon request for inspection.
4. *Required Spacing.* No Marihuana Establishment shall be located within five-hundred (500) feet from any licensed educational institution or school, college or university, church, or house of worship or other religious facility, or public or private park, if such uses are in existence at the time the Establishment is issued an initial permit, with the minimum distance between uses measured horizontally between the closest edge of any such building or use on the property.
5. *Operating Hours.* No Retailer or Microbusiness (if permitted under this Ordinance) shall operate between the hours of 8:00 p.m. and 8:00 a.m.
6. *Colocation not permitted.* Colocation of Establishment Permits is not permitted, except that a Grower Facility may colocate with a Marihuana Grower Establishment.
7. *Stacked License.* An Applicant for a grower establishment may apply to stack another grower permit at the Establishment or Permitted Premises. The Applicant shall be subject to the same requirements as a renewal permit application, including payment of a separate application fee for each stacked permit. Permits or Licenses may only be stacked consistent with state law and the rules and regulations promulgated by the Department.
8. *Amount of Marihuana.* The amount of Marihuana on the Permitted Property and under the control of the Permit Holder, owner or operator of the Establishment shall not exceed that amount permitted by the state License or the Township's Permit.

9. *Sale of Marihuana.* The Marihuana offered for sale and distribution must be packaged and labeled in accordance with state law.
10. *Sign Restrictions.* No pictures, photographs, drawings or other depictions of Marihuana or Marihuana paraphernalia shall appear on the outside of any Permitted Premises nor be visible outside of the Permitted Premises on the Permitted Property. The words “Marihuana,” “cannabis” and any other words used or intended to convey the presence or availability of Marihuana shall not appear on the outside of the Permitted Premises nor be visible outside of the Permitted Premises on the Permitted Property.
11. *Use of Marihuana.* The sale, consumption or use of alcohol or tobacco products on the Permitted Premises is prohibited. Smoking or consumption of controlled substances, including Marihuana, on the Permitted Premises is prohibited unless otherwise permitted under a specific Township Permit for such use.
12. *Indoor Operation.* All activities of Marihuana Establishments, including without limitation, distribution, growth, cultivation, or the sale of Marihuana, and all other related activity permitted under the Permit Holder’s License or Permit must occur indoors. The Establishment’s operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no nuisance odor is detectable at the property line of the Permitted Premises.
13. *Unpermitted Growing.* A Patient may not grow his or her own Marihuana at a Commercial Medical Marihuana Facility.
14. *Distribution.* No person operating an Establishment shall provide or otherwise make available Marihuana to any person who is not legally authorized to receive Marihuana under state law.
15. *Permits.* All necessary building, electrical, plumbing, and mechanical permits must be obtained for any part of the Permitted Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of Marihuana are located.
16. *Waste Disposal.* The Permit Holder, owner and operator of the Establishment shall use lawful methods in controlling waste or by-products from any activities allowed under the License or Permit.
17. *Transportation.* Marihuana may be transported by a Marihuana Secure Transporter within the Township under this Ordinance, and to effectuate its purpose, only:
 - a. By Persons who are otherwise authorized by state law to transport Marihuana;
 - b. In a manner consistent with all applicable state laws and rules, as amended;
 - c. In a secure manner designed to prevent the loss of the Marihuana;

- d. No vehicle used for the transportation or delivery of Marihuana under this Ordinance shall have for markings the words “Marihuana,” “cannabis” or any similar words; pictures or other renderings of the Marihuana plant; advertisements for Marihuana or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase, or symbol indicating or tending to indicate that the vehicle is transporting Marihuana;
- e. No vehicle may be used for the ongoing or continuous storage of Marihuana, but may only be used incidental to, and in furtherance of, the transportation of Marihuana.

18. *Additional Conditions.* The Township Board may impose such reasonable terms and conditions on a Marihuana Establishment special use as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

SECTION 7. PENALTIES AND CONSEQUENCES FOR VIOLATION. In addition to any other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances:

- 1. Violations of the provisions of this Ordinance or failure to comply with any of the requirements of this Ordinance shall be subject to and found responsible for a municipal civil infraction. The forfeiture for any municipal civil infraction shall be five hundred dollars (\$500.00) plus court costs, attorney fees and abatement costs of each violation, together with all other remedies pursuant to MCL 600.8701, *et seq.* Each day a violation continues shall be deemed a separate municipal civil infraction.
- 2. A Permit issued under this Ordinance may be denied, limited, revoked, or restricted under any of the following conditions:
 - a. Any fraudulent, false, misleading, or material misrepresentation contained in the Application.
 - b. Repeat violations of any requirements of this Ordinance or other applicable law, rule, or regulation. As used in this subsection, the term “repeat offense” means a second (or any subsequent) misdemeanor violation or civil infraction of the same requirement or provision committed within any six-month period and upon conviction or responsibility thereof.
 - c. A valid License is not maintained as required by this Ordinance.
 - d. The Permit Holder, its officer, agent, manager, or employee failed to timely submit any document or failed to timely make any material disclosure as required by this Ordinance.
- 3. If a Permit is revoked or limited under this Ordinance, the Township or its designee shall issue a notice stating the revocation, limitation, or restriction including the reason for the action and

providing a date and time for an evidentiary hearing before the Township Board.

4. The owner of record or tenant of any building, structure or premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in or maintains such violation may each be found guilty or responsible of a separate offense and suffer the penalties and forfeitures provided in this section, except as excluded from responsibility by state law.
5. In addition to any other remedies, the Township may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this Ordinance. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Ordinance.

SECTION 8. SEVERABILITY. The provisions of this Ordinance are hereby declared severable. If any part of this Ordinance is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.

SECTION 9. SAVINGS CLAUSE. This Ordinance does not affect rights and duties matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. REPEAL. The Meridian Township Ordinance Prohibiting Marihuana Establishments, and all other Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 11. EFFECTIVE DATE. This Ordinance shall take effect the day following publication or posting after final adoption by the Township Board.

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED:

Meridian Township Supervisor



MUNICIPAL GUIDE

MUNICIPAL GUIDE

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Medical Facility Licensing Questions

What provisions in the Medical Marijuana Facilities Licensing Act (MMFLA) are relevant to municipalities?

[Section 205](#) of the [MMFLA](#) is relevant for municipalities that are considering allowing or restricting medical marijuana facilities' operations within the municipality.

Below are the relevant provisions in the [MMFLA](#) related to municipalities. The Marijuana Regulatory Agency (MRA) is unable to provide legal interpretation of statutory provisions that fall under municipal authority. If clarification on any of the provisions below that fall under municipal authority is needed, the MRA recommends that you consider consulting an attorney:

- Sec. 102.(q): "Municipality' means a city, township, or village."
- Sec. 201.1: "Except as otherwise provided in this act, if a person has been granted a state operating license and is operating within the scope of the license, the licensee and its agents are not subject to any of the following for engaging in activities described in subsection (2):
 - (a) Search or inspection, except for an inspection authorized under this act by law enforcement officers, the municipality, or the department."
- Sec. 201.3: "Except as otherwise provided in this act, a person who owns or leases real property upon which a marijuana facility is located and who has no knowledge that the licensee violated this act is not subject to any of the following for owning, leasing, or permitting the operation of a marijuana facility on the real property:
 - d) Search or inspection, except for an inspection authorized under this act by law enforcement officers, the municipality, or the department."
- Sec. 205.1: "A municipality may adopt an ordinance to authorize 1 or more types of marijuana facilities within its boundaries and to limit the number of each type of marijuana facility. A municipality may adopt other ordinances relating to marijuana facilities within its jurisdiction, including zoning regulations, but shall not impose regulations regarding the purity or pricing of marijuana or interfering or conflicting with this act or rules for licensing marijuana facilities. A municipality that adopts an ordinance under this subsection that authorizes a marijuana facility shall provide the department with all of the following on a form prescribed and provided by the department:
 - (a) An attestation that the municipality has adopted an ordinance under this subsection that authorizes the marijuana facility.
 - (b) A description of any zoning regulations that apply to the proposed marijuana facility within the municipality
 - (c) The signature of the clerk of the municipality or his or her designee.
 - (d) Any other information required by the department."
- Sec. 205.2: "A municipal ordinance may establish an annual, nonrefundable fee of not more than \$5,000.00 to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the municipality."

- Sec. 205.3: “The department may require a municipality to provide the following information to the department on a form prescribed and provided by the department regarding a licensee who submits an application for license renewal:
 - (a) Information that the board declares necessary to determine whether the licensee’s license should be renewed.
 - (b) A description of a violation of an ordinance or a zoning regulation adopted under the subsection (1) committed by the licensee, but only if the violation relates to activities licensed under this act and rules or the Michigan Medical Marihuana Act.
 - (c) Whether there has been a change to an ordinance or a zoning regulation adopted under subsection (1) since the license was issued to the licensee and a description of the change.”
- Sec. 205.4: “Information a municipality obtains from an applicant under this section is exempt from disclosure under the Freedom of Information Act, 1976 PA 442, MCL 15.246. Except as otherwise provided in this subsection, information a municipality provides to the department under this section is subject to disclosure under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.”
- Sec. 401.1: “Beginning December 15, 2017, a person may apply to the board for state operating licenses in the categories of class A, B, C grower; processor; provisioning center; secure transporter; and safety compliance facility as provided in this act. The application shall be made under oath on a form provided by the board and shall contain information as prescribed by the board, including, but not limited to, all of the following:
 - (j) A paper copy or electronic posting website reference for the ordinance or zoning restriction that the municipality adopted to authorize or restrict operating 1 or more marihuana facilities in the municipality.
 - (k) A copy of the notice informing the municipality by registered mail that the applicant has applied for a license under this act. The applicant shall also certify that it has delivered the notice to the municipality or will do so by 10 days after the date the applicant submits the application for a license to the board.”
- Sec. 401.6: “By 10 days after the date the applicant submits an application to the board, the applicant shall notify the municipality by registered mail that it has applied for a license under this act.”
- Sec. 503.1: “A secure transporter license authorizes the license to store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money. It does not authorize transport to a registered qualifying patient or registered primary caregiver. If a secure transporter has its primary place of business in a municipality that has adopted an ordinance under section 205 authorizing that marihuana facility, the secure transporter may travel through any municipality.”

Does a municipal ordinance have to opt in or opt out for medical facilities?

If a municipality intends to authorize the operation of medical marijuana facilities within the municipality, the municipality must adopt an ordinance that specifically authorizes the operation

of medical marijuana facilities within the municipality. If no ordinance is in place, the Marijuana Regulatory Agency will not issue a license to a facility in that municipality.

Can the Marijuana Regulatory Agency (MRA) tell a municipality what should be included in the municipality's ordinance and zoning regulations?

The MRA does not provide legal advice or interpretation regarding issues that fall under municipal authority. Please review [Section 205](#) of the [Medical Marijuana Facilities Licensing Act](#) for information about municipal authority regarding ordinance and zoning regulations.

If you still have questions after your review, you may wish to consider consulting with an attorney.

Does the Marijuana Facilities Licensing Act prohibit facilities from being within a certain distance to a school?

No, but the municipality may have ordinance or zoning requirements that require a facility be a certain distance from the school. For more information please review [Section 205](#) of the [Medical Marijuana Facilities Licensing Act](#) or contact the municipality where your facility will operate.

Can the municipality charge an application fee?

Yes, pursuant to [Section 205.2](#) of the [Medical Marijuana Facilities Licensing Act \(MMFLA\)](#):

“A municipal ordinance may establish an annual, nonrefundable fee of not more than \$5,000.00 to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the municipality.”

How does the medical marijuana facility licensing process work?

The medical marijuana facility licensing process is a two process step:

Prequalification (Step 1) Application

The first step in the process is prequalification. During prequalification, the Marijuana Regulatory Agency (MRA) vets the entities and individuals who are applicants for the proposed medical marijuana facility by conducting criminal and financial background checks to verify their eligibility for licensure.

If the applicant is denied for prequalification, the MRA sends the applicant a Notice of Denial letter advising the applicant the prequalification application is denied. Denied applicants have 21 days to request a public investigative hearing. At the hearing, the applicant has an opportunity to demonstrate they are eligible for licensure. After the public investigative hearing, the

Executive Director of the MRA either affirms or reverses the Licensing Division's decision to deny the application. If the Executive Director affirms the decision to deny the application, the applicant has the ability to pursue additional legal action in the courts to reverse the decision.

If the applicant is approved for prequalification, the MRA sends the applicant a Notice of Determination letter advising the applicant that prequalification status has been granted and is approved for two years.

Facility License (Step 2) Application

The second step in the medical marijuana facilities licensing process is the facility license application. During the facility license application process, the MRA reviews the facility license application documents and requests that the MRA Enforcement Division (Field Operations) and the Bureau of Fire Services (BFS), if applicable, inspect the facility.

Facility inspections are conducted after all facility license application deficiencies have been resolved. The MRA will not perform building inspections if [Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality](#) has not been completed by the municipality.

Please note that a facility license application may be denied. Some reasons for denial include, but are not limited to, the applicant's failure to resolve application deficiencies or lack of municipal authorization to operate.

If a facility license application is denied, the MRA sends the applicant a Notice of Denial letter advising the applicant the facility license application is denied. Denied applicants have 21 days to request a public investigative hearing. At the hearing, the applicant has an opportunity to demonstrate they are eligible for licensure. After the public investigative hearing, the Executive Director of the MRA either affirms or reverses the Licensing Division's decision to deny the application. If the Executive Director affirms the decision to deny the application, the applicant has the ability to pursue additional legal action in the courts to reverse the decision.

If the MRA approves the facility license application, a state license will be issued to the applicant after the regulatory assessment fee is paid.

Renewal Application

A medical marijuana facility license is issued for a one-year period from the date of the licensee's original licensure approval. If a licensee decides to renew their license, they will need to submit a renewal application.

During the renewal process, the licensee must submit the licensure fee payment and a renewal application prior to the licensee's expiration date. The MRA reviews the renewal application to ensure the facility is compliant with tax obligations, municipal ordinances, and the MRA's [rules and regulations](#).

If the MRA approves the renewal application, the expiration date of the state license is extended by one year.

What type of licenses are available under the Medical Marijuana Facilities Licensing Act (MMFLA)?

The following license types are available under the [MMFLA](#) and associated [administrative rules](#):

- Class A Grower (may grow up to 500 marijuana plants)
- Class B Grower (may grow up to 1,000 marijuana plants)
- Class C Grower (may grow up to 1,500 marijuana plants)
- Processor
- Provisioning Center
- Safety Compliance Facility
- Secure Transporter

What are the touchpoints between the Marijuana Regulatory Agency (MRA) and municipalities during the medical marijuana facility licensing process?

The following touchpoints exist between the MRA and municipalities during the medical marijuana facility licensing process:

Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality

The medical marijuana facility license application (Step 2) requires that [Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality](#) be completed by the municipal clerk or designee of the municipality in which the proposed facility will be located.

After signing the attestation in the presence of a notary, the municipal clerk or designee should return the form to the applicant so the applicant can submit the attestation with their facility license application.

By signing this attestation, the municipality is attesting the municipality has adopted an ordinance authorizing the operation of medical marijuana facilities within the municipality and the proposed facility is in compliance with all municipal regulations and ordinances. The municipality is also confirming that they will report any changes to municipal ordinances adopted under [Section 205](#) of the [Medical Marijuana Facilities Act \(MMFLA\)](#) and will report any violations of municipal regulations or ordinances to MRA-Enforcement@michigan.gov.

If the municipality signs this attestation, the MRA will consider the applicant compliant with all municipal regulations and will approve the applicant for a medical marijuana facility license if all licensing requirements have been met.

If the municipality does not sign this attestation, the MRA will not request or perform the required inspections to determine if the applicant has met all licensing requirements.

Certified Mail Receipt with Letter Sent to Municipality

[Section 401.1 \(k\)](#) of the [MMFLA](#) requires that an applicant send the MRA a copy of the notice informing the municipality by registered mail that the applicant has applied for a license under

the [MMFLA](#). The applicant shall also certify that it has delivered the notice to the municipality or will do so by 10 days after the date the applicant submits the application for a license...”

The [medical marijuana facility license application checklist](#) states that the MRA requires a copy of the certified mail receipt along with the letter that was sent to the municipality notifying the municipality that the applicant’s facility application was submitted to the MRA.

[Page 9 of the facility license application](#), under Part 2, requires the facility’s municipality information. This section also asks for information on the certified mail receipt – if the notice was sent and the date the notice was sent to the municipality.

Notification of State Operating License Determination – Granted:

This determination letter is sent to the municipality after the facility license application has been approved, the regulatory assessment fee has been paid, and the license has been issued. This letter is sent by email to the email address provided in the “Clerk (or designee) Email Address” field of Attestation I: Part 1. The subject line of this email will be “Notification of State Operating License Determination – Entity Name” (e.g., Notification of State Operating License Determination – Michigan Marijuana LLC). The municipality determination letter of approval will be provided as an attachment.

Notification of State Operating License Determination – Denied:

This determination letter is sent to the municipality after a facility license application has been denied. This letter is sent by email to the email address provided in the “Clerk (or designee) Email Address” field of Attestation I: Part 1. The subject line of this email will be “Notification of State Operating License Determination – Entity Name” (e.g., Notification of State Operating License Determination – Michigan Marijuana LLC). The municipality determination letter of denial will be provided as an attachment.

Please note that an application is not officially denied unless an applicant fails to request a public investigative hearing or the applicant has exhausted all administrative remedies and legal appeals for the denial. Therefore, a municipality will not receive this letter until an applicant is officially denied.

Attestation I – Renewal

The medical marijuana facility license renewal application requires that [Attestation I – Renewal](#) be completed by the municipal clerk or designee of the municipality in which the licensee is operating. After signing the attestation in the presence of a notary, the municipal clerk or designee should return the form to the licensee so it may be submitted with their license renewal application.

Within the attestation, the municipal clerk or designee must indicate if the licensee has or has not violated a municipal ordinance or zoning regulation pursuant to [Section 205](#) of the [MMFLA](#). If a violation has occurred, the municipal clerk or designee should provide an attachment along with the attestation describing the violation.

The municipal clerk or designee must also indicate if there has been a change to a municipal ordinance or zoning regulation adopted under [Section 205](#) of the [MMFLA](#). If a change has occurred, the municipal clerk or designee should provide an attachment along with the attestation describing the change.

If the municipality signs the this attestation, the MRA will consider the licensee compliant with all municipal regulations and will renew the licensee’s medical marijuana facility license if all licensing requirements have been met.

Violations of Municipal Ordinances or Zoning Regulations

The municipality should report any violations of municipal ordinances or zoning regulations by licensees located in the municipality to MRA-Enforcement@michigan.gov.

Changes to Municipal Ordinances or Zoning Regulations

The municipality should report any changes to municipal ordinances or zoning regulations related to medical marijuana facilities to MRA-Enforcement@michigan.gov.

How do municipalities confirm to the Marijuana Regulatory Agency (MRA) that an applicant is authorized to operate a medical facility in the municipality?

Municipalities confirm to the MRA that an applicant is authorized to operate a medical marijuana facility in the municipality by completing [Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality](#).

If confirmation of municipal compliance is received, the MRA will approve the applicant for a medical marijuana facility license if all licensing requirements have been met.

Does an applicant have to notify the municipality when the applicant submits a facility license (Step 2) application?

Yes. [Section 401.1 \(k\)](#) of the [Medical Marijuana Facilities Act \(MMFLA\)](#) requires that an applicant send the Marijuana Regulatory Agency (MRA) a copy of the notice informing the municipality by registered mail that the applicant has applied for a license under the [MMFLA](#). The applicant shall also certify that it has delivered the notice to the municipality or will do so by 10 days after the date the applicants submits the application for a license...”

The [medical marijuana facility license application checklist](#) states that the MRA requires a copy of the certified mail receipt along with the letter that was sent to the municipality notifying the municipality that the applicant’s facility application was submitted to MRA.

[Page 9 of the facility license application](#), under Part 2, requires the facility’s municipality information. This section also asks for information on the certified mail receipt – if the notice was sent and the date the notice was sent to the municipality.

Is a municipality notified when a facility license (Step 2) application is approved or denied?

Yes. The Marijuana Regulatory Agency will notify the municipality after a facility license application determination has been made. See below for a description of the two letters.

Notification of State Operating License Determination – Granted:

This determination letter is sent to the municipality after the facility license application has been approved, the regulatory assessment fee has been paid, and the license has been issued. This letter is sent by email to the email address provided in the “Clerk (or designee) Email Address” field of [Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality](#). The subject line of this email will be “Notification of State Operating License Determination – Entity Name” (e.g., Notification of State Operating License Determination – Michigan Marijuana LLC). The municipality determination letter of approval will be provided as an attachment.

Notification of State Operating License Determination – Denied:

This determination letter is sent to the municipality after the facility license application has been denied. This letter is sent by email to the email address provided in the “Clerk (or designee) Email Address” field of [Attestation I – Confirmation of Section 205 Compliance - Part 1: Municipality](#). The subject line of this email will be “Notification of State Operating License Determination – Entity Name” (e.g., Notification of State Operating License Determination – Michigan Marijuana LLC). The municipality determination letter of denial will be provided as an attachment.

Please note that an application is not officially denied unless an applicant fails to request a public investigative hearing or the applicant has exhausted all administrative remedies and legal appeals for the denial. Therefore, a municipality will not receive this letter until an applicant is officially denied.

When an applicant renews a license, does the applicant have to confirm to the Marijuana Regulatory Agency (MRA) that he or she still has municipal authorization to operate a facility within the municipality?

Yes. The municipality is required to sign [Attestation I – Renewal](#) when an applicant renews their medical marijuana facility license. If the municipality signs this attestation, the MRA will consider the licensee compliant with all municipal regulations and will renew the licensee’s medical marijuana facility license.

By signing this attestation, the municipality is attesting that they are in compliance with the municipal ordinance requirement of [Section 205](#) of the [MMFLA](#). The municipality is also confirming that they are reporting changes to municipal ordinances adopted under [Section 205](#) of the [MMFLA](#) and have reported any violations of municipal regulations or ordinances to MRA-Enforcement@michigan.gov.

After signing the attestation in the presence of a notary, the municipal clerk or designee should return the form to the applicant so the applicant can submit the attestation with the renewal application.

Adult-Use Establishment Licensing Questions

What provisions in the Michigan Regulation and Taxation of Marihuana Act (MRTMA) are relevant to municipalities?

[Section 6](#) of the [MRTMA](#) is relevant for municipalities that are considering allowing or restricting adult-use marijuana establishments' operations within the municipality.

Below are the relevant provisions in the [MRTMA](#) related to municipalities. The Marijuana Regulatory Agency (MRA) is unable to provide legal interpretation of statutory provisions that fall under municipal authority. If clarification on any of the provisions below that fall under municipal authority is needed, the MRA recommends that you consider consulting an attorney:

- Sec. 3.(q): "Municipality' means a city, village, or township."
- Sec. 6.1.: "Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries."
- Sec. 6.2.: "A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or any rule promulgated pursuant to this act and that:
 - (b) establish reasonable restrictions on public signs related to marihuana establishments;
 - (c) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;
 - (d) authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time; and
 - (e) designate a violation of the ordinance and provide for a penalty for that violation by a marihuana establishment, provided that such violation is a civil infraction and such penalty is a civil fine of not more than \$500."
- Sec. 6.3.: "A municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department."
- Sec. 6.4.: "A municipality may charge an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality."
- Sec. 6.5.: "A municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operation at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801."
- Sec. 9.1.: "Each application for a state license must be submitted to the department. Upon receipt of a complete application and application fee, the department shall forward a copy of the application to the municipality in which the marihuana establishment is to be located, determine whether the applicant and the premises qualify for the state license and comply with this act, and issue the appropriate state license or send the applicant a notice of

rejection setting forth specific reasons why the department did not approve the state license application within 90 days.

- Sec. 9.3.: “Except as otherwise provided in this section, the department shall approve a state license application and issue a state license if:
 - (b) the municipality in which the proposed marihuana establishment will be located does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of this act and in effect at the time of application;
 - (c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;
- Sec. 9.4.: “If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.”
- Sec. 14.3.: “The department shall expend money in the [marihuana regulation] fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide \$20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:
 - (a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;

Does a municipal ordinance have to opt in or opt out for adult-use establishments?

To avoid an adult-use establishment license from being issued within the municipality, a municipality must opt out of the [Michigan Regulation and Taxation of Marihuana Act \(MRTMA\)](#) by passing a municipal ordinance that completely prohibits adult-use marijuana establishments.

The municipality is also able to opt in to the [MRTMA](#) by passing a municipal ordinance that authorizes the operation of marijuana establishments within the municipality. An authorizing ordinance may also limit the number of marijuana establishments that operate within the municipality.

For further information on municipal ordinances, refer to [Section 6](#) of the [MRTMA](#).

Can the Marijuana Regulatory Agency (MRA) tell a municipality what should be included in the municipality's ordinance and zoning regulations?

The MRA does not provide legal advice or interpretation regarding issues that fall under municipal authority. Please review [Section 6](#) of the [Michigan Regulation and Taxation of Marijuana Act](#) for information about municipal authority over adult-use marijuana establishments.

If you still have questions after your review, you may wish to consider consulting with an attorney.

Does the Michigan Regulation and Taxation of Marijuana Act (MRTMA) prohibit adult-use establishments from being within a certain distance to a school?

Yes. Pursuant to [Section 9.3.\(c\)](#) of the [MRTMA](#), the property where the proposed marijuana establishment will be located cannot be within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement.

Please note that a municipality may exercise its authority to reduce the distance via ordinance in two ways:

- 1) Define the way in which the distance is measured (e.g. door to door, along streets),
OR
- 2) Reduce the distance the requirement outright (e.g. 500 feet instead of 1,000).

If a municipality has not adopted an ordinance reducing the distance requirement, the Marijuana Regulatory Agency (MRA) will not issue a license for an adult-use establishment that is within 1,000 feet of the school. The MRA will measure the 1,000 feet perimeter as the direct distance from property line to property line when making this determination.

Can the municipality charge an application fee?

Yes. Pursuant to [Section 6.4.](#) of the [Michigan Regulation and Taxation of Marijuana Act](#):

“A municipality may charge an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of the marijuana establishment in the municipality.”

Does money collected from adult-use establishments taxes or fees go to municipalities?

Yes, a portion does but not immediately. Money in the fund is first used to repay the initial appropriation from the general fund used to implement the [Michigan Regulation and Taxation of Marihuana Act \(MRTMA\)](#). Next, \$20M per year for at least 2 years is used for Food and Drug Administration (FDA) approved clinical trials. After that money is distributed to municipalities, counties, the school aid fund, and the transportation fund. Please see the relevant [MRTMA](#) provision below.

Pursuant to [Section 14](#) of the [MRTMA](#):

1. The marihuana regulation fund is created in the state treasury. The department of treasury shall deposit all money collected under section 13 of this act and the department shall deposit all fees collected in the fund. The state treasurer shall direct the investment of the fund and shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund.

2. Funds for the initial activities of the department to implement this act shall be appropriated from the general fund. The department shall repay any amount appropriated under this subsection from proceeds in the fund.

3. The department shall expend money in the fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide \$20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:

(a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;

(b) 15% to counties in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the county;

(c) 35% to the school aid fund to be used for K-12 education; and

(d) 35% to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.

How does the adult-use licensing process work?

The adult-use establishment licensing process is divided into two steps: the prequalification application and the establishment license application.

Prequalification (Step 1) Application

The first step in the process is prequalification. During prequalification, the Marijuana Regulatory Agency (MRA) vets the entities and individuals who are applicants for the proposed adult-use marijuana establishment by conducting criminal and financial background checks to verify their eligibility for licensure.

If the applicant is denied prequalification, the MRA sends the applicant a Notice of Denial letter advising the applicant the prequalification application is denied. Denied applicants have 21 days to request a public investigative hearing. At the hearing, the applicant has an opportunity to demonstrate they are eligible for licensure. After the public investigative hearing, the Executive Director of the MRA either affirms or reverses the Licensing Division's decision to deny the application. If the Executive Director affirms the decision to deny the application, the applicant has the ability to pursue additional legal action in the courts to reverse the decision.

If the applicant is approved for prequalification, the MRA sends the applicant a Notice of Determination letter advising the applicant that prequalification status has been granted and is approved for two years.

Establishment License (Step 2) Application

The second step in the adult-use establishment licensing process is the establishment license application. During the establishment license application process, the MRA reviews the establishment license application documents and requests that the MRA Enforcement Division (Field Operations) and the Bureau of Fire Services (BFS), if applicable, inspect the establishment.

Establishment inspections are conducted after all establishment license application deficiencies have been resolved. The MRA will not perform building inspections if [Attestation 2-C - Confirmation of Section 6 Compliance - Part 1: Municipality](#) has not been completed by the municipality.

Please note that an establishment license application may be denied. Some reasons for denial include, but are not limited to, the applicant's failure to resolve application deficiencies or lack of municipal authorization to operate.

If an establishment license application is denied, the MRA sends the applicant a Notice of Denial letter advising the applicant the establishment license application is denied. Denied applicants have 21 days to request a public investigative hearing. At the hearing, the applicant has an opportunity to demonstrate they are eligible for licensure. After the public investigative hearing, the Executive Director of the MRA either affirms or reverses the Licensing Division's decision to deny the application. If the Executive Director affirms the decision to deny the application, the applicant has the ability to pursue additional legal action in the courts to reverse the decision.

If the MRA approves the establishment license application, a state license will be issued to the applicant after the initial licensure fee is paid.

Renewal

An adult-use license is issued for a one-year period from the date of the licensee's original licensure approval. If a licensee decides to renew their license, they must submit a renewal application.

During the renewal process, the licensee must submit the licensure fee payment and a renewal application prior to the licensee's expiration date. The MRA reviews the renewal application to ensure the establishment is compliant with tax obligations, municipal ordinances, and the MRA [rules and regulations](#).

If the MRA approves the renewal application, the expiration date of the state license is extended by one year.

What types of licenses are available under the Michigan Regulation and Taxation of Marijuana Act (MRTMA)?

The following license types are available under the [MRTMA](#) and associated [administrative rules](#):

- Class A Marijuana Grower (may grow up to 100 plants)
- Class B Marijuana Grower (may grow up to 500 plants)
- Class C Marijuana Grower (may grow up to 2,000 plants)
- Excess Marijuana Grower (may grow up to 2,000 plants, depending on the adult-use licensee's medical marijuana plant allowance)
- Marijuana Microbusiness (may grow up to 150 plants, process, and retail)
- Marijuana Processor
- Marijuana Retailer
- Marijuana Safety Compliance Facility
- Marijuana Secure Transporter
- Designed Consumption Establishment
- Marijuana Event Organizer
- Temporary Marijuana Event

What are the touchpoints between the Marijuana Regulatory Agency (MRA) and municipalities during the adult-use licensing process?

The following touchpoints exist between the MRA and municipalities during the adult-use licensing process:

Attestation 2-C – Confirmation of Section 6 Compliance - Part 1: Municipality

The adult-use establishment license (Step 2) application requires that [Attestation 2-C - Confirmation of Section 6 Compliance - Part 1: Municipality](#) be completed by the municipal clerk or designee of the municipality in which the proposed establishment will be located.

After signing the attestation in the presence of a notary, the municipal clerk or designee should return the form to the applicant so the applicant can submit the attestation with their establishment license application.

By signing this attestation, the municipality is attesting the municipality has not adopted an ordinance prohibiting adult-use marijuana establishments within the municipality and the proposed establishment is in compliance with all municipal ordinances and zoning regulations.

The municipality is also confirming that they will report any changes to municipal ordinances adopted under [Section 6](#) of the [Michigan Regulation and Taxation of Marihuana Act \(MRTMA\)](#) and will report any violations of municipal regulations or ordinances to MRA-Enforcement@michigan.gov.

If the municipality signs this attestation, the MRA will consider the applicant compliant with all municipal regulations and will approve the applicant for an adult-use establishment license if all licensing requirements have been met.

If the municipality does not sign this attestation, the MRA will not request or perform the required inspections to determine if the applicant has met all licensing requirements.

Municipal Notification Letter

After receiving an establishment license application with a completed [Attestation 2-C - Confirmation of Section 6 Compliance - Part 1: Municipality](#), the MRA sends a municipality notification letter by email to the email address provided in the “Clerk (or designee) Email Address” field of this attestation. This email will come from MRA-AdultUseLicensing@michigan.gov. The subject line of this email will be “Municipality Notification – Applicant Name - Application Number” (e.g., Municipality Notification – Michigan Marijuana LLC AU-RA-000099). The municipality notification letter will be provided as an attachment and includes the applicant name, supplemental applicant names, address of the proposed establishment, and the type of marijuana establishment license the applicant applied for. Due to the FOIA provision in [Section 9\(7\)](#) of the the [MRTMA](#) [“7. Information obtained from an applicant related to licensure under this act is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.”], application records are not disclosed.

After the municipality receives the municipality notification letter, no action is required by the municipality unless the applicant named in the letter is non-compliant with a municipal ordinance adopted under [Section 6](#) of the [MRTMA](#). If the applicant is in violation of a municipal ordinance adopted under [Section 6](#) of the [MRTMA](#), the municipality should notify the MRA pursuant to the instructions provided in the letter.

Confirmation of Municipal Compliance

After an establishment license application has passed the required inspections, the adult-use licensing analyst will request confirmation of municipal compliance to ensure no changes have occurred within the municipality or with the applicant since the Municipal Notification Letter was sent. The email will come from noreply@accela.com with the subject “ Confirmation of Municipal Compliance.”

Pursuant to the instructions in the email, the municipality must send an email to MRA-AdultUseLicensing@michigan.gov confirming that no ordinances have been adopted prohibiting adult-use marijuana establishments and that the proposed establishment is in compliance with all regulations and ordinances within the municipality. The MRA will not move forward with the application until confirmation of municipal compliance has been received.

Due to the statutory requirement in [MRTMA](#) that adult-use marijuana establishment applications must be approved or denied within 90 days of receipt, the adult-use analyst will follow up on the confirmation of municipal compliance email via phone or email as necessary until a response is received.

Municipality Determination Letter

The municipality determination letter is sent to the municipality after the establishment license application determination has been made.

The municipality determination letter is sent by email to the email address provided in the “Clerk (or designee) Email Address” field of [Attestation 2-C -Confirmation of Section 6 Compliance - Part 1: Municipality](#). The subject line of this email will be “Municipality Determination Letter – Applicant Name – Application Number” (e.g., Municipality Determination Letter – Michigan Marijuana LLC – AU-RA-001234). The municipality determination letter will be provided as an attachment and will indicate the applicant name, application number, address of the establishment, and whether the license has been approved or the application has been denied.

If the license has been approved, this letter is sent after the initial licensure fee has been paid and the license has been issued. This email will come from MRA-AdultUseLicensing@michigan.gov.

If the license has been denied, this letter is sent if the applicant did not request a public investigative hearing within 21 days the denial determination or if the result of a public investigative hearing remains a denial determination. This email will come from noreply@accela.com.

Please note that an application is not officially denied unless an applicant fails to request a public investigative hearing or the applicant has exhausted all administrative remedies and legal appeals for the denial. Therefore, a municipality will not receive this letter until an applicant is officially denied.

Attestation R-B – Confirmation of Section 6 Compliance

The adult-use establishment license renewal application requires that [Attestation R-B – Confirmation of Section 6 Compliance](#) be completed by the municipal clerk or designee of the municipality in which the licensee is operating. After signing the attestation in the presence of a notary, the municipal clerk or designee should return the form to the licensee so it may be submitted with their license renewal application.

Within the attestation, the municipal clerk or designee must indicate if the licensee has or has not violated a municipal ordinance or zoning regulation pursuant to [Section 6](#) of the [MRTMA](#). If a violation has occurred, the municipal clerk or designee should provide an attachment along with the attestation.

The municipal clerk or designee must also indicate if there has been a change to a municipal ordinance or zoning regulation adopted pursuant to [Section 6](#) of the [MRTMA](#). If a change has occurred, the municipal clerk or designee should provide an attachment describing the violation along with the attestation.

If the municipality signs this attestation, the MRA will consider the licensee compliant with all municipal regulations and will renew the licensee’s adult-use establishment license if all licensing requirements have been met.

Violations of Municipal Ordinances or Zoning Regulations

The municipality should report any violations of municipal ordinances or zoning regulations by licensees located in the municipality to MRA-Enforcement@michigan.gov.

Changes to Municipal Ordinances or Zoning Regulations

The municipality should report any changes to municipal ordinances or zoning regulations related to adult-use establishments to MRA-Enforcement@michigan.gov.

How do municipalities confirm to the Marijuana Regulatory Agency (MRA) that an adult-use applicant is compliant with municipal ordinances and zoning regulations?

Municipalities confirm to the MRA that an adult-use applicant is in compliance with municipal ordinances and zoning regulations by completing [Attestation 2-C -Confirmation of Section 6 Compliance - Part 1: Municipality](#).

Before a license is issued, the MRA will also send a Confirmation of Municipal Compliance email to the email address provided for the municipal clerk or designee to confirm that the information on the attestation is accurate and that no changes have occurred within the municipality or with the applicant since the attestation was signed.

If confirmation of municipal compliance is received, the MRA will approve the applicant for an adult-use establishment license if all licensing requirements have been met.

What happens after the municipality signs Attestation 2-C – Confirmation of Section 6 Compliance – Part 1: Municipality?

After signing [Attestation 2-C -Confirmation of Section 6 Compliance - Part 1: Municipality](#) in the presence of a notary, the municipal clerk or designee should return the form to the applicant so it may be submitted with their establishment license (Step 2) application.

If the municipality signs this attestation, the Marijuana Regulatory Agency (MRA) will consider the applicant compliant with all municipal regulations and will approve the applicant for an adult-use establishment license if all licensing requirements have been met.

If the municipality does not sign this attestation, the MRA will not request or perform the required inspections to determine if the applicant has met all licensing requirements.

Does an applicant have to notify the municipality when they submit an adult-use establishment license (Step 2) application?

No, the applicant is not required to notify the municipality upon submitting an adult-use establishment license application. However, the Marijuana Regulatory Agency will send a

municipal notification letter by email to the email address provided in the “Clerk (or designee) Email Address” field of the completed [Attestation 2-C -Confirmation of Section 6 Compliance - Part 1: Municipality](#) notifying the municipality that an adult-use license has been applied for within the municipality.

Is a municipality notified when an adult-use establishment license (Step 2) application is approved or denied?

Yes. The Marijuana Regulatory Agency will notify the municipality after an establishment license application determination has been made.

This letter will be sent by email to the email address provided in the “Clerk (or designee) Email Address” field of [Attestation 2-C -Confirmation of Section 6 Compliance - Part 1: Municipality](#). The subject line of this email will be “Municipality Determination Letter – Applicant Name – Application Number” (e.g., Municipality Determination Letter – Michigan Marijuana LLC – AU-RA-001234). The municipality determination letter will be provided as an attachment and will indicate the applicant name, application number, address of the establishment, and whether the license has been granted or the application has been denied.

When an adult-use licensee renews a license, do they have to confirm to the Marijuana Regulatory Agency that they are still compliant with municipal ordinances and zoning regulations?

Yes. To confirm that an adult-use licensee is still compliant with municipal ordinances and zoning regulations when renewing an adult-use establishment license, the renewal application requires that [Attestation R-B – Confirmation of Section 6 Compliance](#) be completed by the municipal clerk or designee of the municipality in which the licensee is operating.

Enforcement Questions

When does the Marijuana Regulatory Agency (MRA) inspect a proposed marijuana business (medical facility or adult-use establishment) and what is included in the inspection?

The MRA conducts several types of inspections of marijuana businesses:

Pre-Licensure

This inspection occurs after a marijuana business has applied to the MRA for a marijuana license and is in the Step 2 application phase. During this time, the MRA inspectors will communicate with the applicant and conduct an inspection of basic building requirements that need to be met in order to pass the required Pre-Licensure inspection. Some of these requirements include security cameras, partitioning from other businesses in certain cases, and a valid Certificate of Occupancy (or its equivalent) from the local municipality.

Should a business not pass the Pre-Licensure inspection, the MRA inspectors will work with the applicant to bring them into compliance and a passing inspection or advise the MRA Licensing Division that the applicant is unable to pass this requirement. An inspection report is always generated and provided to the applicant after each inspection.

30-Day Post-Licensure

This inspection occurs approximately 30-calendar days after a licensee receives their marijuana license from the MRA. The focus is to bring the licensee into compliance with several functions that can only occur when a business has the license. This includes, but is not limited to, tagging of marijuana products with the statewide monitoring system (Metrc), product labelling compliance, employee suitability for employment and employee training, product storage compliance, adherence to the Executive Orders related to COVID, plant count limits, and more.

The intent of this inspection is to highlight the multitude of rule requirements a new licensee must adhere to in order to remain in compliance with state statutes and rules. Any deficiencies are noted, and a re-inspection will be scheduled until the licensee passes. An inspection report is always generated and provided to the licensee after each inspection.

Semi-Annual

This inspection occurs approximately every six months and is similar to the 30-Day Post-Licensure inspection in detail. This inspection is focused on ensuring the licensee maintains compliance with state statutes and rules. Any deficiencies are noted, and a re-inspection will be scheduled until the licensee passes. An inspection report is always generated and provided to the licensee after each inspection.

Other

This inspection occurs whenever a business reports a need for any change or modification they want to make to the physical structure or equipment at the business. The MRA also uses this inspection type at our discretion to conduct an inspection at a time of our choosing. Any deficiencies are noted, and a re-inspection will be scheduled until the licensee passes. An inspection report is always generated and provided to the licensee after each inspection.

What role does the Bureau of Fire Services have in the Marijuana Regulatory Agency's (MRA) inspection process?

The Bureau of Fire Services (BFS) conducts Pre-Licensure, Semi-Annual, and Other inspections just like the MRA. The BFS utilizes the NFPA 1 of 2018 fire code as a foundation of their inspections. Prior to some inspections, the BFS perform plan reviews of grow, microbusiness, and processor license types due to the fire risks associated with growing and processing marijuana, along with the possible presence of a multitude of chemicals.

Like the MRA, the BFS inspectors and plan reviewers communicate with marijuana business applicants and licensees and perform inspections of the marijuana businesses in an effort to bring them into compliance with the NFPA 1 of 2018. Any deficiencies are noted, and a re-inspection will be scheduled until the licensee passes, or the BFS will advise the MRA that the business is out of compliance.

What role does a municipality play in the inspection process?

The local municipality's main role in state inspections is to issue a Certificate of Occupancy (or its equivalent) for the proposed marijuana business. Municipality personnel are always welcome to join the Marijuana Regulatory Agency and the Bureau of Fire Services inspections and they are always welcome to share any issues, concerns, or business deficiencies to MRA-Enforcement@michigan.gov.

Does a municipality need to provide an applicant for licensure with a certificate of occupancy?

Yes, or its equivalent. This document is required for a proposed marijuana business to pass Pre-Licensure inspections and receive a state license.

After an applicant is granted a license, does the Marijuana Regulatory Agency conduct additional inspections?

Yes. Please see the answer to the FAQ "When does the Marijuana Regulatory Agency (MRA) inspect a facility or establishment and what is included in the inspection?"

If a municipality adopts an ordinance regarding medical facilities or adult-use establishments, should the municipality submit a copy of the ordinance to the Marijuana Regulatory Agency (MRA)?

Yes. The MRA frequently updates documents located at www.michigan.gov/MRA that inform the public what municipalities do, or do not, permit regarding marijuana businesses.

Does the Marijuana Regulatory Agency (MRA) monitor licensees and enforce compliance with municipal and zoning ordinances?

The MRA does not enforce local municipal zoning ordinances. The MRA will, however, receive any report of non-compliance or judgment from local municipalities/courts and that information may have state licensing implications. Feel free to send this information to MRA-Enforcement@michigan.gov.

If a municipality determines that a licensee has violated a municipal ordinance, should the municipality report the violation to the Marijuana Regulatory Agency?

Yes. Please report the violations to MRA-Enforcement@michigan.gov.

Is a municipality responsible for enforcing licensee's compliance with the Medical Marijuana Facilities Licensing Act, Michigan Regulation and Taxation of Marijuana Act, and the administrative rules?

Municipalities can enforce state statutes, the jurisdiction of creating and enforcing the [administrative rules](#) is incumbent on the Marijuana Regulatory Agency.

If a municipality becomes aware of unlicensed or illegal marijuana operations, should the municipality report it to the Marijuana Regulatory Agency (MRA) or law enforcement?

The municipality is always free to inform state and local law enforcement. If they inform the MRA, we will forward this information to the Michigan State Police.

THE MARKET FOR AND ECONOMIC IMPACT OF THE ADULT-USE RECREATIONAL MARIJUANA INDUSTRY IN MICHIGAN

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Abstract:

With recent passage of adult-use (recreational) marijuana, the industry in Michigan appears to be maturing rapidly. However, some obstacles to growth exist. Undeveloped testing systems and local options to ban the sale of recreational marijuana induces uncertainty throughout the value chain. Despite this, the supply chain is maturing rapidly, with several well-funded vertically integrated firms already operating. Both indoor and outdoor growing operations are in place but over time it appears that much of the production will take place in dedicated indoor growing facilities. It is estimated that the level of retail sales once it becomes widely available is approximately \$3 billion with a total economic impact in excess of \$7.8 billion. Employment in businesses along the marijuana supply chain is estimated to be 13,500 with a total economic impact on employment in the state of 23,700. Total tax revenue raised is \$495.7 million of which \$298.6 million is excise taxes and \$197.1 million are in the form of sales taxes. These figures are extrapolated from the experience in Colorado and adjusted for Michigan's population.

THE MARKET FOR AND ECONOMIC IMPACT OF THE ADULT-USE MARIJUANA INDUSTRY IN MICHIGAN

Introduction

This study outlines the market and potential economic impact of the adult-use (recreational) marijuana industry in Michigan. The state is one of 11, plus the District of Columbia, that have legalized recreational marijuana. Canada has also legalized marijuana for recreational use. Marijuana use is still against federal law, and therefore interstate shipment of marijuana is problematic. As a result, at least in the short run, most of the marijuana consumed in the Michigan will be produced in Michigan. Federal regulations place restrictions on the sale, production and funds from state recreational and medical marijuana activities. If the federal government does legalize recreational marijuana, those states that can produce marijuana at the lowest cost will dominate marijuana production. This is especially true for outdoor production.

Estimating the impact of recreational marijuana in Michigan is difficult due to the lack of data specific to the state. However, other states, particularly Colorado, are developing a record of several years' worth of information on legal marijuana. It also provides a case-study of the trajectory of industry formation over five years of development. We extrapolated from the Colorado data to derive estimates for marijuana consumption, economic impact, and tax revenues. While based on survey data, consumption patterns in Michigan appear to be similar to those in Colorado.

It is estimated that the retail value of marijuana sales will be in the range of \$3 billion a year once the market matures. It is also estimated that the total employment in activities along the marijuana supply chain is approximately 13,500. IMPLAN, a standard economic impact software package, was used to estimate the total economic impact including the impact of related industries (indirect impacts) and household spending (induced impacts). The total economic impact is estimated to be \$7.85 billion with a total impact on employment of 23,700. Total tax revenues are estimated to be \$495.7 million of which \$298.6 million is excise tax on marijuana and \$197.1 million is sales tax revenue.

It is very important to note that these figures are based on the assumption that the industry will grow over the next several years. If barriers to expansion persist, these estimates will overstate the expected economic impact and the tax revenue resulting from the legalization of recreational marijuana. Additional threats to these estimates are a change in national policies. As tax revenues for marijuana sales are largely attributable at the retail sales level, state tax revenues will likely be minimally impacted compared to the potential disruption to the in-state supply chain. That is, we would expect that grower operations in southern states will be able to outcompete in state production, and dominant national firms will develop in the processing of THC-based products.

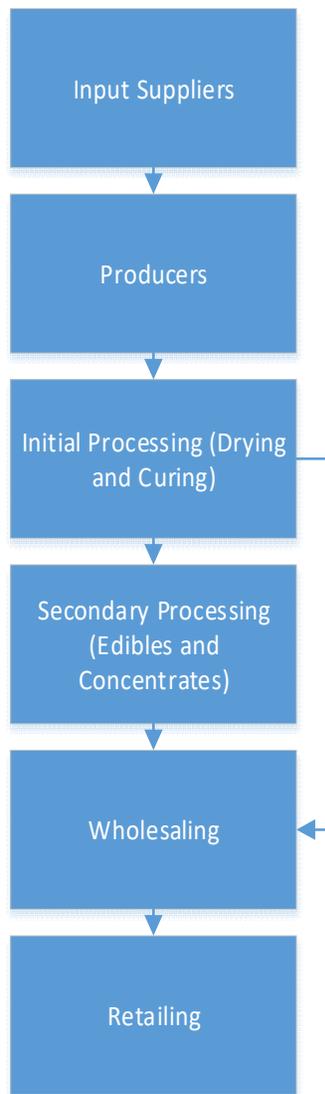
There are two possible barriers to the growth of the industry. The first is the lack of acceptance by local communities. Currently, there are relatively few communities that allow recreational marijuana. Many appear to be taking a wait and see approach and assessing the experiences of those communities that do allow for the sale of recreational marijuana before passing their own ordinances. The second barrier is the lack of testing facilities and capacity. Marijuana needs to pass testing before it can be sold, and currently, it takes several weeks before growers and processors receive their results. The slow rate of local approval and the backlog of testing has created a bottleneck in the supply chain and are factors that partially explain why marijuana prices in Michigan remain quite high.

The supply chain for recreational marijuana appears to be maturing rapidly. Vertical integration appears to be a major attribute of the supply chain in Michigan with some licensees growing marijuana as well as processing it. Growers and processors also sell directly to retailers eliminating the need for independent wholesalers. While marijuana is grown both indoors and outdoors, indoor production appears to be more efficient and a better way to control the quality of the product.

Supply Chain

The supply chain – or value chain – of recreational marijuana is outlined in figure 1. One important agent in the supply chain that is often overlooked are input suppliers. Seeds, clones, land, greenhouses, fertilizers, lighting, labor and harvesting equipment are all examples of input supplies. Access to sufficient electricity generation capacity is particularly important for indoor marijuana growing facilities.

Figure 1: The Adult-Use Recreational Marijuana Supply Chain



Growers provide resources and make management decisions that result in the growing of marijuana. Two forms of marijuana are produced by growers. The first is the flower, or the bud, which has a higher THC content. The second, resulting from the process of harvesting the flower, generates leaves and other plant material known as trim. While having a lower THC content, this material also has value which is discussed below.

There are two primary production technologies for commercial marijuana production, the first is outdoor production, and the second is greenhouse/indoor production. Outdoor production has the advantage of requiring less initial investment and lower production costs. Greenhouses and indoor production have the advantages of producing higher yields, year-round production, and the potential to grow a more consistent product. Because of this, indoor production generally commands higher prices than outdoor production. For example, in Oregon, the price of marijuana grown indoors is approximately twice the price of marijuana grown outdoors (Oregon Liquor Control Commission). Given the climatic and quality control factors, greenhouse/indoor production will probably be the dominant technology used in Michigan. After the marijuana is harvested, it is then dried and cured. This process is similar to hop or tobacco production. This initial processing can be carried out at the grow and makes marijuana suitable for further processing or retail sales. Based on other states' experiences, most of this marijuana then goes to the wholesaler and then the retailer.

Some marijuana, mostly trim, is used to make marijuana products that are eaten – edibles - or used to make concentrates. Concentrates are becoming more popular with consumers, and this further processing creates a market for the trim and provides greater cash flow along the value chain. CBD oil, a co-product with a very low THC content, provides a second source of generated revenues.

The role of wholesalers is to link marijuana production to retailers. Wholesalers provide storage, transportation service, and aggregate raw materials for retailers. Wholesalers may take shipments from initial processors and from secondary processors. A stand-alone wholesale market does not exist in Michigan and it will take time to see how the supply chain develops. The retailers sell to consumers, where their primary role is to meet consumer expectations with respect to different product offerings and quality standards.

In Michigan it appears that processors also undertake the role of wholesalers. They contract with growers on a harvest-by-harvest basis, with price depending on the quality of the marijuana. At the present time there is comparatively little, if any, forward contracting; processors agreeing to buy a certain amount of marijuana at a determined price before the marijuana is grown. The lack of forward contracting increases the level of risk faced by marijuana growers and therefore impedes supply.

It should be noted that while all of these activities need to take place, one firm can act on multiple levels along the supply chain. This is sometimes referred to as vertical integration. For example, a retailer or a retail chain could work directly with growers to carry out its own wholesale activities. Another example would be if a retailer undertook its own manufacturing activities in order to produce edibles and concentrates. It is also conceivable for growers to process and market directly to consumers through wholly owned retail outlets, though the largest share of the statewide value chain will be distributive across different parties along the value chain.

Control of the supply chain is still being developed. Currently, it appears that the production and distribution of marijuana is not concentrated. This will likely be the case as long as recreational marijuana

is against federal law. However, some major firms are interested in the industry, especially beverage firms. Constellation Brands, Molson Coors, and Heineken are investing in cannabis or THC-infused beverages. Major pharmaceutical firms are also interested in the market, although perhaps primarily for the medical market.

The situation may be somewhat different in Michigan. While the market is still being developed, Michigan growers and processors appear to be larger and more likely to be vertically integrated. Most, if not all, processors sell directly to retailers. There is little, if any independent wholesaling. Also, several of the larger processors grow their own marijuana, often in a controlled indoor environment. Because of the short supply chains in Michigan, the supply chain for marijuana may mature faster than it has in Oregon, Colorado, and other states that legalized recreational marijuana before Michigan.

The Life Cycle of Marijuana

Marijuana is an annual plant. There are both male and female marijuana plants and, as a result, growers will buy seedlings or use their own clones as opposed to seeds. Only the female plant is of economic value, and it is important to ensure that there are no male plants that would fertilize the female plant. Seeds generally take 3 to 7 days to germinate (Leaf Science, 2017). Once the seed has grown its first pair of leaves it is considered a seedling. At this point the plant needs up to 18 hours of light per day. The seedling stage generally takes 2 to 3 weeks. The vegetative state takes 3 to 16 weeks and also requires up to 18 hours of light per day. In this stage the demand for fertilizers is the greatest, primarily nitrogen and potassium. The final stage is the flowering state and takes 8 to 11 weeks. During this stage the light requirement falls to 12 to 14 hours per day. Currently, indoor growers cultivate marijuana plants by hand.

At the present time there are no federally registered pesticides for use on marijuana. The state of California allows pesticides that are approved for organic farming on cannabis (California Department of Pesticide Regulation). Marijuana also prefers relatively dry soil, with predictable moisture and moderate humidity. While the level of light in Michigan during the late spring and summer make it possible to grow marijuana outdoors, the variation in rain and humidity makes indoor production far less risky than outdoor production. Furthermore, indoor production is capable of producing three to four crops per year as opposed to one. If managed intensively, a light that generates three to four plants a year can produce 2.50 to 2.75 pounds of marijuana per year.

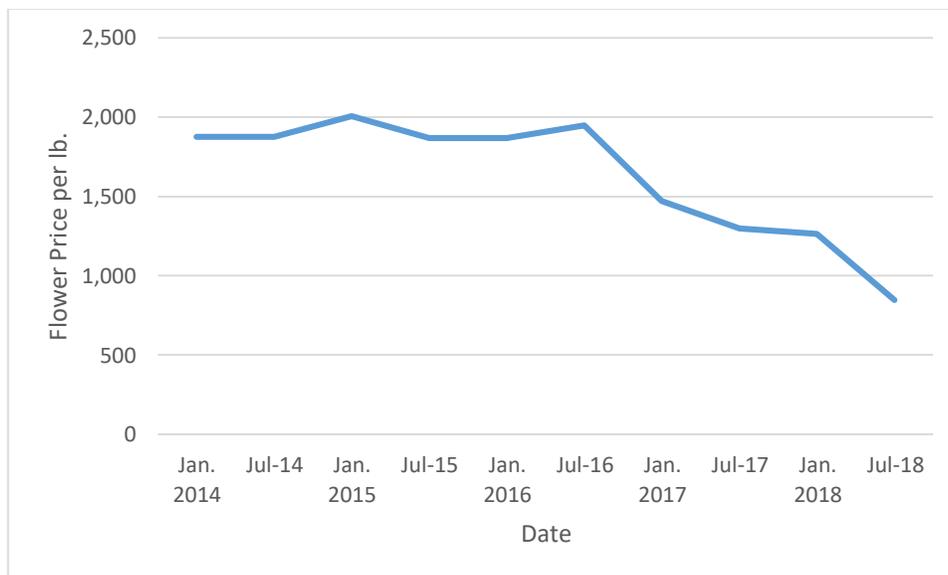
Market Price Estimates

In March of 2016 in the state of Washington, the retail price of marijuana was \$9.32 per gram and the wholesale price was \$2.99 per gram (Schwartz, 2016). In Washington the grow price is approximately 30 percent of the retail price. This is similar to retail/farm price ratios for fresh fruits and vegetables. As an illicit substance, marijuana prices are highest in states where it is illegal. Prices are subject to the laws of supply and demand.

Where demand outstrips supply, buyers will bid up the price of marijuana, but as supply increases relative to demand, prices will tend to abate. The long-term price floor, unfettered by regulatory supply constraints would be expected to approximate the cost of production, processing and selling plus normal, or competitive, markups.

Colorado presents an interesting test case because recreational marijuana has been legal since January 1, 2014. From that date to July 1, 2018 the price of marijuana declined from \$1,876 per pound to \$846 per pound. The trend in prices in Colorado is shown in figure 1.

Figure 2: Grow Price of Marijuana per Pound Colorado Jan. 1, 2014 to July 1, 2018



Source: Laxen

It appears that the price of marijuana was fairly consistent from January 2014, to July 2016 from about \$1,860 to \$2,000. As the industry has matured the price has dropped precipitously to about \$846 per pound of flower in the summer of 2018. It is expected that prices in Michigan will also decline, perhaps faster than it did in Colorado because the national marijuana market has become more mature; entrepreneurs in the industry have learned from both their own mistakes and the mistakes of others.

Market Dynamics

There are a few potential barriers to the growth of the industry in Michigan. The first is that, as of November 2019, more than 1,400 communities, including Detroit, have opted out of recreational marijuana, and several local jurisdictions have been slow to adopt ordinances to regulate the sale of recreational marijuana (Nicols, 2019). Over time it is assumed that more local governments will allow marijuana sales as marijuana consumption becomes more acceptable, and local communities obtain a more complete picture of the marijuana industry.

The second is the lack of sufficient numbers of facilities to test marijuana. According to some in the developing Michigan industry it, takes more than a month to get the results of tests to determine if the marijuana can be sold or processed.

Other factors are relevant, including the trajectory of federal regulations of marijuana production and sales. Federal deregulation has the potential to increase consumer demand in Michigan while inviting competition in production from states with more suitable growing environments.

Marijuana Production

Initially, demand for marijuana and marijuana-based products will exceed Michigan's production capacity. Because of federal regulation, which forbids interstate transport of THC products, supply will likely be limited until the in-state industry adjusts and ramps up production to meet demand. With a lag, it appears that marijuana production will eventually match the demand for marijuana.

In 2017, marijuana production in Colorado was 340.7 metric tons, which was slightly higher than the 301.7 metric tons consumed (Orens et al, 2019). Conversely, Oregon, another state that has legalized recreational marijuana, has a serious over-production problem.

The Size of the Market

Obtaining an accurate estimate of the size of Michigan's market for marijuana is difficult. It is likely that, at least in the short run, consumption of marijuana will increase due to the fact that marijuana consumption will be legal at the state level. For example, in 2014, 13.6 percent of adult residents of Colorado reported using marijuana in the previous 30 days; that figure rose to 15.5 percent in 2017 (Reed, 2018). The experience in Colorado suggests that legally produced marijuana supplants illicitly grown marijuana (Orens et al, 2019).

It appears that people in their twenties are the largest consumers of marijuana. In 2018 it was estimated that 35.9 percent of high school seniors, 42.6 percent of college students and 39.1 percent of young adults used marijuana or hashish. Furthermore, approximately 25 percent of college students and young adults consumed marijuana or hashish in the previous month (Schulenberg et al, 2019). Education appears to be negatively correlated with marijuana use, as people with no college education tend to be heavier users. Additionally, as people age, the consumption of marijuana appears to decline. It should be noted that these figures are based on self-reported surveys and the actual level of consumption may be somewhat different. However, given the increased acceptability of using marijuana, these figures may be relatively accurate.

Prices will eventually decline as output increases to meet demand. Lower prices will also be a factor in increased marijuana consumption. Also, the medical marijuana market will likely decline as the recreational market expands. Based on projected sales, the Michigan Department of Treasury estimates that sales tax revenues from marijuana sales will be \$97.5 million in 2020 and \$143.0 million in 2021 (Eubanks and Guilfoyle, 2020). Because the Michigan tax on recreational marijuana is ad-valorem, actual tax revenues will fluctuate in proportion to the sale price and quantity sold at the retail level. A major decline in the price of marijuana could reduce tax revenue. If the percentage decline in the price is greater than the percentage increase in consumption, tax revenues will decline.

One difficulty in determining the size of the market is the changing ways in which marijuana is consumed. Marijuana flower (or female buds) is the traditional form of consumption but other forms are becoming more common. Vaping marijuana is a new but increasingly popular method of marijuana consumption; 21.6 percent of 19 to 28 year olds surveyed indicated that they vaped marijuana at least once (Schulenberg et al., 2019). The figures from Colorado provide an example and are shown in table 1.

Table 1: Forms of Consumption Colorado 2017, Flower Equivalent

Product Form	Percent of Consumption
Flower	61.8
Concentrate	27.3
Trim	5.7
Infused Edibles	4.9
Infused Nonedibles	0.3

Source: Orens et al 2019

From 2014 to 2017, Colorado retail sales of flower increased by 516 percent, infused edibles increased by 226 percent and infused non-edibles increased by 135 percent (Reed, 2018).

A common unit of measure is required to obtain a good estimate of the amount of marijuana consumed. Since flower is the most popular form of consumption, all products will be in flower equivalents. This is shown in table 2.

Table 2: Marijuana Equivalency

Product Type	Solvent	Purchase Amount	Trim Used in Production	Flower Equivalent
Edible	Butter	10 mg.	.08 grams	.07 grams
Edible	Butter	100 mg.	.77 grams	.69 grams
Edible	Butane	10 mg.	.08 grams	.07 grams
Edible	Butane	100 mg.	.82 grams	.72 grams
Edible	CO2	10 mg.	.09 grams	.08 grams
Edible	CO2	100 mg.	.92 grams	.82 grams
Concentrate	Butane	1 gram	5.84 grams	5.20 grams
Concentrate	CO2	1 gram	6.59 grams	5.84 grams
Concentrate	Ethanol	1 gram	5.86 grams	5.21 grams
Concentrate	Water	1 gram	10.29 grams	9.15 grams

Source: Orens et al, 2015

While there is some variation of raw inputs depending on the size of the amount purchased and the type of solvent used, the band is very narrow. For the purposes of this analysis, the ratio used for edibles is 1.14 units of trim to 1 unit of flower, and in the case of concentrates, 1.12 units of trim to one unit of flower. Conversely, 1 gram of flower equals to 0.3 grams of concentrate, and 1 gram of flower equals three 10 mg. edible units (Orens et al, 2015).

Overall, residents and visitors to Colorado consumed 301.7 metric tons of flower equivalent. However, concentrate accounted for 27.3 percent of all marijuana consumed. Consumers appear to be interested in products that have a higher concentration of THC, the psychoactive ingredient in marijuana. In Colorado, from 2015 to the end of 2017, the THC content in flower increased from 16.6 percent to 19.9 percent and the THC content of trim increased from 14.9 percent to 17.2 percent (Orens et al, 2019).

The price of marijuana is also difficult to estimate. It is fair to say that as the market matures the price will decline. For example, in Colorado the pretax price of flower declined from \$14.05 to \$5.34 per gram from 2014 to 2017, and the price of concentrate fell from \$41.43 to \$21.57 per gram (Orens et al, 2019). The price further declined by 2019 to \$1.78 per gram for flower and 97 cents per gram for trim (Colorado Department of Revenue, 2019). In Oregon, the retail price of usable marijuana declined from \$7.00 per gram in December 2017, to approximately \$4.80 per gram in December of 2018 (Oregon Liquor Control Commission, 2019). This is despite the fact that the potency of marijuana increased.

Over-production could put further downward pressure on prices. Excitement over a new market could lead to overinvestment in production with resulting lower prices. For example, the Oregon Liquor Control Commission (2019) estimated that in 2018, the excess supply of marijuana equaled 6.5 years of demand. However, over- and undersupplied markets may have negligible impacts on the overall size of the market measured in dollars. For example, in cases of undersupply, supply constraints may reduce the volume to be sold – reducing the market value. However, the supply shortage will cause the unit price to increase – increasing the market value. The extent to which the undersupply impacts the overall market value depends on how consumers respond to price changes. If consumers are price sensitive, such that they reduce demand by proportionately more than the increase in price, then overall market value will decline. Alternatively, if they are not price sensitive and will seek to maintain a level of consumption regardless of price, then a supply shortage will increase the overall economic size of the market.

Another variable in determining demand is how much marijuana users consume. As is the case with many products, a minority of consumers ingest the majority of marijuana, with heavy consumers using on average 1.6 grams of flower or flower equivalent per day (Orens et al, 2019). These consumers tend to be less sensitive to price changes.

Additionally, approximately 20 percent of Oregon adults consumed marijuana in 2018, with an average annual per capita consumption of 224.6 grams of flower equivalent (Oregon Liquor Control Commission, 2019). It should be noted that the majority of marijuana is consumed by a relatively small number of consumers. Colorado estimates that 21.8 percent of marijuana users account for 66.9 percent of consumption and that 30 percent of consumers account for 87.1 percent of all marijuana consumption (Schwartz, 2016).

In order to assess consumption in Michigan data from the National Survey on Drug Use and Health was used. In this survey, individuals were asked to indicate whether they had used marijuana within the last 12 months and whether they had used it within the last month. Use in Colorado, Michigan, Oregon and Washington were compared.

As shown in Table 3, people between the ages and 18 and 25 were more likely to indicate use over the past 12 months and over the last month. More importantly, Table 3 indicates that the three states with recreational marijuana had a higher rate of usage by 4 to 9 percent over Michigan for 18 to 25 year olds. Similarly, this rate was between 5 and 9 percent for all adults. Additionally, Table 3 shows that marijuana consumption is common among young people in all four states, including in Michigan where, at the time of the survey, recreational marijuana use was illegal. Assuming that Michigan will experience similar rates of usage as those in Colorado, Oregon and Washington when recreational use is legalized seems to be reasonable, if not slightly conservative.

**Table 3: Percent Indicating Marijuana Use:
Colorado, Michigan, Oregon and Washington**

State	Within last year		Within last month	
	18-25 Yr-Olds	All Adults	18-25 Yr-Olds	All Adults
Colorado	49.23	27.77	33.21	18.12
Oregon	49.57	28.56	33.11	19.65
Washington	44.50	24.18	30.44	17.01
Michigan	40.92	18.91	27.50	13.08

Source: 2017-2018 National Survey on Drug Use and Health

The final data point to consider is the population of Michigan. Michigan’s population count of adults is higher than that of the referent states, though Michigan has a slightly larger share of 18-25 year olds, as shown in Table 4.

Table 4: Estimated Population 2017: Colorado, Michigan, Oregon and Washington

State	Population 18-24	Total Population 18 and Over	Percent 18-24
Colorado	516,709	4,184,186	12.3
Michigan	997,075	7,717,047	12.9
Oregon	362,918	3,160,871	11.5
Washington	658,536	5,282,568	12.4

Source: U.S. Census Bureau

We use Colorado estimates of per-capita use by 18-24 year-olds and 25 or older, along with total annual sales to project expected Michigan sales. While 18-24 year-olds make up about 12.3 percent of Colorado’s adult population, they consume about 21.9 percent of marijuana based on self-reported usage. Hence, it is important to recognize demographic differences between Colorado and Michigan in generating usage projections, where Michigan has a higher share of the adult population in the age group of 18-24 years of age.

One additional source of demand that needs to be considered is nonresident consumption. Tourism is a major industry in Michigan, and some believe that Michigan could become a destination for marijuana tourism. Of the Great Lakes states, only Illinois has legalized recreational marijuana, although marijuana consumption for medical purposes is legal in Ohio. Given the fact that marijuana is legal in Canada, tourism from Ontario is unlikely, especially given the weakness of the Canadian dollar. Colorado is also a tourism state. Using Colorado as an example, in 2017, it was estimated that 9.1 percent of the marijuana consumed in Colorado was from non-residents (Orens et al, 2019). We implicitly assume that about 9 percent of the marijuana sold in Michigan will go to other states, primarily to Indiana and Ohio. While marijuana tourism may arise from these states, it is also likely that marijuana use will also arise from passive tourism demand of those visiting Michigan for other reasons.

Recreational marijuana tourism can be a significant draw, especially along borders with states without recreational marijuana. At least one small town near the Indiana border appears to be drawing customers as far as 200 miles south of their location (Beggin, 2020). While tourism demand is projected to be relatively small compared to in-state use, the total value of tourism sales is not insignificant. Additionally, passive tourism demand – those who travel to Michigan for other reasons but take up recreational use while visiting – may increase, as a larger share of U.S. residents will be accustomed to marijuana use.

However, we anticipate the net effect of federal regulation will be a decrease in tourism-based demand for Michigan marijuana and that the vast majority of recreational marijuana will be consumed by Michigan residents. Before then, there may be some potential for retailers along the border between Michigan, Ohio, Indiana, and Wisconsin (along the border with the Upper Peninsula).

Table 5 shows calculations used in projecting Michigan sales. Using Colorado estimates, we estimate the volume purchased by our two age groups: 18-24 years and 25+. We start with total volume of flower-equivalency for Colorado, which was estimated at 301.7 metric tons. Since nine percent of total sales was estimated to be sold to non-residents, we subtract out 24.9 metric tons from in-state purchases. As 18-24 year-olds consumed 21.9 percent of the in-state marijuana sales, we estimate that 60.6 metric tons were consumed by this group. The remaining 216.2 was allocated to the 25+ age group. Dividing the two age groups by respective populations provides our per-person average usage in volume (metric tons).

To project Michigan usage, we work backwards. As shown in Table 5 and starting with population counts, Michigan has just under a million 18-25 year-olds and 6.7 million adults over the age of 25. Multiplying these by per-person consumption rates in Colorado provides our projected usage volume in metric tons. We also exert that tourism uptake is proportional to that of Colorado, at 9 percent in-state sales. From these volume estimates, we project that Michigan demand will be just under 560 metric tons a year.

Table 5: Projection Calculations of Volume of Sales

	Colorado			Total
	18-25	25+	Tourism ^ψ	
Volume (metric tons)	60.6	216.2	24.9	301.7
Population	516,709	3,667,477	NA	4,184,186
per-cap Consumption	0.0001173	0.0000589	NA	NA
	Michigan			Total
	18-25	25+	Tourism ^ψ	
Population	997,075	6,719,972	NA	7,717,047
per-cap Consumption	0.0001173	0.0000589	NA	NA
Volume (metric tons)	116.9	396.1	46.2	559.2

^ψ Tourism volume of purchases based on 9 percent of residential sales

Assuming a retail price of \$5.34 (the pretax price per gram) yields a total market value of \$2.986 billion per year; this is at the retail level and assumes that the rate of consumption in Michigan will be similar to that of Colorado once the Michigan industry matures and more retail operations are established. We project this will take between four to six years based on the experience in Colorado.

Expected Tax Revenue

There are two taxes that will be derived from the sale of marijuana. The first is a 10 percent excise tax that retailers will pay on the sale price (Oosting, 2019). The second is 6 percent retail sales tax. The Senate Fiscal Agency estimates that the total revenue raised could be \$262 million a year once the industry matures (Oosting, 2019), without going into detail on expected sales volume tied to those revenue projections (Michigan Senate Fiscal Agency, 2018). Using our retail sale volume projections, we anticipate Michigan Excise tax revenues will increase by \$298.6 million annually, and sales tax (sales price plus excise tax) to be \$197.1 million. Collectively, we project that public revenues will increase by \$495.7 million

annually from the direct sales of recreational marijuana when the market stabilizes in about four to six years. This does not include estimates of reduced revenues through other, foregone, taxable purchases that may include medical marijuana and/or other sales and excise taxable goods and services that compete with recreational marijuana sales.

One often overlooked issue when assessing the expected tax revenue impacts of legalized marijuana is the impact on alcohol consumption. While good data is difficult to obtain it appears that as marijuana consumption increases, alcohol consumption declines (Schulenberg et al, 2019). Some people apparently substitute marijuana consumption for alcohol consumption. While legalized marijuana will raise revenues, there appears to be a somewhat offsetting reduction in alcohol consumption. One study indicated that alcohol sales declined by 20 percent in counties where recreational marijuana is legal (Vittert, 2019). This figure may be somewhat high and alcohol sales appear to be declining with or without legal recreational marijuana.

Economic Impact

Economic impacts arise when a new industry or economic activity is introduced in the local economy which infuses new transactions into the economy. It is important to properly account for what constitutes new transactions. Technically, transactions generated can only be considered new if they do not supplant other transactions which would have taken place in the absence of the new industry or activity. That is, if consumers increase expenditures on marijuana products by \$10 and subsequently reduce expenditures on beer by \$10 – and that marijuana products are a substitute for beer for these consumers – then no new expenditures have taken place. Similarly, expenditures on marijuana products may be substituted for other expenditures like those for movies, lottery tickets and other products or services. Based on this understanding of what is not new expenditures, the only new expenditures generated that we can be sure of are those generated by recreational marijuana tourists who made the trip into Michigan for the pursuit of recreational marijuana. Other tourists, who are likely to purchase marijuana during their trip but made the trip on other grounds, are likely substituting other planned trip expenditures to purchase marijuana products. That is, overall, we expect the true economic impact, in terms of new economic activity to be modest.

Rather than measure the economic impact in isolation, an alternative measure by which to gauge the economics of recreational marijuana is an economic contribution analysis. An economic contribution analysis provides a snapshot of the importance we attribute to the projected Michigan marijuana products and services sectors to the overall economy. To this extent, an economic contribution study of Michigan's projected marijuana industry shows the extent to which this industry contributes to the overall macroeconomic environment, including direct and secondary effects as dollars re-circulate throughout the economy. However, the results should be interpreted with care. Economic contribution estimates assert the size of the economy that the marijuana product value chains contribute but does not assert the economy will expand by the estimated values.

The IMPLAN Pro. 3.0 economic simulation model was used to model economic expenditures. The modeling framework traces transactions across industries and institutions (households and government units) to account for secondary transactions and recognizes that one's expenditures are another's revenues. Secondary transactions arise as dollars spent in the state economy are respent multiple times. For example, when consumers purchase marijuana-based products from a retailer, the retailer will re-spend a portion of the earnings to restock, purchase services and other inputs to retailing. A portion will

be directed to households in the form of labor income and payments to shareholders, and to government, in the form of tax and license payments. Much of these expenditures will go to instate purchases, but the share that is used to purchase inputs from outside the state will cease to re-circulate further. This process repeats itself through subsequent rounds of expenditures and revenues. This process continues, only hampered by the extent to which subsequent expenditures leave the state.

Transactions are distributed across supply sectors for modeling. We start with agricultural marketing dollar provided by the USDA. However, these industry expenditure shares must be modified to reflect expected expenditure breakouts reflecting the average marijuana product value chain. The breakout shown in Table 6 are the resulting estimates derived from heuristic adjustments to baseline agricultural value chains. Specific adjustments include more weight on processing – accounting for the myriad different CBD and THC consumer products derived from marijuana plants, on grow production recognizing increased value-added activities tied to greenhouse operations, and energy – also accounting for greenhouse operations with year-round production.

Table 6: Estimated Sector Inputs Shares

Industry Group	Input Percent
All industries	100.0
Agribusiness	4.9
Grow production	14.3
Processing	22.5
Packaging	2.5
Transportation	4.9
Wholesale trade	13.3
Retail trade	21.5
Energy	10.0
Finance & Insurance	3.1
Advertising	2.0
Legal & accounting	1.0

A custom industry was generated using the value chain breakout in Table 6 to model the Michigan marijuana value chain. Standard agricultural value added attributes were included. These attributes allocate net income payments to labor, capital and indirect business taxes levied on grow production. Value added attributes of other supplying firms remain unchanged from their baseline values. Because the 10 percent excise tax is allocated at the retail price and because agricultural products are usually not assessed Michigan’s six percent sales tax, direct tax estimates are added to simulation results in the aggregate.

Findings

The estimated economic contributions of Michigan’s new recreational marijuana industry, at \$3 billion in output, are shown in Table 7. Starting with employment, we project that as the sector reaches an initial state of maturity, the value chain will employ some 13,500 people directly. A rough breakout suggests that about 10,000 of those positions will be on the retail and wholesale trade sectors, including shipping,

supplying around one thousand retail outlets. Because all Michigan retail sales will come from in-state production. We anticipate about 1.25 million pounds of wet harvest to be harvested and processed commercially. Accordingly, grower operations will employ about 3,500, while process operations will employ around 3,500. The average wage of these direct jobs will be about \$28,600, contributing about \$384.7 million to labor income and \$1.8 billion to total annual gross state product.¹

Accounting for respending of direct dollars by industry participants and all subsequent recirculation of dollars in the state economy, we estimate that total employment contributions will be just over 23,700 Michigan jobs with annual pay of just under \$1 billion. When accounting for all associated transactions, recreation marijuana will contribute some \$7.9 billion in annual transactions and contribute \$4.7 billion to the state's gross state product, which includes the approximate \$500 million dollars in direct public revenues from the sale and licensing of marijuana products.

Table 7: Estimated Economic Impacts

	Employment	Labor Income	Value Added	Output
Direct Effects	13,500	\$384,743,000	\$1,797,627,000	\$2,986,000,000
Secondary Effects	10,300	\$559,284,000	\$2,855,060,000	\$4,866,919,000
Total	23,700	\$944,027,000	\$4,652,687,000	\$7,852,919,000

Totals may not sum up due to rounding

We should be careful to note that these estimates are not to be interpreted as economic impacts that would not exist in the absence of Michigan's new recreational marijuana sector. Rather they represent the contribution this sector will have on the existing economy at the end of the first four to five years. There is sufficient reason to assert that the true economic impact may be lower as recreational marijuana sales will crowd out other expenditures for medical marijuana, beer and alcohol and possibly other recreational expenditures. Hence the actual effect on the state's economy is not easily predicted.

Other conflating factors may impact these estimates. The time span we selected draws from the primary referent state, Colorado, experience. In this time span of four to five years, as seen in Colorado, we anticipate that the sector will largely reach an initial state of equilibrium. This is likely not a long-run steady state, but rather at some point, firms along the value chain will start to consolidate such that there will likely be a few dominant firms with higher levels of efficiency than fringe firms that make up the periphery of the value chain. Gained efficiencies from economies of scale will likely be further advanced by national and global efficiencies as national demand for customized processing equipment come online. That is, as more states legalize recreational marijuana, national equipment manufacturers will increase interest in developing processing and product innovations for industry adoption. The combined efficiency impacts will likely reduce the overall economic contribution in terms of employment and likely reduce the cost of final goods for consumers. Whether consumers will respond to lower costs by increasing overall demand sufficient to generate larger economic contributions remains to be seen, as no state has surmounted the initial industry consolidation phase of industry development.

¹ Gross state product is a term to describe total state earnings by private and public entities.

Summary

The marijuana industry in Michigan appears to be maturing rapidly. An improved testing system and a wider acceptance of recreational marijuana by local communities would assist in the maturation process. It is estimated that the level of retail sales once it becomes widely available is approximately \$3 billion with a total economic impact in excess of \$7.8 billion. Employment in businesses along the marijuana supply chain is estimated to be 13,500 with a total economic impact on employment in the state of 23,700. Total tax revenue raised is \$495.7 million of which \$298.6 million is excise taxes and \$197.1 million are in the form of sales taxes. These figures are extrapolated from the experience in Colorado and adjusted for Michigan's population.

The supply chain for marijuana was also analyzed. It appears that the supply chain is maturing rapidly, with several well-funded vertically integrated firms already operating. Both indoor and outdoor growing operations are in place but over time it appears that much of the production will take place in dedicated indoor growing facilities.

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Revenue Administrative Bulletin 2020-17

TAXATION OF ADULT-USE (RECREATIONAL) MARIHUANA UNDER THE MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT

Approved: October 16, 2020

(Replaces Revenue Administrative Bulletin 2019-17)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2020-17.

The Michigan Revenue Act authorizes the Department of Treasury (“Department”) to periodically issue bulletins that explain the Department’s interpretation of current state tax laws.[1] The purpose of this Revenue Administrative Bulletin (“RAB”) is to (i) explain the excise tax imposed on sales of marihuana[2] under the Michigan Regulation and Taxation of Marihuana Act (Initiated Law 1 of 2018) (“MRTMA” or the “Act”) (MCL 333.27951 *et seq.*), (ii) discuss the sales and use tax treatment of marihuana sales under the MRTMA, (iii) address certain other issues arising under the MRTMA, and (iv) set forth the tax return and remittance requirements and procedures that taxpayers under the MRTMA must follow.

This RAB addresses only the taxation of adult-use or recreational marihuana, which was legalized in Michigan by the MRTMA. It does not address the Medical Marihuana Facilities Licensing Act (“Marihuana Facilities Act”) [3] or, except peripherally, the Michigan Medical Marihuana Act (“Medical Marihuana Act”).[4] Additionally, this RAB does not directly address the duties and responsibilities of the Department of Licensing and Regulatory Affairs (“LARA”) under the MRTMA.

This RAB replaces RAB 2019-17. The guidance in RAB 2019-17 has been updated to provide certain clarifications on the income tax deduction for ordinary and necessary expenses and whether taxpayers are permitted to charge the excise tax on adult-use marihuana to customers.

ISSUES

- I. What is the excise tax that is imposed on sales of marihuana under the MRTMA?
- II. Do the General Sales Tax Act and the Use Tax Act apply to sales of marihuana under the MRTMA?
- III. What is the income tax expense deduction provided by the MRTMA?
- IV. Does the MRTMA replace the Marihuana Facilities Act or the Medical Marihuana Act?

V. What are the tax return and remittance requirements and procedures under the MRTMA?

ANALYSIS AND DISCUSSION

I. Excise Tax

a. Rate, Administration, and Date of Imposition

The MRTMA imposes an excise tax on marihuana retailers and marihuana microbusinesses licensed under the Act at the rate of 10 percent of the “sales price” of adult-use marihuana sold or otherwise transferred to anyone other than a “marihuana establishment.”[5] The statute specifies that the 10 percent excise tax is imposed “[i]n addition to all other taxes.”[6] The excise tax is administered by the Department,[7] and, like other taxes administered by the Department, it is subject to the administrative, audit, assessment, interest, penalty, and appeal procedures set forth in sections 21 to 30 of the Revenue Act.[8]

The MRTMA became effective on December 6, 2018; however, the Act required LARA to take many diverse actions, including the promulgation of rules, prior to issuing licenses to marihuana retailers and marihuana microbusinesses, at which point the 10 percent excise tax would be imposed. The 10 percent excise tax began to be imposed in November 2019, when the first licenses were issued by the Marihuana Regulatory Agency (MRA)[9].

b. “Sales Price”

As noted, the MRTMA imposes a 10 percent excise tax on the “sales price” applicable to each retail sale or other transfer of adult-use marihuana made by a licensed marihuana retailer or licensed marihuana microbusiness. In this context, “sales price” means the total amount of consideration, including cash, credit, property, services, or any other valuable consideration given in exchange for marihuana.[10] This definition is consistent with the definition of “sales price” in the General Sales Tax Act.[11]

A licensed marihuana retailer or licensed marihuana microbusiness is permitted to sell marihuana to customers for a set price that is inclusive of the 10 percent excise tax. If the excise tax has been included in the business’s gross sales of marihuana, the actual sales amount (exclusive of the tax) must be determined in order to complete the excise tax return. To determine retail marihuana sales for the tax period, a taxpayer using the inclusive pricing method should divide its gross retail marihuana sales (for each location using this pricing method) by 11, then subtract the resulting number from its gross retail marihuana sales. The result is the taxpayer’s retail marihuana sales for the period.

Example A: Taxpayer using the inclusive pricing method has gross retail marihuana sales of \$1,650 for the return period. Taxpayer divides \$1,650 by 11, with a result of \$150. Taxpayer subtracts \$150 from \$1,650, with a result of \$1,500. Taxpayer’s retail marihuana sales for the period are \$1,500, and this number is entered on the excise tax return.

Taxpayers should retain all documentation supporting their use of the inclusive pricing method and the actual sales price calculation, in the event of audit. This includes items such as sales invoices, general ledgers, subsidiary ledgers and journals, workpapers and accounting data used to prepare the return, and any other supporting books and records. (See *Taxpayer Rights During an Audit*, available on the Department’s website.)

A licensed marihuana retailer or licensed microbusiness is also permitted to pass the cost of the 10 percent excise tax through to customers by including the tax as a separate line item on the invoice or sales receipt.

The 10 percent excise tax is not owed on small amounts of adult-use marihuana taken from inventory by a licensed marihuana retailer or licensed marihuana microbusiness for direct use in the business, such as for display or to provide samples to customers, because such use does not constitute a sale of adult-use marihuana.[12] Taxpayers must retain for audit purposes sufficient documentation to support such non-sale business uses of marihuana inventory.

c. Bundled Transactions

The MRTMA provides that “a product subject to the tax imposed by this section may not be bundled in a single transaction with a product or service that is not subject to the tax imposed by this section.”[13] This provision prohibits adult-use marihuana from being sold in a single-mixed or “bundled” transaction together with property or services other than marihuana. For the purposes of the 10 percent excise tax, a “bundled transaction” means the retail sale of marihuana together with one or more other products and services, where the other products and services are distinct and identifiable, and the marihuana and the other products and/or services are sold for one non-itemized price.[14] Containers, wrappers, plastic bags or other packaging in which the marihuana is dispensed or packaged for sale, or labels attached or affixed to such packaging, are not considered separate products that are not subject to the excise tax, but are part of the sale of the marihuana.

If property or services other than marihuana are bundled and sold in a single transaction despite the prohibition against such transactions set forth in MCL 333.27963(2), then the entire sales price of the transaction, including the property or services that do not constitute marihuana, is subject to the 10 percent excise tax.[15]

An invoice or similar sales document that separately itemizes and prices marihuana and non-marihuana property or services that are purchased together does not constitute a prohibited “bundled” or “single transaction.”[16]

Example B: Joe buys marihuana, a marihuana vaporizer, and a tee shirt at Corner Supply, a licensed marihuana retailer. The items are rung up individually, and Joe pays for the items in one transaction with his debit card. Each item that Joe purchases is separately listed and priced on the receipt that he receives, and he is charged 10 percent excise tax on the sales amount of the marihuana only. Because the property purchased has been segregated and itemized on the receipt in a manner that permits determination of the consideration exchanged for each individual item, this is not a prohibited single or bundled transaction.

Example C: Jane buys a marihuana vaporizer, which includes a quantity of marihuana, at Corner Market, a licensed marihuana retailer. The vaporizer and marihuana are packaged together and sold for a single price. The receipt that Jane receives also reflects the sale of one item for a single price. Corner Market owes excise tax on the sales price of the vaporizer, including the marihuana packaged with the vaporizer, even though only the marihuana itself would be subject to the excise tax if it had been separately sold and itemized.

II. Sales and Use Tax

a. Applicability, Rate, and Tax Base

The 10 percent excise tax on sales of adult-use marihuana under the MRTMA is levied “in addition to all other taxes.”[17] Marihuana constitutes “tangible personal property” under Michigan’s General Sales Tax Act (MCL 205.51 *et seq.*). Accordingly, in addition to the 10 percent excise tax and absent a valid claim of exemption, retail sales of adult-use marihuana under the MRTMA are also subject to the state’s 6 percent sales tax, [18] based upon the “sales price” of the property.[19] Similarly, the use, storage, and consumption of adult-use marihuana in this state are subject to the Use Tax Act.[20]

The “sales price” of marihuana subject to the 6 percent sales tax includes the 10 percent excise tax levied under the MRTMA.

Example D: Corner Supply is a licensed marihuana retailer under the MRTMA. Corner Supply sells marihuana to Joe for \$100. Corner Supply is liable for the 10 percent excise tax on the sale, which totals \$10. In addition, Corner Supply must pay sales tax on the transaction. The “sales price” for sales tax purposes is \$110 (the sales price of the marihuana plus the amount of the excise tax). The amount of sales tax due is 6 percent of \$110, or \$6.60.

Example E: Corner Market is a licensed marihuana retailer under the MRTMA. Corner Market sells marihuana and a tee shirt to Jane for \$120 in a prohibited bundled transaction. Corner Market is liable for the 10 percent excise tax on the combined sales price of the items purchased by Jane in the transaction, which totals \$12. In addition, Corner Market must pay sales tax on the transaction. The “sales price” for sales tax purposes is \$132 (the sales price of the bundled transaction plus the amount of the excise tax). The amount of sales tax due is 6 percent of \$132, or \$7.92.

b. Exemptions

i. Food or food ingredients

The General Sales Tax Act and the Use Tax Act exempt from taxation the sale and use of “food or food ingredients,” which are defined as “substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.”[21] Food and food ingredients do not include alcoholic beverages and tobacco.

[22] Marihuana infused food products, sometimes called marihuana edibles, are not consumed for their taste or nutritional value, but are consumed as a method of ingesting the marihuana. Therefore, food or food products that have been infused with marihuana are not eligible for the exemption for “food or food ingredients” under the General Sales Tax Act or the Use Tax Act.[23]

ii. Drugs legally dispensed by prescription

The General Sales Tax Act and the Use Tax Act also exempt from taxation the sale and use of “drugs for human use that can only be legally dispensed by prescription” as well as “over-the-counter drugs for human use that are legally dispensed by prescription.”[24] “Drug” is defined as a “compound, substance, or preparation ... intended for human use” that is (i) recognized in the official U.S. pharmacopoeia or similar compilation, (ii) intended for use in the treatment or prevention of disease, or (iii) intended to affect the structure or a function of the body.[25]

Adult-use marihuana does not meet the definition of a “drug,” nor can it be legally dispensed in this state by prescription. Therefore, sales and use of adult-use marihuana under the MRTMA are not exempt from taxation under the General Sales Tax Act or the Use Tax Act as a drug dispensed by prescription.[26]

iii. Other exemptions

Unless otherwise specified in the MRTMA or other applicable law, other exemptions from taxation generally available to taxpayers under the General Sales Tax Act and the Use Tax Act are also available to marihuana retailers and marihuana microbusinesses licensed under the MRTMA, provided that the requirements for the

particular exemption are fully met and the taxpayer can support its eligibility for the exemption. These exemptions may include the agricultural exemption, except for greenhouses primarily used to grow marihuana, [27] the industrial processing exemption,[28] the resale exemption,[29] and others.

III. Expense Deduction

The MRTMA provides as follows:

In computing net income for marihuana establishments, deductions from state taxes are allowed for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.[30]

Although the MRTMA does not directly amend the Michigan Income Tax Act (“MITA”), the deduction provided under the Act for the “ordinary and necessary expenses” of marihuana establishments operates to effectively amend the MITA by decoupling Michigan from Internal Revenue Code (“IRC”) 280e. IRC 280e prohibits the federal tax deduction of “ordinary and necessary expenses” by certain businesses engaged in activities determined to be contrary to federal law.

The MRTMA provision referenced above permits a validly licensed marihuana establishment to deduct on its Michigan tax return those “ordinary and necessary” business expenses that it is otherwise prohibited from deducting on its federal return due to the operation of IRC 280e. The “ordinary and necessary expenses” of a business are not the same as the expenditures used to determine the business’s “cost of goods sold,” a calculation intended to reflect direct business expenses, such as direct labor, raw materials, and overhead production costs. All businesses may subtract the “cost of goods sold” for federal tax purposes, and that subtraction is subsumed in the initial federal gross income calculation that is the basis of the Michigan tax return. Accordingly, the “ordinary and necessary expenses” of a validly licensed marihuana establishment may be taken as a Michigan deduction from adjusted gross income for individuals and from federal taxable income for corporations. Only those “ordinary and necessary” expenses paid or incurred after the date of licensure by LARA, as determined by using the taxpayer’s method of accounting used for federal income tax purposes, may be deducted under this provision.

This deduction is applicable only to marihuana establishments licensed by MRA under the MRTMA; it is not applicable to any other marihuana-related businesses, including marihuana-related businesses licensed by MRA under the Marihuana Facilities Act or under other statutes.

IV. Relationship to Other Marihuana Statutes

a. Repeal of Excise Tax Under Marihuana Facilities Act

The MRTMA does not repeal or replace either the Marihuana Facilities Act or the Medical Marihuana Act; all three statutes are currently effective. The Marihuana Facilities Act imposes a 3 percent excise tax on the gross retail receipts of licensed medical marihuana “provisioning centers” (sometimes informally known as dispensaries).[31] However, the Marihuana Facilities Act also provides that the 3 percent excise tax is repealed by operation of law beginning 90 days after the effective date of a law “authorizing the recreational or nonmedical use of marihuana in this state.”[32] The MRTMA authorizes the recreational or nonmedical use of marihuana in Michigan. Accordingly, the 3 percent excise tax on medical marihuana provisioning centers imposed by the Marihuana Facilities Act was repealed as of March 6, 2019, 90 days following the effective date of the MRTMA.

b. Dual Licensing

The MRTMA permits a marihuana retailer or a marihuana microbusiness licensed to sell adult-use marihuana to concurrently be licensed as a “provisioning center” under the Marihuana Facilities Act. [33] Additionally, an entity holding both licenses is permitted to operate both businesses out of the same physical location.[34] For an entity holding licenses under both the Marihuana Facilities Act and the MRTMA, sales of medical marihuana to registered qualifying patients[35] are not subject to the 10 percent excise tax on adult-use marihuana. An entity holding licenses under both statutes must separately identify, itemize, and account for sales of medical marihuana to registered qualifying patients in its books and records, so that such sales are clearly differentiated from the entity’s sales of adult-use marihuana. An entity holding licenses under both statutes must maintain or otherwise be able to provide, at the request of the Department, documentation supporting and clearly evidencing the validity of each sale of medical marihuana accounted for in its books and records. A sale of marihuana by an entity licensed under both statutes that cannot be shown by the taxpayer to be a valid sale of medical marihuana will be presumed to be a sale of adult-use marihuana under the MRTMA, subject to the 10 percent excise tax and 6 percent sales tax.

V. Return and Remittance Requirements and Procedures

The MRTMA does not set forth specific requirements or procedures regarding remittance to the Department of the 10 percent excise tax. In order to ensure payment of the tax and to provide for efficient administration, the Department will initially determine how frequently marihuana retailers and marihuana microbusinesses licensed under the MRTMA must file returns and remit the excise tax, and those requirements may be modified in the future. Specific guidance regarding remittance of the 10 percent excise tax is available on the Department’s website. Returns are submitted electronically through Michigan Treasury Online (“MTO”).

Marihuana retailers and marihuana microbusinesses must file sales tax returns based upon the frequency directed by the Department (i.e., monthly, quarterly, or annually). Filing of returns for sales and use taxes may be made electronically through MTO. Payments for sales and use taxes may also be remitted electronically through MTO. The discounts set forth in MCL 205.54(1) for timely tax payments are applicable to marihuana retailers and marihuana microbusinesses licensed under the MRTMA. Please refer to the Department’s website for additional information on sales and use taxes.

[1] See MCL 205.3(f).

[2] “Marihuana,” rather than the more common “marijuana,” is the spelling used in the MRTMA.

[3] MCL 333.27101 *et seq.*

[4] MCL 333.26424 *et seq.*

[5] MCL 333.27963(1). A “marihuana establishment” means “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 LARA under the MRTMA. MCL 333.27953(h).

[6] MCL 333.27963(1).

[7] MCL 333.27963(3).

[8] MCL 205.20.

- [9] The MRA was established within LARA by Executive Reorganization No. Order 2019-2 effective April 30, 2019, in order to permit more efficient regulation of both medical and adult-use marihuana. E.R.O. No. 2019-2, compiled at MCL 333.27001.
- [10] This definition is codified at Mich. Admin. Code R 205.150.
- [11] See MCL 205.51(d).
- [12] However, 6% use tax would still be owed on the inventory value of the adult-use marihuana used in this way by the licensed marihuana retailer or microbusiness.
- [13] MCL 333.27963(2).
- [14] This definition is codified at Mich. Admin. Code R 205.151(2).
- [15] See Mich. Admin. Code R 205.151(1).
- [16] See Mich. Admin. Code R 205.151(3).
- [17] MCL 333.27963(1).
- [18] Sales of marihuana are subject to sales tax whether the marihuana is sold legally or illegally. (See *Notice Regarding Michigan Taxes on Illegal Activities*, available on the Department's website.)
- [19] The General Sales Tax Act defines "sales price" as "the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax." MCL 205.51(1)(d). "Sales price includes ... taxes imposed on the seller other than taxes imposed by this act" MCL 205.51(1)(d)(ii).
- [20] MCL 205.91 *et seq.*
- [21] MCL 205.54g(1)(a), MCL 205.54g(3); MCL 205.94d(1)(a), MCL 205.94d(3).
- [22] MCL 205.54g(3); MCL 205.94d(3).
- [23] See Mich. Admin. Code R 205.141(3).
- [24] MCL 205.54g(1)(a), MCL 205.54g(3); MCL 205.94d(1)(a), MCL 205.94d(3).
- [25] MCL 205.51a(i); MCL 205.92b(i).
- [26] See Mich. Admin. Code R 205.141(3).
- [27] MCL 205.54a(1)(e), 205.54a(5)(e); MCL 205.94(1)(f), 205.94(5)(e).
- [28] MCL 205.54e; MCL 205.94o.
- [29] MCL 205.94(1)(c)(i).
- [30] MCL 333.27962.
- [31] MCL 333.27601.
- [32] MCL 333.27601.
- [33] MCL 333.27959(6).
- [34] MCL 333.27958(3)(c).

[35] A “registered qualifying patient” is “a qualifying patient who has been issued a current registry identification card under the Michigan medical marihuana act or a visiting qualifying patient as that term is defined in section 3 of the Michigan medical marihuana act, MCL 333.26423.” MCL 333.27102(x).

CANNABIS

How state marijuana legalization became a boon for corruption

By making local officials the gatekeepers for million-dollar businesses, states created a breeding ground for bribery and favoritism.



In states' rush to limit the numbers of licensed vendors and give local municipalities control of where to locate dispensaries, they created something else: A market for local corruption. | Ed Andrieski/AP Photo

By **MONA ZHANG**

12/27/2020 06:50 AM EST



Jasiel Correia's star was rising.

The son of Cape Verdean immigrants in the working-class Massachusetts port city of Fall River — famed as the home of Lizzie Borden — Correia was a home-grown prodigy. At 23, he was elected mayor, fielding congratulatory calls from Sen. Elizabeth Warren and Rep. Joe Kennedy.

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That was in 2015. Four years later, just a week before his reelection race, federal agents ignominiously led him away from his home in handcuffs and charged him with attempting to extort cannabis companies of \$600,000 in exchange for granting them lucrative licenses to sell weed in his impoverished city.

“Mayor Correia has engaged in an outrageous brazen campaign of corruption, which turned his job into a personal ATM,” declared U.S. Attorney Andrew Lelling during a press conference announcing the charges.

The downfall of Fall River's young mayor wasn't just a tragedy for the thousands of people who invested their hopes in him: It was emblematic of a rash of cannabis-related corruption across the nation, from Massachusetts to California to Arkansas and beyond.

In the past decade, 15 states have legalized a regulated marijuana market for adults over 21, and another 17 have legalized medical marijuana. But in their rush to limit the numbers of licensed vendors and give local municipalities

control of where to locate dispensaries, they created something else: A market for local corruption.

Almost all the states that legalized pot either require the approval of local officials — as in Massachusetts — or impose a statewide limit on the number of licenses, chosen by a politically appointed oversight board, or both. These practices effectively put million-dollar decisions in the hands of relatively small-time political figures — the mayors and councilors of small towns and cities, along with the friends and supporters of politicians who appoint them to boards. And these strictures have given rise to the exact type of corruption that got Correia in trouble with federal prosecutors. They have also created a culture in which would-be cannabis entrepreneurs feel obliged to make large campaign contributions or hire politically connected lobbyists.

For some entrepreneurs, the payments can seem worth the ticket to cannabis riches.

For some politicians, the lure of a bribe or favor can be irresistible.

Correia’s indictment alleges that he extorted hundreds of thousands of dollars from marijuana companies in exchange for granting them the local approval letters that are necessary prerequisites for obtaining Massachusetts licenses. Correia and his co-conspirators — staffers and friends — accepted a variety of bribes including cash, more than a dozen pounds of marijuana and a “Batman” Rolex watch worth up to \$12,000, the indictment charges.



CANNABIS

1 in 3 Americans now lives in a state where recreational marijuana is legal

BY NATALIE FERTIG AND MONA ZHANG

Cigar bars were his preferred meeting spot, where he rendezvoused with aspiring marijuana licensees to ascertain their willingness to pay bribes, prosecutors allege. When one marijuana vendor asked him why he demanded so much money for a letter in support of his business, Correia said he needed

the money for legal fees. A year earlier, he had been indicted on charges of wire fraud and filing false tax returns in connection with his tech startup.

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“All government contracting and licensing is subject to these kinds of forces,” said Douglas Berman, a law professor at Ohio State University who authors a [blog on marijuana policy](#). But “there are unique facets to government contracting in [the cannabis] space that makes it uniquely vulnerable to corruption.”

In Fall River, with its population of roughly 90,000, the cost of obtaining a letter of local approval from Correia’s City Hall was anywhere from \$100,000 to \$250,000 in bribes, according to the indictment. One vendor even agreed to give 2 percent of his sales to a friend of Correia’s who was helping to facilitate the bribes, according to court documents. This friend allegedly acted as a middleman to help conceal the mayor’s involvement in the extortion scheme.

Genoveva Andrade, who served as Correia’s chief of staff, [pleaded guilty to bribery and extortion charges](#) in December. Correia is scheduled [to go to trial in February](#), and five marijuana applicants are expected to testify for the prosecution.

“There’s a lot of deal-making between businesses and localities that creates the environment of everyone working their way towards getting a piece of the action,” Berman said. Whether it’s city or county officials that need to be

action, Berman said. Whether it's city or county officials that need to be appeased, local control is "just another opportunity for another set of hands to be outstretched."

It's not just local officials. Allegations of corruption have reached the state level in numerous marijuana programs, especially ones in which a small group of commissioners is charged with dispensing limited numbers of licenses. Former Maryland state Del. Cheryl Glenn was sentenced to two years in prison in July for taking bribes in exchange for introducing and voting on legislation to benefit medical marijuana companies. Missouri Gov. Mike Parson's administration is the [target of law enforcement and legislative probes into the rollout](#) of its medical marijuana program.

"The state is given full control in an industry where there is so much competition — where everyone realizes how valuable these licenses are," said Lorenzo Nourafchan, CEO of Northstar Financial Consulting, which works with cannabis businesses.

Nourafchan cited some friends who submitted "incredible applications" for Missouri medical marijuana licenses only to see the licenses go to large, multistate operators: "It just seemed to me and many others that it was not fair ... people were not given objective and unbiased treatment."

Paying for police and restoring artwork

When advocates seek to legalize marijuana, whether through a ballot initiative or through the state legislature, there is typically a corresponding demand that local communities be given a say in whether a dispensary will be set up shop in their towns.

Inevitably, some localities would want to ban marijuana businesses as unsuitable to their tastes; others, however, may welcome them in hopes of reaping a tax windfall. When Massachusetts passed a recreational legalization initiative in 2016, the state gave wide latitude to local authorities. Not only are cannabis companies required to have a letter of support from municipalities to get a state license, they must also have a "host community agreement," which

allows for a "community impact fee" of not more than 3 percent of gross sales of the cannabis business.

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But the competition for licenses has been so intense that companies quickly found ways of going beyond the cap, offering more community givebacks in order to win their support. In this scramble for licenses, large, well-heeled firms were able to offer municipalities greater financial benefits compared to small, locally run businesses — the opposite of what the law intended.

For instance, the national pot powerhouse PharmaCann (“Improving people’s lives through cannabis”) offered the town of Wareham, on the Cape Cod Canal, [money for police details; paid an art conservation company to restore a painting](#); and put up money for a local oyster festival, among other sweeteners.

These special benefits — particularly the police details — seemed to run afoul of the state’s commitment to right past wrongs of marijuana enforcement, which was the thinking behind a requirement that cannabis businesses have a ["Positive Impact Plan"](#) in order to help areas that were disproportionately targeted by marijuana enforcement.

State regulators delayed the license renewal of PharmaCann last year in order to review its agreements with Wareham. A bill to increase oversight of these agreements stalled in committee last session, but state Sen. Julian Cyr, who

represents Cape Cod, Nantucket and Martha's Vineyard, plans to reintroduce the legislation next year.

Local control is "the biggest mistake that we made," said Massachusetts Cannabis Control Commissioner Shaleen Title at a Boston University conference on marijuana law. Title is a longtime drug policy-reform advocate and serves in the Commission's social justice seat. As someone who helped draft Massachusetts's legalization law, Title said, she takes responsibility for those shortcomings.

"We should have spelled out a lot more how local control would work ... how the selection decisions would be made as to who can operate in a city or town," she said. A quick solution, she said, would be to tie municipal marijuana tax revenue to certain social equity goals like rewarding local businesses.

"Then, you get your share of tax revenue," Title said, referring to local governments. "I think that would completely solve that issue."

Massachusetts, however, isn't the only state that is plagued by issues of local control.

California led the way for the country's modern legalization movement when it legalized medical marijuana at the ballot box in 1996. The state's early medical marijuana program was largely unregulated — no testing requirements for contaminants, no seed-to-sale tracking software that are now common in regulated marijuana markets. The industry flourished, and many saw California's program as "de-facto legalization" amid the lax regulatory structure.

Those days are long gone. Oklahoma's medical marijuana market [is looking more like California's cannabis heyday](#) when small operators didn't have to contend with the exorbitant costs of compliance. California, on the other hand, is contending with the same forces that gave rise to Correia's alleged crimes in Massachusetts: local control.

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Since California voters approved adult-use legalization in 2016, giving municipal governments near-total control of the approval process, many longtime medical marijuana and underground operators struggled to enter the industry. Aside from compliance costs, there's the matter of actually securing a license. Despite California's pot-friendly reputation, most of the state's municipalities have chosen to ban commercial cannabis businesses, fueling even greater competition among companies to enter the municipalities willing to host them.

In return, the localities have chosen to enact their own regulations on how to obtain cannabis licenses, empowering local politicians and government officials. That's given rise to a myriad of corruption cases, from bribes to local sheriffs to a Ukrainian-born man [indicted alongside two associates of presidential lawyer](#) Rudolph Giuliani, Lev Parnas and Igor Fruman, over campaign finance violations for plotting to funnel money to politicians in hopes of getting licenses in Nevada and New York.

In May, federal prosecutors charged two city officials in Calexico, near California's border with Mexico, with corruption, after the pair solicited bribes from an undercover FBI agent in exchange for fast-tracking a marijuana permit application, according to court documents. "This isn't our first rodeo," one of the officials told the agent, referencing how the pair had done similar work for others. The bribery scheme was carried out under the guise of a consulting firm, which was used to launder money, according to court documents. Both officials struck plea deals.

Just a month later, FBI agents [arrested Los Angeles City Council Member Jose Huizar](#) for corruption. The city is home to the largest legal marijuana market in the world, posting [more than \\$3 billion in sales last year](#).

While the federal corruption case focuses on allegations that Huizar was a central figure in a pay-to-play scheme for real estate developers, court documents in a separate suit allege that Huizar operated in a similar fashion with marijuana companies. A former staffer [filed a wrongful termination complaint](#), claiming he was fired after sharing details about Huizar extorting cannabis companies with federal officials.

According to court documents, Huizar conditioned local marijuana permits on "political donations, 'consulting fees' funneled to the Councilmember's friends, and cash payments made directly to Huizar."

Huizar pleaded not guilty to the bribery charges in December. He denied the allegations in the wrongful termination suit, and the case is poised to be dismissed after the parties reached a settlement.

In November, FBI agents raided a Compton, California, councilman's home and the offices of a Baldwin Park city attorney as part of an investigation into their dealings with marijuana businesses, [the Los Angeles Times reported](#). A former police officer said in a declaration that three cannabis businesses complained to him about "questionable business practices, which included paying as much as \$250,000 cash in a brown paper bag to city officials."

These cases didn't occur in a vacuum. The FBI has been warning states across the country about the public corruption threat posed by the marijuana industry.

"We've seen in some states the price go as high as \$500,000 for a license to sell marijuana. So, we see people willing to pay large amounts of money to get in to the industry," said special agent Regino Chavez [during an FBI podcast last year](#).

Further north in Sacramento, Andrey Kukushkin, the chief financial officer of a company that operates a cannabis dispensary, was indicted on federal campaign finance violations alongside Parnas and Fruman, who had allegedly helped Giuliani look into U.S. officials in Ukraine as part of his probe into President-elect Joe Biden. Kukushkin pleaded not guilty to the federal charges.

The Ukrainian-born Kukushkin and his partner are the "de facto pot kings of Sacramento," [the Sacramento Bee reported](#), controlling nearly one-third of the local market. Kukushkin was also set to partner with the San Francisco Veterans Affairs Medical Center on a cannabis research project, but the agreement was scrapped just weeks before he was indicted, [POLITICO first reported](#).

Kukushkin, along with the other three individuals indicted in the case, planned to use funds from a Russian national for political donations in Nevada and New York in order to secure marijuana licenses, [according to federal prosecutors](#).

Parnas and Fruman also attempted to get into the pot business in Florida, but [industry insiders told POLITICO](#) that their lack of familiarity about cannabis regulations in California and Nevada, where they claimed to hold licenses, raised red flags.

If the same players are repeatedly getting licenses, "it stifles creativity and ingenuity and new ideas in the space," Nourafchan said. "The person who has an incredible application, but doesn't have deep pockets to pay off local officials, is prevented from adding their own contribution."

Limited programs, license caps

It's not just liberal states, eager to help local communities scarred by the drug war, where corruption has emerged as an issue.

Medical marijuana programs in more conservative states such as Arkansas and Missouri have also been dogged with allegations of corruption, though none have stuck in court. In both states, applicants who lost out on licenses believe the supposed “merit-based” application process was rigged to benefit the politically well-connected.

Naturalis Health, one of the losing applicants in Arkansas, succeeded in getting a temporary restraining order against the state Medical Marijuana Commission after a Circuit Court judge ruled that the regulators carried out the licenses process in a “flawed, biased, and arbitrary and capricious manner.” But that ruling was [thrown out by the state Supreme Court](#).

And while Arkansas Attorney General Leslie Rutledge wrote in a letter to the chief justice that allegations of improprieties are “unsubstantiated,” she raised the issue of a commissioner being offered a bribe by one of the winning companies. The commissioner did not report the attempted bribe, Rutledge wrote, and there is no law requiring him to do so. But the commissioner gave the applicant “the second-highest score that he awarded to any entity,” which was “significantly higher” than any other commissioner.

AD

“We have no evidence that the commissioner took the bribe or based his scoring on the offer,” [the letter, first reported by KHBS, read](#). “Still, we believe

we needed to provide these facts to the tribunal.”

Other applicants similarly filed lawsuits and ethics complaints about the process.

"It was just unbelievable ... the level of corruption was shocking to me," said Mildred Barnes Griggs, who was part of a team that applied for but did not receive a license in Arkansas, and responded with a series of official complaints alleging favoritism and a lack of accountability. "Open corruption. Corruption that went unpunished."

Arkansas gave out only five cultivation licenses in the first round of licensing and Griggs says the license cap played a big role in promoting wrongdoing, including awarding licenses to applicants who provided false information and one who [seemed to plagiarize much of its application from another team](#) that didn't receive one. She and Olly Neal, another member of her application team, were both motivated to get involved in the cannabis industry after seeing high levels of poverty in their communities and the devastation of disproportionate marijuana arrests of African Americans.

Both Griggs and Neal hail from Lee County — named after the Confederate general — and went to segregated schools growing up. Neal went on to become the [first Black district prosecutor](#) in the state, and eventually served as a judge in the state circuit and appeals courts. Since voters in the state approved medical marijuana legalization at the ballot box in 2016, arrests for possession have trended upward, [according to data from the American Civil Liberties Union](#). In Lee County, Black people are four times more likely to be arrested for marijuana possession than white people, slightly higher than the national average.

Griggs and Neal felt that allowing their application, which was rooted in a Black community that had suffered from the drug war, would spur economic development and heal some of the wounds. But they say that despite encouragement from the state to apply, the process was rigged from the beginning.

Neal filed a complaint with the Arkansas Ethics Commission, pointing to Medical Marijuana Commissioner Travis Story's ties to one of the winning licensees, Osage Creek Cultivation. As a lawyer, Story had helped the owners of Osage Creek in previous business and land-use matters unrelated to medical marijuana. The commission dismissed the complaint, saying that licensing medical marijuana businesses did not qualify as a "procurement matter" [under state ethics laws](#).

Story's ties to state Sen. Bob Ballinger, who is a partner at his law firm, [raised eyebrows for the various campaign contributions Ballinger received](#) from medical marijuana hopefuls.

Story has [denied any allegations of bias](#) or impropriety during the licensing process.

AD

Other legal challenges were also filed by those who didn't secure licenses, including by Griggs' team. Those lawsuits alleged that the regulators violated their own rules during the licensing process, and that the licenses were [awarded in an "arbitrary and capricious" manner](#). None of them prevailed in court except one: Abraham Carpenter, a farmer in Grady, Ark., who also grows produce and hemp. Carpenter Farms was the only 100 percent Black-owned applicant. Despite the application's high score, it was disqualified based on a "scriveners' error," a minor inconsistency in two parts of his application, despite the fact that one of the winning applicants had the same error.

During a commission hearing in June, Carpenter explained how he had taken his grievances to the attorney general's office, the commission, and even the governor's office. Everyone told him his only remedy is through the courts.

"We'll, we've been all the way to the Supreme Court and we prevailed," he said. "We are yet to be treated fairly."

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The licensed cultivators "want to fix prices at high levels," said Billy Murphy, the Baltimore civil rights attorney who represented Carpenter in the case. "We belong at the table. We've earned it with our blood, sweat, tears, our prison sentences."

The state Supreme Court ruled that the commission violated equal protection, amounting to racial discrimination. The regulatory agency "differentiates among individuals (the 100 percent minority-owned applicants and everyone else)," the court wrote.

Carpenter eventually got a license, but another lawsuit from existing growers [is trying to stop newer licensees](#).

License caps similarly befell Missouri's medical marijuana program earlier this year after regulators decided to cap the number of licenses to the minimum required under the law. The limited licenses and perceived scoring disparities led to more than 800 administrative appeals, law enforcement and legislative investigations, and a lawsuit challenging the license cap.

Even if there wasn't outright corruption, state Sen. Peter Merideth told POLITICO earlier this year that [even the appearance of corruption was problematic](#). A [legislative report](#) penned by a lawyer for the state Democratic caucus cited "credible allegations" of executive branch interference with the corruption investigation. But the Republican-led investigation fizzled out, and it's unclear whether the Special Committee on Government Oversight will pick it up next session.

AD

"Where there's money, there's people in powerful positions able to steer contracts or granting of licenses in one direction," Kenneth Warren, a political science professor at Saint Louis University, said of the conflict-of-interest allegations. He cited an "endless" list of groups involved in the medical marijuana program that are connected to the Parson administration.

While Arkansas' marijuana regulators scored the applications themselves, Missouri regulators hired a third party. In both cases, detractors pointed to scoring irregularities and questioned how "blind" the process really was.

A major sticking point in Missouri's licensing process was the late addition of "bonus points" for locating businesses in certain ZIP codes after many applicants had already secured real estate for their businesses.

During a trial over the state's medical marijuana program, the top cannabis regulator testified under oath that the FBI subpoenaed the agency for information involving four medical marijuana license applicants. The subpoena

was likely tied to an FBI investigation into utility contracts in Independence, [the Missouri Independent reported](#). The judge in the trial ultimately tossed the case.

"Because the state is delegating exactly who is in control, who is doing the review process of the licenses, who approves them, who creates the applications, etc. it's a breeding ground for corruption," Nourafchan said.

The cannabis industry is "particularly vulnerable to lacking a set of safeguards or regularity that might hedge against corruption in other areas," said Berman, the Ohio State law professor. Even with other vice industries like alcohol or gambling, policymakers have been working on regulating those industries for decades. "In the cannabis space, we're almost literally making it up as we go. No history, no background, no norms," he said.

States that have largely avoided corruption controversies either do not have license caps — like Colorado or Oklahoma — or dole out a limited number of licenses through a lottery rather than scoring the applicants by merit — like Arizona. Many entrepreneurs, particularly those who lost out on license applications, believe the government shouldn't be in the business of picking winners and losers and should just let the free market do its job.

"It was far more political than I had ever anticipated," said Barnes Griggs of her application experience. "People were encouraged to apply, but you didn't stand a chance. It was already rigged."

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the review

May / June 2020

the official magazine of the  michigan municipal league



MARIJUANA

MAKING THE RIGHT CHOICE
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the review

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Morenci Mayor Sean Seger and City Administrator/Clerk Michael Sessions tour a retail marijuana facility in their city.

Photo by David Green of the *State Line Observer*



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the review

The official magazine of the Michigan Municipal League

Volume 93, Number 3

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We Live in Rapidly Changing Times

It has now been several weeks since the unprecedented crisis of a pandemic completely upended our everyday lives. This will certainly be one of those defining world events where the new norms will comprise of changed attitudes and behaviors. As you know, in response to Governor Whitmer's recommendations as well as the Michigan Department of Health and Human Services, the League made the decision to cancel or postpone several events. However, we considered it critical to remain open for business. Fortunately, through several communication platforms, we have been able to stay in close touch with our members. This has been new territory for everyone, but rest assured that we will continue to monitor the situation closely for as long as it takes in order to maintain the health and safety of our members and staff. We have great appreciation for you as front-line leaders of our communities, as you make impactful decisions every day. We will get through this together.

Another challenge that communities are facing relates to the legalization of recreational marijuana. In 2018, Michigan voters made recreational marijuana legal under the Michigan Regulation and Taxation of Marijuana Act (MRTMA). This now brings the total number of states that have legalized recreational marijuana, including the District of Columbia, to 11.

It has now been a year and a half since the law was enacted, but there are still important concerns to address. In this issue, Kalamazoo City Attorney Clyde Robinson—the League's 2019 Outstanding Service Award recipient—will discuss the particulars of the new law in Michigan, including a focus on social equity as it relates to marijuana

businesses. Also, several communities weigh in on their decision-making around the usage of marijuana. Other relevant topics will be addressed as well.

There is no question that the economic benefits are real, but the social challenges and a potentially polarized citizenry need to be considered. Hopefully, we will provide the information you need and discussion points to consider moving forward. Unlike the medical marijuana regulations, which allowed communities to take a "wait and see" position by doing nothing to opt out, recreational marijuana requires a more proactive decision whether to allow or prohibit state-licensed recreational marijuana establishments. To date, almost a thousand cities, villages, and townships have opted out of recreational marijuana sales for a variety of reasons but can opt back in at a later time if they so choose.

In addition to what you will read here, we have an abundance of resources you can tap into on our website. We have posted podcasts, webinars, sample ordinances, and informational sheets. Please check them out. And don't forget that League staff is always available to discuss directly with you, as well.

A final note—I want to give a big shout-out to the League's Risk Management Services team, led by Director Michael Forster. I am proud to have such an outstanding group of individuals who work in partnership with our insurance members to provide the assistance they need to improve safety and reduce risks in their communities. As a result of all this hard work, the League's Workers' Compensation Fund and the Liability and Property Pool funds—almost a thousand cities, villages, counties, townships, and other public entities—will share dividends totaling over \$15.5 million in 2020. Great work, everyone!



Daniel P. Gilmartin
League Executive Director and CEO
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A worker at Morenci Brothers Holding Company in the industrial park tends to young cannabis plants.



Coleman LaBarr (right), store manager of Michigan Supply & Provisions cannabis dispensary in Morenci, talks to City Administrator/Clerk Michael Sessions (left) and Morenci Mayor Sean Seger during a tour of the store.

MARIJUANA: BUSINESS

By Kim Cekola

Morenci was approached with an offer to buy two parcels in its empty industrial park—by prospective medical marijuana businesses. The offer was too good to pass up. It started Morenci on its journey to becoming one of the few cities in Michigan with operating recreational marijuana businesses.

Southern Municipalities

Is Michigan benefiting from the lack of recreational marijuana in Indiana and Ohio? There are eight other cities and villages south of I-94 (the interstate that runs between Chicago and Detroit) authorizing adult-use marijuana: Adrian, Buchanan, Decatur, Niles, Quincy, Reading, Petersburg, and Sturgis. For most, their location didn't factor into their decision. According to Petersburg Mayor James Holeman, there was minimal opposition in his city. There was a lot of uproar over



Out of the nursery and planted in growing cubes, young plants will soon be moved into a flower room where they will eventually develop buds—the flowering part of the cannabis plant.



Clones are placed in color-coded collars that indicate the strain of marijuana growing.

medical marijuana, but by the time recreational came along, there were only a few citizens at the public hearing on the subject. The city was approached by investors—its location was not a factor. “The public approval (election result) was obvious and tax revenue is the goal,” said Holeman.

In Adrian, City Manager Nathan Burd reported, “We held a public hearing, and since Proposal 1 passed by a decent margin in Adrian, many residents seemed to expect that the city would remain opted in.” Location was not a part of the decision-making in Adrian, either.

However, in Decatur the situation is different. “We see a lot of out-of-state visitors in the summer. So, it stands to reason that some of those people could be customers of those facilities,” said Village Manager Matthew Newton. “In conjunction, we felt that being close to the border could offer our community a chance to increase tourism from neighboring states, similar to what we have seen with Colorado. With the lake (Lake of the Woods) as a great asset here, it's possible a bed-and-breakfast or other types of establishments could spring up around the industry.”



These businesses are not here to make a fast buck; they are trying to help the community and be good neighbors. It's good to see — we weren't necessarily looking for that.



NOT MORALITY



MARIJUANA FINANCIALS – MORENCI

Medical Marihuana License Fee Revenue

Fiscal Year 2019–20 (to date):	\$140,000
(adult use \$40,000; medical \$100,000)	
Fiscal Year 2018–19:	\$60,000
Fiscal Year 2017–18:	\$80,000
Total:	\$280,000

Tax Revenue Generated

2020 Operating Tax Revenue:	\$48,096
2019 Operating Tax Revenue:	\$11,767
2018 Operating Tax Revenue:	\$1,747
Total:	\$61,611

Property Sales

Fiscal Year 2019–20	\$26,673
Fiscal Year 2018–19:	\$144,505
Fiscal Year 2017–18:	\$198,340
Total:	\$369,352

Utility Sales

FY 2019–20:	\$2,527
(Growing and Processing Centers Only)	

Morenci's Journey Michigan Medical Marihuana Act of 2008 (MMMA)

There were a lot of backyard growers in Morenci, and their neighbors were not pleased with the odor. In 2016, city council appointed the Exploratory Committee of Concerned Citizens to Protect the Rights of Patients and Non-Patients of Medical Marihuana. The committee crafted language that protected individuals with the legal right to grow under the Act, while also protecting nearby property owners by making it an ordinance violation to emit noise, smells, and/or other environmental issues when growing.

Medical Marihuana Facilities Licensing Act of 2016 (MMFLA)

A public presentation in Morenci by MSU-Extension in April 2017 attracted 60-70 attendees. By June, the city had received two offers to purchase property in its industrial park. The committee created a citizen survey with only one question: "If any of these types of facilities were allowed in the city, would you be interested in being employed by one of them?" According to City Administrator/Clerk Michael Sessions, that is when public sentiment turned. They received more replies than for any other city survey. The results showed overwhelming support for development: 60 percent yes, 30 percent no, 10 percent not sure/need more info. By the time the results came in, city council was prepared to allow medical marijuana businesses. Mayor Sean Seger states that they were past stigma and stereotypes. The mayor himself had done a turn-around. They passed an ordinance in October 2017.

Regarding the villages opt-in decision, Newton continued: "After the ordinances opting in were passed, Decatur had a small minority of residents express some displeasure on social media and a time or two in public comments. Now that the initial shock of legalization has passed, most seem to think that the jobs created will be a big benefit and agree that the economic impact could be substantial for our community down the line. In fact, many local business owners and residents have made it a point to tell me so."

Michigan Regulation and Taxation of Marijuana Act of 2018 (MRTMA)

By the time recreational marijuana talk came to Morenci, medical marijuana had been in place for two years. The small city is blessed with a great local paper, the *State Line Observer*. Both the mayor and manager remarked on its quality. When the editor outed himself as a medical marijuana user, it caused a ripple effect. Others came forward as users, too. And they wanted to buy marijuana in Morenci, not drive to Ann Arbor. The city held a public hearing in November 2018. There were some residents who were opposed—they thought the city would turn into a live action *Reefer Madness*. City officials did not want that, either. The mayor was intent on focusing on the business aspect and not the morality side.

The time for discussing the morality of marijuana was reserved for whether it should be legalized. After that, the point was moot. When asked about Facebook, Mayor Seger said they didn't use it. He feels it would have derailed the process. He didn't want one side being nasty to the other. The city wanted to proceed in a controlled environment, with civil discourse. Council passed an ordinance in October 2019. The first customer through the door was an older gentleman in a wheelchair.

When asked how the city decided on the number of each type of establishment to allow, Sessions said they mimicked what was in the medical ordinance. They allowed what was possible in the confines of the city (five retail businesses) with distancing and available properties—all other types of establishments are unlimited. Morenci now has three operating retail businesses, and seven to eight other businesses in development. A large amount of capital has come into the community. Business owners didn't need bank loans—they came in and started spending money. Sessions stressed that "These businesses are not here to make a fast buck; they are trying to help the community and be good neighbors. It's good to see—we weren't necessarily looking for that."

Although Morenci decided against onsite consumption establishments, the idea of such businesses has come up in planning commission and DDA meetings. The city now has a booming marijuana industry, but the downtown is suffering. Sessions' opinion is if it will bring in revenue, they should do it. Mayor Seger is less inclined to allow onsite consumption establishments. The city already has issues with odor. They say they will have to find a happy medium.

Advice to Municipalities

Morenci's experience has been interesting. "It's not that scary," said Sessions. "You'll find that people going into marijuana facilities are the same as those buying liquor at the liquor store. And the stores are nice. There are trustworthy people working there. The businesses are providing a supplemental income for employees."

In Decatur, a simple application process proved to be essential. "Don't overreach and require a lot of documentation in your application that might be redundant," said Newton, "We did, and realized several issues: many of our elected officials and staff didn't have the expertise to judge the completeness of a facility plan, crisis response plan, etc. So, we simplified our application; our focus now is on parcel location and zoning elements. Our view is simple—if MRA issues a license, they met the state requirements; all we need to focus on is then ensuring the facility operates in the manner we permit."

In the words of Mayor Seger: Think about business, not morality. 

Kim Cekola is a research specialist/editor for the League. You may reach her at 734.669.6321 or kcekola@mml.org.

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SPLIT DECISION

Medical – YES

Recreational – NO



By Ken Hibl

The legislation, Senate Bill 431, was clearly written—and is being promoted by a veritable army of hired guns—to crush the will of local residents in a single sleepy community in rural Lapeer County. But the outcome of this legislative battle will be felt across the state.

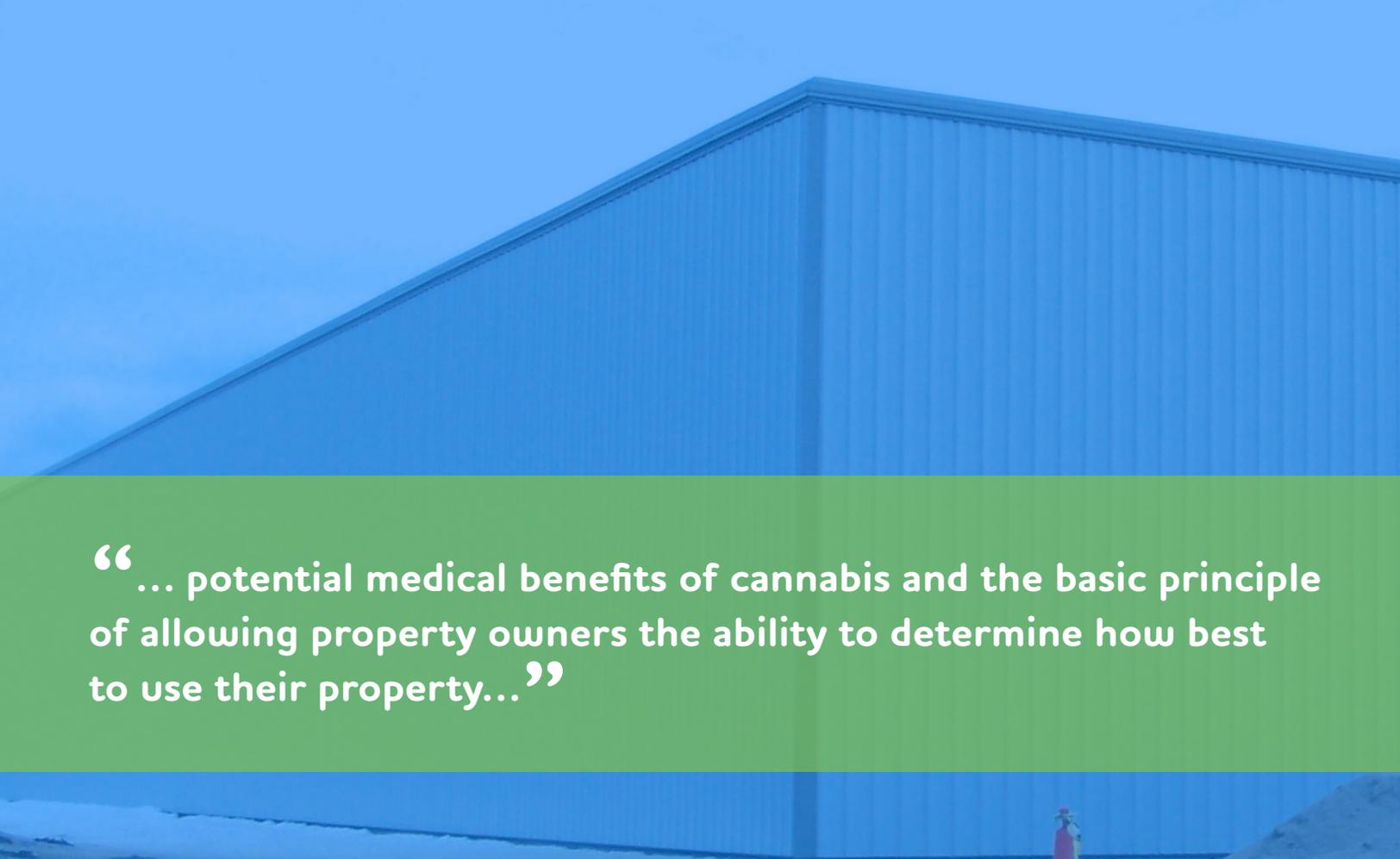
The City of Clare's current positions on medical and recreational marijuana are somewhat unique. In 2011, the city decided to opt-in on the topic of medical marijuana. Seven years later, after the majority of Michigan's electorate supported the legalization of recreational marijuana in the state, Clare chose to opt-out on recreational marijuana.

The decisions made by Clare's city commission followed a lengthy process. It began in 2010 with the city commission's task to its planning commission to conduct a detailed study and make appropriate recommendations to the city commission on whether to allow commercial medical marijuana activities in Clare. The city commission initially passed a three-month moratorium followed by two moratorium extensions. This precluded the receipt and processing of any special permit applications for medical marijuana facilities in Clare while the planning commission completed its research and due diligence before making its recommendations to the city commission.

During the period of the city commission-imposed moratoriums, the planning commission tried to become well-informed about medical marijuana. They read numerous case studies; sought the advice and counsel of its city attorney; held lengthy internal discussions; listened to expert speakers on the topic; attended numerous seminars; and held multiple public hearings in jam-packed rooms, listening to testimonials from proponents of medical marijuana and opposition opinions professing the adverse impact of allowing the introduction of commercial medical marijuana activities in Clare.

Medical Marijuana Gets a Thumbs Up

In December 2010, the planning commission unanimously recommended that the city commission amend its zoning ordinances to allow commercial medical marijuana. The primary reasons for its recommendation were the potential medical benefits of cannabis and the basic principle of allowing property owners the ability to determine how best to use their property within the parameters and guidelines of the city's zoning codes. The city commission unanimously accepted and adopted the planning commission's recommendations in March 2011, thereby allowing medical marijuana facilities within the industrial-zoned districts of the city.



“... potential medical benefits of cannabis and the basic principle of allowing property owners the ability to determine how best to use their property...”

“I believe that research has shown the benefits of medical marijuana to those in need,” said Nick Loomis, planning commissioner and assistant library/information technology director for Pere Marquette District Library, “If its allowance in the City of Clare can help those citizens then it can only serve to benefit our community.”

Since the city commission’s 2011 decision, the city’s ordinance codes have been amended on four separate occasions with respect to medical marijuana. The amendments further defined the process for application for special use permits for medical marijuana licensing; further restricted and isolated the geographical area within the city where medical marijuana facilities are allowed; and restricted the number of allowed medical marijuana provisioning centers/retail outlets to only two. There are presently no city restrictions on any of the other categories of medical marijuana licensing except retail sales.

Building Construction is Underway

To date, the city has issued six special use permits for grow and processing facilities and two special use permits for retail sales. New construction is in progress for one of the grow and process facilities as well as one of the retail

outlets. Internal building construction is in progress on three other existing industrial buildings to accommodate medical marijuana growing, processing, and retail sales. While special use permits have been issued, no actual commercial medical marijuana activities have commenced. The city continues to receive frequent queries related to the start-up of additional commercial medical marijuana activities.

Recreational Marijuana Gets a Thumbs Down

Clare has decided to opt-out of allowing commercial recreational marijuana activities in the city. The planning commission and city commission simply followed the will of its electorate at the ballot box, wherein 51 percent of the city’s voters opposed recreational marijuana in the 2018 referendum on this topic.

“Many recreational marijuana studies show the possibility of it becoming a gateway drug,” said Loomis. “As the people have voted not to allow recreational marijuana, I would agree it’s not right for the City of Clare at this time.” 

Ken Hibel is the Clare city manager. You may contact him at 989.386.7541 ext. 102 or KHibel@cityofclare.org.



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MARIJUANA ON THE BALLOT



“ The MRTMA’s initiative provision creates many potential issues for cities and villages. ”

Initiatives and Referendums of Marijuana Ordinances

By Laura J. Genovich

For the City of Mount Pleasant, the battle at the ballot box between competing marijuana ordinances began in the fall of 2019. Following a series of public work sessions, the city commission approved an ordinance under Michigan’s 2018 voter-initiated marijuana law, the Michigan Regulation and Taxation of Marihuana Act (MRTMA). The city’s ordinance would allow up to three adult-use (recreational) marijuana retailers, along with limited numbers of other establishments, contingent on zoning and special use approval.

Shortly before that, a citizen submitted a petition to initiate a marijuana ordinance that would allow five retailers and an unlimited number of marijuana growers, without any special use approval or establishment-specific zoning requirements. The initiated ordinance was placed on the November 2019 ballot.

Would voters approve the less restrictive initiated ordinance? What would happen to the city’s existing ordinance if the initiative passed? What if provisions in the initiative were incompatible with the city charter or other ordinances?

Initiatives and Referendums

Mount Pleasant was one of the first cities—but not the last—to encounter a marijuana ordinance initiative or referendum. (The concepts are distinct: an initiative proposes a new ordinance, while a referendum seeks to reject an ordinance already adopted by the municipality.)

The MRTMA permits electors to initiate a marijuana ordinance:

Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election.



MCL 333.27956. This means that if enough electors sign a petition, the municipality must place a proposed ordinance on the ballot at the next regular election—and that ordinance could allow or prohibit marijuana establishments, depending on the petition’s language.

When marijuana regulations take the form of zoning ordinance amendments, the referendum provisions of the Michigan Zoning Enabling Act, Act 110 of 2006 (MZEA) also come into play. The MZEA allows “a registered elector residing in the zoning jurisdiction” to file a notice of intent and then a petition requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in this zoning jurisdiction for their approval.” MCL 125.3402. Thus, if a city or village enacts zoning regulations for marijuana establishments, those regulations are subject to referendum under the MZEA.

Beyond those statutes, a city or village’s charter may include a process for initiatives and referendums. As of 2019, 250 cities and 24 villages provided for initiatives, referendums, or both in their home rule charters. The signature requirements in those charters may differ from the requirements of the MRTMA, as discussed below.

Case Studies

Several cities have already faced marijuana ordinance initiatives, including the following:

- City of Mount Pleasant
- Village of Vanderbilt
- City of Highland Park
- City of South Haven
- City of Allen Park
- City of Hudson
- City of Lincoln Park

Most initiatives to allow establishments have failed at the ballot box, even though a majority of Michiganders approved the MRTMA in the November 2018 election. Of the examples listed above, only voters in the City of Lincoln Park approved an initiative to allow establishments.

Most recently, on March 10 voters in the City of Ecorse approved an initiative to allow recreational marijuana establishments. The city had previously adopted an ordinance prohibiting the establishments. Meanwhile, voters in the City of Petoskey voted down a referendum of the city’s ordinance allowing medical marijuana facilities, meaning that the facilities will be able to operate, and approved a measure that would allow voters (not the city) to determine whether recreational establishments should be permitted in the future.

Issues & Challenges

The MRTMA’s initiative provision creates many potential issues for cities and villages. Given the short time that the MRTMA has been in effect, the courts have not published decisions interpreting its initiative provision, so some of these questions do not yet have clear answers.

1. What happens if the initiated ordinance passes and the city or village has adopted an ordinance? The MRTMA allows a municipality to “completely prohibit or limit the number of marijuana establishments within its boundaries,” while also allowing electors to initiate an ordinance. The MRTMA does not say what happens if both ordinances are approved. Some argue that the initiated ordinance supersedes a municipality’s ordinance, but the courts have not yet addressed this issue.
2. What if the initiated ordinance conflicts with the charter or other ordinances? Because an initiated ordinance is drafted by electors, it could include provisions inconsistent with the city or village’s charter or ordinances. This could put the city or village in the position of having to seek a court order determining the enforceability of such provisions if the initiative is approved. (Lawsuits to challenge the substance of initiatives before the election have been rejected as premature.)

3. What can a city or village say about a proposed initiative before the election? The Michigan Campaign Finance Act prohibits public bodies from using funds or other public resources to promote a ballot question (such as an initiative), but a public body may disseminate “factual information concerning issues relevant to the function of the public body.” This means cities and villages can provide factual information about the content of an initiative, but they must avoid providing opinions or persuasive statements about whether the initiative should be approved.
4. What if the charter requires more signatures than the MRTMA? Generally, a state statute can preempt a local charter if the charter directly conflicts with the state law or if the state law completely occupies the regulatory field. Thus, if a charter requires signatures

of more than 5 percent of the electors for an initiative, it may be preempted by the MRTMA, which only requires 5 percent. Cities and villages should consult with legal counsel when dealing with conflicting provisions.

In Mount Pleasant, the voters ultimately turned down the initiated marijuana ordinance, so the city was able to move forward with the ordinance approved by the city commission. But undoubtedly, more ordinances will be initiated around the state, and more cities and villages will be faced with the novel issues discussed above. 

Laura J. Genovich is a shareholder at Foster Swift Collins & Smith P.C., where she practices municipal law and litigation, including helping dozens of municipal clients with marijuana ordinances. You may contact her at 616.726.2238 or lgenovich@fosterswift.com.



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FIRE AND LIFE SAFETY IN MICHIGAN'S MARIJUANA FACILITIES

By Adam A. Dailide



With so many stories, articles, websites, podcasts, presentations, and online “experts” on the topic of marijuana, reliable information is critical. It’s important to educate Michiganders on the marijuana facilities that may be coming to their community, particularly the fire and life safety aspects.

With the passage of the Medical Marijuana Facilities Licensing Act (MMFLA) and the Michigan Regulation and Taxation of Marijuana Act (MRTMA), the Bureau of Fire Services (BFS) was named as one Authority Having Jurisdiction (AHJ) for marijuana facilities in Michigan. The other initial AHJs are the Marijuana Regulatory Agency (MRA) and the local jurisdiction (delegation of power as per each jurisdiction has been designated). The “Fire Code”—NFPA 1, 2018—and its reference codes were adopted by reference as part of those rules.

The marijuana industry is a moving target. Innovation is constantly improving, and methods are frequently changing and adjusting. These facilities are not simple tomato greenhouses, they are highly technical, evolving plant nurseries, which are tracked from seed to sale.

Industrial Occupancy

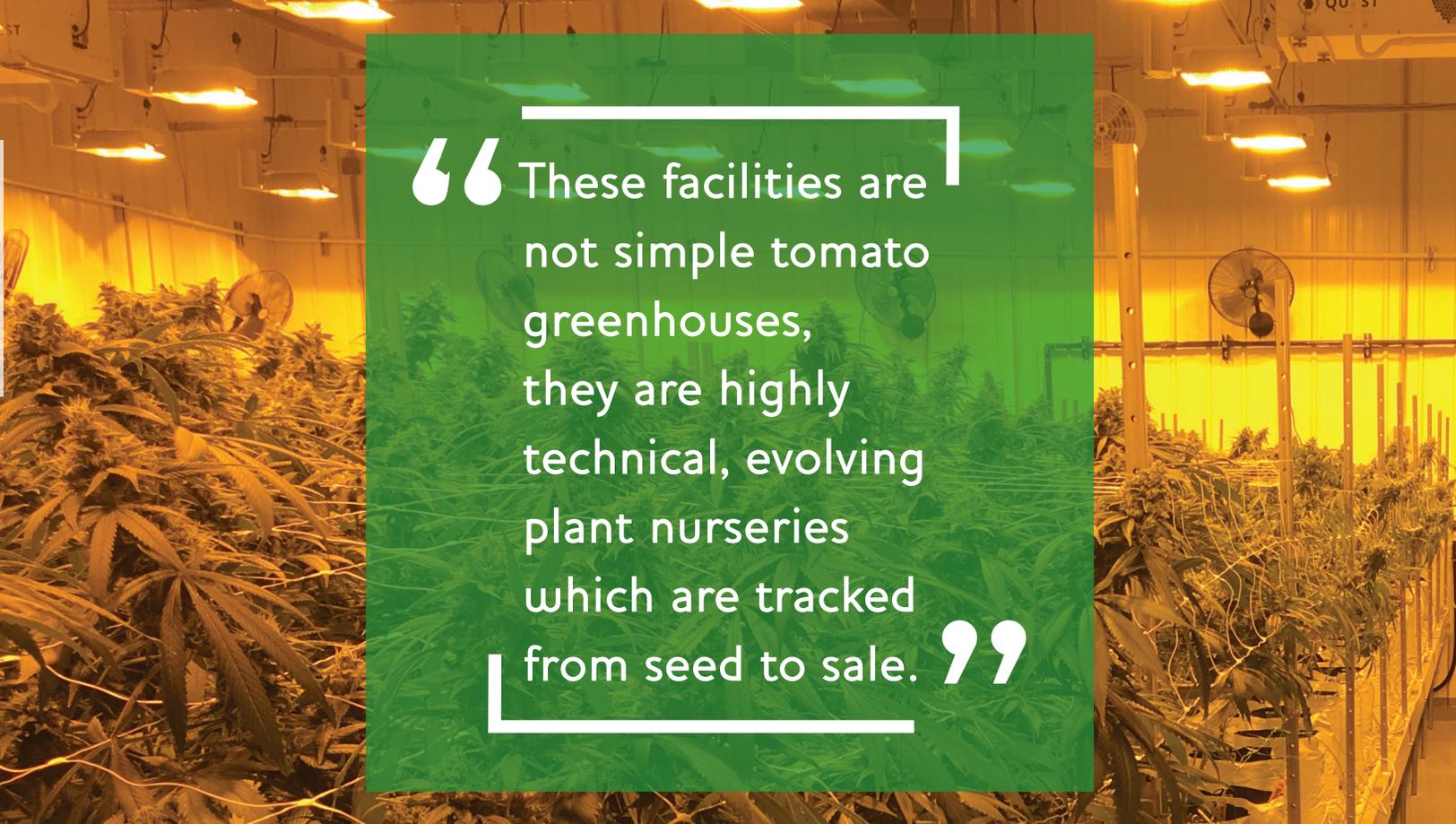
The Bureau of Fire Services looks specifically at the fire and life safety issues with these facilities and their operation. These facilities have uses and methods that are specific to

marijuana growing and processing. NFPA 1, 2018, Chapter 38, specifically addresses marijuana facilities. Within this “Fire Code,” the occupancy of Grow and Processor facilities falls under the industrial category. More specifically, for a Processor with an Extraction Room, the occupancy is Industrial Special Purpose for that specific room. Local municipalities should study these occupancies within their own local ordinances.

The BFS does plan review on several types of licensed facilities: Grow, Processor, Consumption Establishments, and Microbusinesses. In addition, our field staff does the follow-up inspection on the plan review facilities as well as inspection of Secure Transporters, Provisioning Centers, Adult-Use Retailers, and Safety Compliance Facilities.

Potential Concerns

Grow facilities cultivate plants from seed or cloning from a Mother plant in an industrial manner, with hopes of harvesting a plant multiple times a year to maximize yield. A methodical approach is taken, and great care is given to each plant. Windows and doors are kept to a minimum for security and contamination protection. Water and light are abundant, as are fire and life safety concerns. Since 2018, our review of the construction plans and specifications have uncovered some prevalent issues, including common path of travel, aisle width, sprinkler systems, and processor requirements.



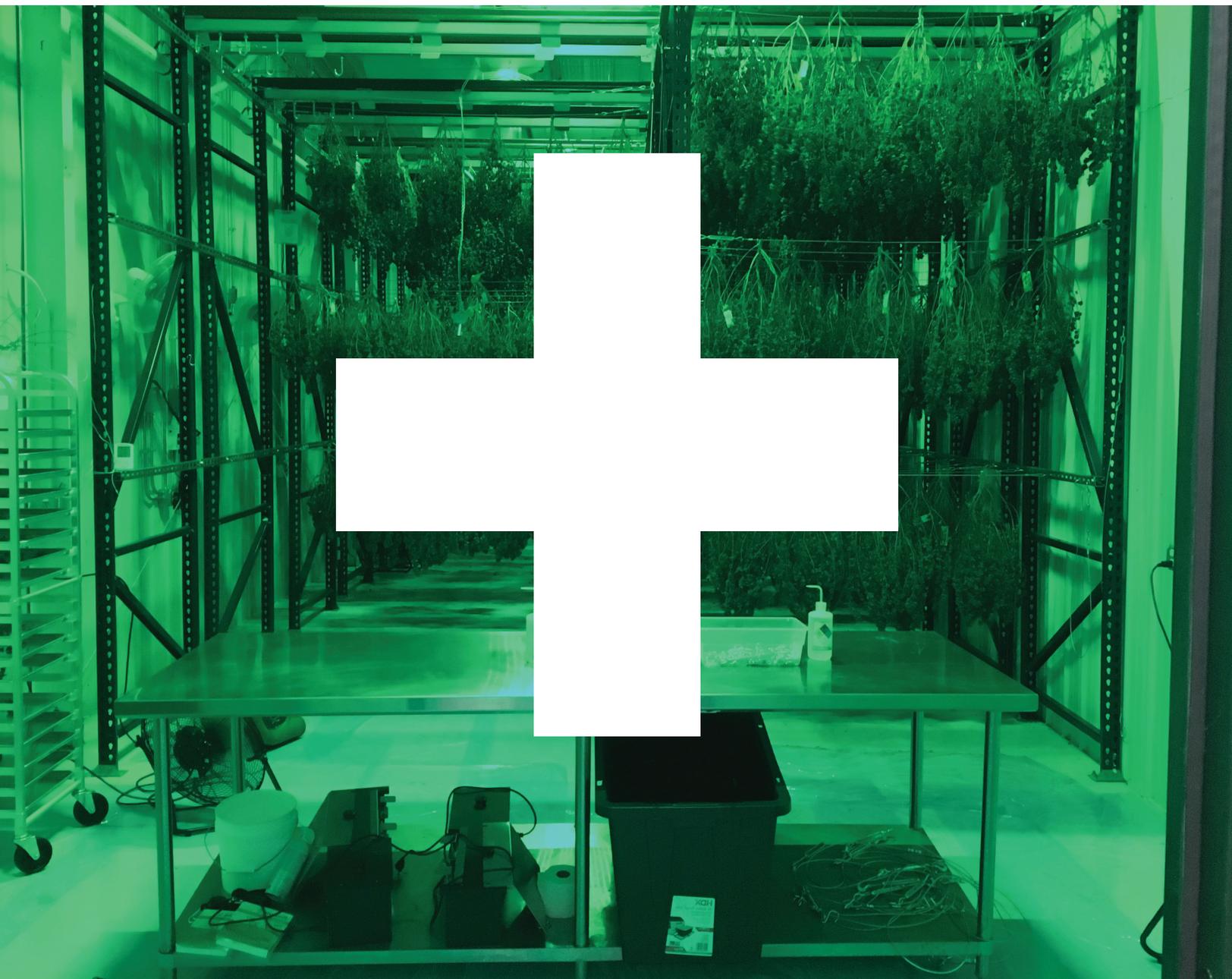
“These facilities are not simple tomato greenhouses, they are highly technical, evolving plant nurseries which are tracked from seed to sale.”

- **Common Path of Travel**—In an Industrial Grow or Processor Facility without sprinklers, the common path of travel is limited to 50 feet. The distance is measured from furthest point in one direction, along the walking path to a point at which the occupant has a choice of two paths of travel to remote exits. This distance is doubled in a sprinklered industrial facility. With the tables, racks, and/or arrangement of grow rooms, this distance becomes a critical point of fire and life safety. An occupant needs to have the ability to exit the facility in a timely and safe manner in the case of an emergency.
- **Aisle Width**—In a windowless Grow room, aisle width becomes an issue that needs to be addressed. Facilities want to pack as many plants in their grow rooms as possible. With the immense growth of the plants, having a clear aisle width and means of egress is critical. In an existing industrial facility, 28” clear width is considered the minimum. In a new industrial facility, the minimum width should be 36”. The clear width, measured at the narrowest point, is important to ensure that a means of egress is accessible for an occupant or emergency responder.
- **Sprinkler Systems**—Sprinkler systems become a potential sticking point for these facilities. In new industrial facilities with three or more stories, greater than 12,000 square feet in fire area and/or greater than 24,000 square feet total of all areas in the building, a NFPA 13 compliant sprinkler system is required. There is an exception in the code to allow for “Low Hazard Industrial.” The Low Hazard designation is something that needs to be documented and studied, as well as approved by BFS. MRA and BFS have decided upon the following qualifying statement for a Low Hazard Industrial facility:
 - **A Non-Electrified Hoop/Greenhouse**—If the hoop/greenhouse has pots or pallets, then the grow is not low hazard; the plants will need to be planted in the dirt. As per MRA rules, this low hazard hoop/greenhouse would be our equivalent of an “outdoor grow” which would require a contiguous building to do the drying/trimming/etc. and other outdoor rule requirements. That building would require a Certificate of Occupancy and must pass the BFS inspection.

- **Processor Requirements**—The highest hazard for fire and life safety comes in the Processor facilities. Extraction of marijuana occurs in these buildings, using solvents such as liquified petroleum gas, alcohol, carbon dioxide, or sometimes just cold water and pressure. These conditions may result in explosion hazards, vapor hazards, or HazMat issues including storage and maximum allowable quantities (MAQ). Each type of extraction has its own requirements that include items like exhaust systems, electrical systems, fire suppression, non-combustible construction, certification, labels/listing, staff training, and/or configuration. These items are very detailed and are based on Chapter 38 of NFPA 1.

The Marijuana Unit of the BFS is available to help your municipality. We can supply you with resources so that your community can make informed decisions on what is required in these facilities to ensure proper fire and life safety. You can also visit our website at www.michigan.gov/bfs 

Adam A. Dailide is a consultant for the Marijuana Unit of the Michigan Bureau of Fire Services. You may contact him at 517.335.4057 or DailideA@michigan.gov.



LEGALIZED MARIJUANA

WHAT IT MEANS FOR PUBLIC EMPLOYERS

By Steven P. Joppich

As most readers of *The Review* are aware, the 2008 Michigan Medical Marihuana Act (MMMA) and the 2018 Michigan Regulation and Taxation of Marihuana Act (MRTMA) are widely recognized as legalizing the use and possession of certain amounts of marijuana. In the wake of these laws is a long list of challenging public policy and legal issues for local governments across the state. Not least among them are issues related to municipal employees who engage in the now legal use and possession of marijuana for medical or recreational purposes. This article is an effort to identify and briefly touch upon some of the more significant workplace laws, questions, and scenarios that might confront municipal employers and employees in this new age of legalized marijuana.

Specific Employer-Employee Provisions in the MMMA & MRTMA

Both the MMMA and the MRTMA have provisions that specifically address some of the employer-employee related questions and issues that will inevitably arise in municipalities. For instance, the MMMA does not require “an employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.” And under the MRTMA, persons who are under the age of 21 are not allowed to use or possess marihuana at any time, including public employees under 21. Additionally, the MRTMA contains a number of other specific provisions related to employer-employee matters.

- Does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer’s property
- Does not prohibit an employer from disciplining an employee for violation of a workplace drug policy
- Does not prohibit an employer from disciplining an employee... for working while under the influence of marihuana
- Does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person... because of that person’s violation of a workplace drug policy or because that person was working while under the influence of marihuana

Applicability of Other State and Federal Laws

What public employees do outside of work may be open to debate. For example: Must an employer forgive an employee’s legal use of marijuana in private and outside of work? What if an employee operates heavy machinery or drives for work? What if an employee fails a drug test? Must an employer accommodate an employee’s use of medical marijuana for a medical condition?

Although the MMMA, and to some extent the MRTMA, do not clearly answer these questions, there are some federal and other state laws and court decisions that provide some guidance. Before examining those laws, however, it should

be recognized that the MMMA and MRTMA do not and cannot alter federal law. Accordingly, just as federal laws prohibiting the possession and use of marijuana are still effective despite Michigan's legalization laws, so too are the Drug-Free Workplace Act and the Department of Transportation regulations implementing the Omnibus Transportation Employee Testing Act. Also relevant are the federal Americans with Disabilities Act, federal Civil Rights Act and state Elliott-Larsen Civil Rights Act.

(a) DOT Regulations

According to U.S. Department of Transportation regulations, marijuana use remains unacceptable for any safety-sensitive employee who is subject to drug testing. That includes public employees who need a commercial driver's license as a condition of their employment (an example would be certain DPW employees). These employees are still required to comply with all USDOT regulations, prohibited from using marijuana, and subject to DOT's policies and procedures on drug-testing.

(b) Drug-Free Workplace Act

The Drug-Free Workplace Act enables municipal employers (and others) to adopt drug-free workplace policies that articulate the requirements and expectations of employees regarding the use of or impairment from marijuana while at work. This federal law is relevant to public employers because it requires some federal grantees to maintain a drug-free workplace as a precondition of receiving certain grants from a federal agency.

(c) Americans with Disabilities Act

The ADA does not require an employer to permit medical marijuana use as a reasonable accommodation.

(d) Title VII and ELCRA

Marijuana users are not a protected class under either Title VII of the federal Civil Rights Act of 1964 or under Michigan's Elliott-Larsen Civil Rights Act.

Applicable Case Law

There are a few cases worth mentioning that are related to employment issues involving the medical use of marijuana. The leading case is *Casias v. Wal-Mart Stores, Inc.*, in which the federal court determined that a private employer could discharge an employee who tested positive for marijuana during a standard drug test even though he was not under the influence while at work, was a properly registered medical marijuana patient, and had only used medical marijuana outside of work hours. Although this case involved a private employer, there is little reason to believe public employers should be treated differently.

In 2014, the Michigan Court of Appeals decided the case of *Braska v. Challenge Manufacturing Co.*, which involved three plaintiffs who made claims for unemployment compensation after being discharged from their jobs for failing a drug test as a result of using medical marijuana with a valid card. The court determined that under the terms of the MMMA, employees discharged solely on the basis of a positive drug test for marijuana were not disqualified from receiving unemployment benefits.

Lastly, in the 2019 case of *Eplee v. City of Lansing*, the Michigan Court of Appeals upheld the city's decision to rescind a conditional offer of employment to the plaintiff after she tested positive for marijuana during a drug screen that was a part of the hiring process. Here, again, the plaintiff was a medical marijuana patient who had lawfully used marijuana outside of work.

What can we learn from these cases?

For now, it seems that Michigan employers may terminate or otherwise discipline employees who do not pass an otherwise authorized drug test and can choose not to hire applicants who fail a pre-employment marijuana screening, even if they have a medical marijuana card. However, we can also gather that the law in this area is still evolving.



What should public employers do?

Below is a non-exclusive short list of steps employers should take now to strive to be compliant with these laws and protect against the risk of liability.

- (a) **Review Policies:** None of the court cases discussed earlier involved situations in which the employee had a contract or a just cause termination provision written into a collective bargaining agreement or personnel policy. Such circumstances might cause the courts, in future cases, to make different decisions. Accordingly, human resources manuals, policies, regulations, operating procedures, and work rules should be carefully reviewed in light of the MMMA and MRTMA. Do you have a substance use policy in place? If so, they often contain references specifically to “marijuana” use, so public employers may want to consider revising such policies to more broadly refer to “illegal drugs” or “illegal substances” for certain employee positions. It is also important to focus on prohibiting employees from being impaired while working, and you may want to consider adding marijuana to your no-smoking policy. Lastly, if you do not currently have one, consider adopting a Drug-Free Workplace Policy.
- (b) **Review Collective Bargaining Agreements (CBAs):** Consider whether there are provisions in the CBAs that may provide additional protections to employees with respect to the use or possession of marijuana on or off the job. This comes into play in a variety of ways, but it is particularly significant with respect to employee discipline.
- (c) **Review Job Descriptions:** Consider updating job descriptions for safety-sensitive positions to include a “no drug” policy. Elements of a drug-free workplace may also come into play with respect to the content of job descriptions.
- (d) **Review Drug Testing Policy:** If your organization has one, it should be reviewed in light of the new laws legalizing marijuana.
- (d) **Train Managers and Supervisors:** Make sure they know and understand applicable employment policies and how to recognize and respond to employees who appear under the influence.
- (e) **Consult Legal:** This is an evolving area of law, so it is important to obtain the advice of a municipal attorney, who can help you create and maintain policies and procedures that are compliant with the laws and a proper fit for your organization. 

Steven P. Joppich is an attorney and shareholder with Rosati, Schultz, Joppich & Amtsbuechler, P.C., a municipal law firm. You may contact him at 248.489.4100 or sjoppich@rsjalaw.com.

“...a long list of challenging public policy and legal issues for local governments... Not least among them are issues related to municipal employees who engage in the now legal use and possession of marijuana...”



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IS MARIJUANA SOCIAL EQUITY A PIPE DREAM?

By Clyde J. Robinson

For many years, certain Michigan communities have been more likely to feel the sting of marijuana prosecution than others. In an effort to address that injustice, Section 8.1 (j) of the Michigan Regulation and Taxation of Marijuana Act (MRTMA), MCL 333.27958, requires the Marijuana Regulatory Agency (MRA) within the Michigan Department of Licensing & Regulatory Affairs to promote “a plan to promote and encourage participation in the marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition and enforcement and to positively impact those communities.” The language used by the statute adopted by Michigan voters in November 2018 raises several questions this article will explore.

Disproportionately Impacted Communities

According to a 2013 American Civil Liberties Union report, *The War on Marijuana in Black and White*, a review of arrests from 2001-2010 found that nationally, black individuals were 3.73 times more likely than whites to be arrested for possession of marijuana despite roughly the same degree of marijuana use by both groups. More specifically, in Michigan, black individuals were 3.3 times more likely than whites to be arrested for possession of marijuana. It is clear that African-American individuals and neighborhoods have been disproportionately impacted by the enforcement of marijuana laws. The question therefore becomes how can the State and local municipalities best fulfill the statutory mandate?

Impact of Michigan Constitution and Federal Fourteenth Amendment

Article 1, § 26 of the Michigan Constitution precludes the State or other governmental body from granting preferential treatment to an individual or group on the basis of race in the operation of public employment, education, and contracts. While the reach of this constitutional requirement does

not expressly extend to licensing, or the provision of other benefits, a municipality should nevertheless be cognizant of its existence. In 2007, the Michigan Attorney General issued opinion #7202 which determined that a City of Grand Rapids policy aimed in part at providing access and equal opportunity to disadvantaged business enterprises (DBE) to do business with the city violated Article 1, section 26 because the definition of a DBE created a rebuttable presumption that females and certain racial and ethnic minorities were disadvantaged. Although the Attorney General found the policy was prohibited by the Constitution, he also opined that a policy which employed race and sex neutral financial or economic factors would be acceptable.

Hence, it is incumbent upon municipalities implementing local policies seeking to promote and encourage people disproportionately impacted by marijuana enforcement to do so in a racially neutral manner. Even if the language of Article 1, § 26 is not applicable to licensing, any classification on the basis of race is inherently suspect and susceptible to challenge pursuant to the Equal Protection Clause of the 14th

Amendment. Any classification made on the basis of race is subject to evaluation using the “strict scrutiny test” articulated by the United States Supreme Court. This test requires any classification based on an inherently suspect category, such as race, must be narrowly tailored to further a compelling governmental interest. *Fisher v. Univ. of Texas*, 570 U.S. 297 (2013). In order to use a race-based remedy, there must be a demonstration that a nonracial approach will not produce the benefits being sought. In other words, while black residents have borne the brunt of marijuana enforcement efforts, other individuals have been impacted as well.

LARA’s Social Equity Plan

The way the Marijuana Regulatory Agency has implemented MRTMA

§ 8.1 (j) is twofold. First, Emergency Rule 7 (13) requires all adult-use marijuana license applicants to provide a social equity plan detailing how the applicant will comply with and carry out the mandate of the statutory provision. Second, the MRA identified 41 communities that it determined to have been disproportionately impacted by marijuana enforcement. The methodology the MRA used for doing so involved a survey of Michigan counties to determine those which had a higher than average number of marijuana-related convictions and communities within those counties where 30 percent or more of the population lived below the federal poverty level. Individuals (and businesses with 51 percent of its members) who can demonstrate residency within a qualifying community for the past five years will receive a 25-percent discount on all State adult-use marijuana application, licensure, and renewal fees, provided the business locates within a qualifying community. Potential licensees can further qualify for additional reductions of 25 percent by providing proof of a marijuana-related conviction (except for delivery to a minor) and 10 percent for being a registered medical marijuana primary caregiver for at least two years between 2008-2017.

The application of the State’s social equity plan has been questioned. Does it go far enough to reach those individuals impacted by the enforcement of marijuana laws? This is where it is possible for any community, whether identified as being disproportionately impacted or not, to supplement what the State already provides. In formulating a social equity program, a local community should be mindful to use a race neutral approach. This is not likely as difficult to do as it may seem at first blush.

Article 1, Section 26 of the Michigan Constitution is based on a nearly identical provision of the California Constitution. Therefore decisions by California courts interpreting that state’s constitutional language, while not binding on Michigan courts, can nevertheless provide persuasive guidance.

In *American Civil Rights Found. v. Berkeley School Dist.*, 172 Cal App 4th 207 (2009), a social diversity plan which used neighborhood demographics (income level, adult education attainment, and race) to assign students to elementary schools and high school programs was challenged. The California Court of Appeals upheld the school district’s program because all students living within a given residential area, regardless of their race, were treated equally. Therefore, a Michigan community can likely single out residents of identified

“... EFFORTS CAN BE MADE TO PROVIDE BENEFITS TO THOSE INDIVIDUALS WHO HAVE BEEN DISPROPORTIONATELY IMPACTED BY MARIJUANA ENFORCEMENT AND CREATE A POSITIVE IMPACT ON THE COMMUNITY.”

neighborhoods, based on zip code or census tracts, for preferential treatment as part of its local social equity program because all residents of the neighborhood, regardless of their race, are treated equally.

Local Social Equity Plans

The City of Ypsilanti has done exactly this in requiring adult-use businesses to use good faith efforts to hire 25 percent of their employees from designated zip codes. Additionally, Ypsilanti encourages the hiring of individuals who have a prior marijuana conviction. However, care must be taken by marijuana business licensees in hiring employees with criminal histories. MRA rules for both medical marijuana and adult use marijuana businesses require an employer to run a criminal history background check on potential employees. And, the MRA maintains a list of “excluded employees.”

Another approach is the one employed by the City of Flint. Qualifying social equity applicants are eligible to receive an administrative exception, without the need for a zoning variance, to locate closer than the otherwise required 300 feet from a residential district. Other distance exemptions exist for adult use marijuana license applicants willing to undertake a blight elimination plan or a park beautification plan near their establishment. Although the Flint ordinance does not specify neighborhoods eligible for these plans, a municipality could limit such exceptions to disproportionately impacted neighborhoods along the lines of the Ypsilanti approach.

Yet another approach is being used by the City of Muskegon. Their plan is consistent with the ACLU recommendation that marijuana-related revenues be used to assist in funding substance abuse prevention and health care. The Muskegon Social Equity Plan asks for a voluntary contribution of 0.5 percent of a marijuana licensee's annual profits and a commitment to offer market rate lease space to retail businesses. Additionally, the Muskegon program intends to focus on providing expungement clinics grants/loans, education on unsafe marijuana consumption and use prevention.

Kalamazoo is still in the planning stage for having an adult-use ordinance in place by June 1, 2020. The city has reached out to the community for its ideas. Suggestions have included making land and structures available at an affordable cost; implementing a mentorship program with licensed businesses; and creating a marijuana business incubator program for residents from identified disproportionately impacted neighborhoods within the city.

In any local social equity assistance program, the likely goal is to provide assistance to residents of the municipality which have been impacted by marijuana enforcement. As a result, a municipality may attempt to impose a condition of durational residency within the municipality to qualify for benefit eligibility. Again, some caution is advised. Although

a minimal residency qualification will not likely trigger a challenge, a significantly lengthy residency requirement could be an invitation to constitutional litigation based on violations of equal protection, privileges and immunities, and commerce clauses for discriminating against non-residents.

Another basis for providing social equity assistance is whether the applicant or a member of the applicant's family has a marijuana-related conviction. If using this basis, some thought should be given to a) the nature of the conviction, such as disqualifying convictions for felony trafficking or selling to minors; and b) where the conviction occurred, whether in the local area, Michigan, or out-of-state.

In summary, while there may exist some legal challenges to instituting a local social equity program, they are not insurmountable, and efforts can be made to provide benefits to those individuals who have been disproportionately impacted by marijuana enforcement and create a positive impact on the community. 

Clyde J. Robinson has practiced municipal law for nearly 40 years, serving as the city attorney for Battle Creek and Kalamazoo. He is a past chair of the Government Law Section of the State Bar and past president of the Michigan Association of Municipal Attorneys. You may contact him at 269.337.8185 or robinsonc@kalamazoo-city.org.



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How Legalizing Recreational Marijuana Impacts Home Values

By Luke Babich



This study originally appeared on the Clever Real Estate blog at listwithclever.com/real-estate-blog/marijuana-housing-market-study/.

Recreational marijuana legalization is a hot-button topic, and the debate is now entering the real estate industry. With more states legalizing recreational use, every home buyer needs to know how housing markets are affected by this cultural shift. Opponents of legalization stress increases in crime that lead to lower property values, while supporters highlight the potential economic benefits. We decided that doing a deep dive into the available Multiple Listing Service data and combining it with dispensary license data was the only way to settle the debate.

Three pivotal questions guided our research

1. How are home values impacted by legalizing recreational and medicinal marijuana on a city level?
2. How does marijuana legalization impact crime rates, and how do changes in crime impact home values?
3. How do retail dispensaries impact local home values?
4. Digging into Zillow's historical home price index, we can shed some light on these questions,

Key Insights

- Cities that allow retail dispensaries saw home values increase \$22,888 more than cities where marijuana is illegal from 2014 to 2019 (controlling for population and initial home values)
- CATO Institute research supports our findings, suggesting homes close in proximity to marijuana retail dispensaries increase in value
- For cities where only medicinal marijuana is legal, home values increased at a comparable rate to cities where marijuana is illegal; a statistically significant increase in home values could not be attributed to medicinal marijuana legalization
- States that legalize recreational cannabis see an immediate bump in home values following legalization, even without

retail dispensaries opening. From 2017 to 2019, cities where recreational marijuana is legal saw home values increase \$6,337 more than cities where marijuana is illegal (controlling for population, initial home values, and GDP).

Recreational Dispensaries Lead to Higher Local Home Values

Public concern around legalizing recreational marijuana usually focuses on elevated crime rates. Elevated crime rates lead to lower property values and poor real estate investments, so the narrative goes. In fact, 42 percent of Canadian's believe a cannabis dispensary will have a negative impact on local home values according to a 2018 study.

Our research reveals the opposite is true: On average, in states where recreational marijuana is legal, cities with retail dispensaries saw home values increase \$22,888 more than cities where marijuana is illegal from 2014 to 2019. Per a CATO Institute study, homes close to retail dispensaries (within 0.1 miles) increased in value approximately 8.4 percent compared to those further away. This effect appears to bring up the entire city's home values at a rate higher than the national average. Real estate agents can use this data to encourage home buyers that are scared off by retail dispensaries near their homes; based on the research, retail dispensaries don't impact home values like liquor stores.

Colorado's first retail dispensaries opened on January 1, 2014, and medical and recreational sales have generated over \$948,000,000 in tax revenue. Denver has 180 dispensaries, the most of any Colorado city, and its housing market has seen unprecedented growth since recreational legalization in 2012.

Since Denver retail dispensaries opened their doors in 2014, residential property values have increased 67.8 percent, the most significant growth in over two decades. Denver is a clear-cut example of dispensaries raising residential property values, but dispensaries have helped bring up property values all

“Cities that allow retail dispensaries saw home values increase \$22,888 more than cities where marijuana is illegal ...”

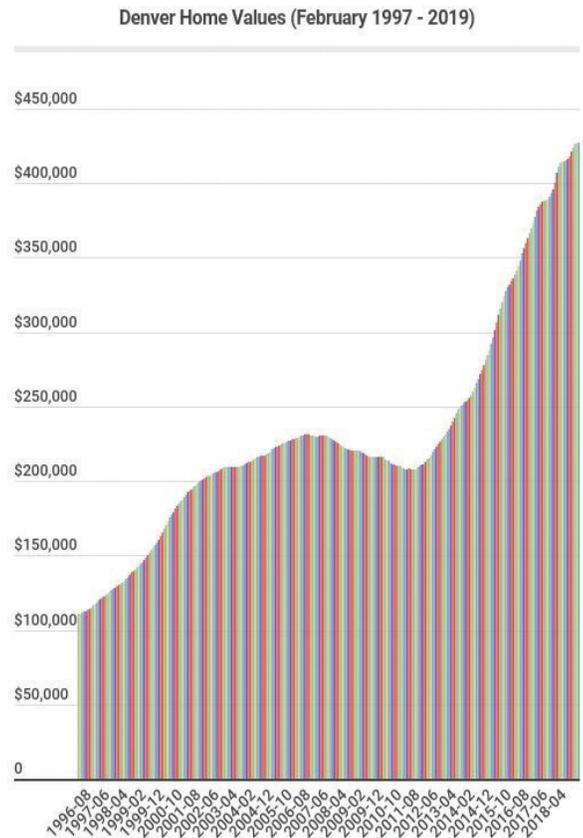
around Colorado. Cities in Colorado with dispensaries have higher than average property value growth compared to the national average.

Colorado and Washington, the first states to legalize cannabis for recreational use, have both seen above average home values since opening their first dispensaries in 2014. Colorado homes have increased by 58 percent and Washington home values have increased 57 percent in the years since legal commercial sales began.

While there are tax benefits to legalizing marijuana medicinally, there was not a statistically significant increase in cities where only medicinal marijuana is legal.

So, why do recreational legalization and retail dispensaries lead to homing price boosts? According to a 2017 study from the University of Mississippi, recreational legalization “attracts more home buyers, including marijuana users as well as entrepreneurs and job seekers.” Businesses start to pop up, and job seekers flock to these cities, driving up the demand for housing and retail space. 

Luke Babich is the co-founder and chief strategy officer of Clever Real Estate, a free online service that connects people with top agents to save money on commission. For more information, you may contact Thomas O’Shaughnessy at thomas@movewithclever.com.



Source: Zillow Home Value Index (February 1997 - February 2019)

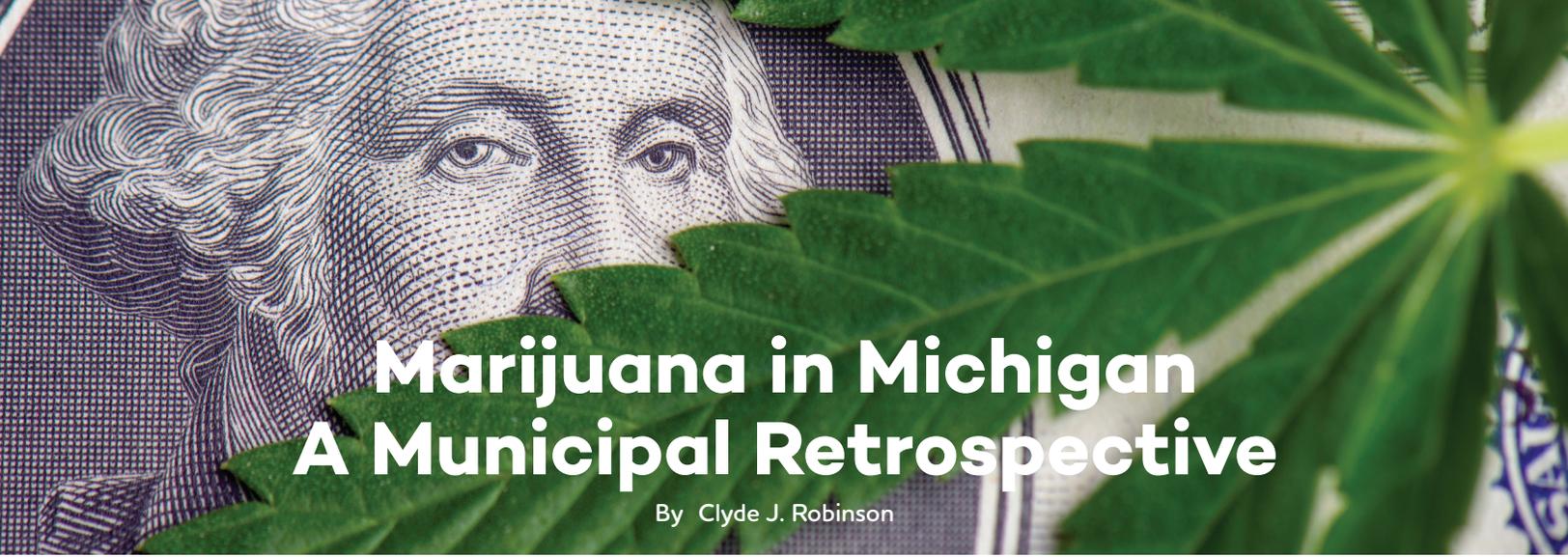


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Marijuana in Michigan A Municipal Retrospective

By Clyde J. Robinson

The MMMA: Palliative or Placebo?

In November 2008, Michigan voters approved the citizen-initiated Michigan Medical Marijuana Act (MMMA). The Michigan Coalition for Compassionate Care, supporters of the measure, emphasized that the measure would provide a much needed drug to address pain relief or lack of appetite in patients. At the same time, it would eliminate the threat of criminal prosecution through State registration of patients and their caregivers. However, the law did not address the commercialization of medical marijuana.

Two years later, the first of many appellate decisions interpreting the MMMA, *People v. Redden*, was issued. Aside from the legal issues present in the case, the concurring opinion of Judge Peter D. O'Connell highlighted the "confusing nature of the MMMA, and its susceptibility to multiple interpretations," pointing out that a marijuana shop existed less than 100 feet from a school in Lansing and questioned whether the statute was the "first step in legalizing marijuana in Michigan." Subsequent to this opinion, the MMMA became the source of a body of law that continues to grow as individuals and local governments attempt to understand and apply the statute.

Attempts by municipalities to regulate the commercialization of medical marijuana following the adoption of the MMMA, and in the absence of statewide legislation, did not fare well, largely due to the seminal *Ter Beek v. City of Wyoming* decision. In this case, the Supreme Court voided a zoning ordinance which prohibited uses that were contrary to federal law, seemingly holding that the MMMA superseded the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.* and was not preempted by the Federal Controlled Substances Act, 21 USC 801 *et seq.* However, in a significant victory for municipalities a unanimous Michigan Supreme Court in *DeRuiter v. Township of Byron* clarified its holding in *Ter Beek* by stating that the MMMA does not nullify the inherent authority of a municipality to

regulate land use under the MZEA so long as it does not prohibit or penalize all medical marijuana cultivation by registered caregivers and does not impose regulations that are unreasonable and inconsistent with state law.

Between 2012 and 2015, many Michigan cities sought to fill the gaps created by the MMMA. Charter amendments were adopted that decriminalized marijuana by legalizing the possession or transfer of less than one ounce of marijuana on private property by persons age 21 and older. Others made enforcement of marijuana law the lowest law enforcement priority or permitted the establishment of commercial medical marijuana dispensaries. In particular, Grand Rapids amended its city charter to make possession, use, or transfer of marijuana a \$25 first offense civil infraction, broadened the scope of the health professional defense in the MMMA, and precluded city police from referring marijuana arrests to the county prosecutor. In what was a victory for home rule in *Kent County Prosecuting Attorney v. City of Grand Rapids*, the charter provisions were upheld on a variety of grounds.

The MMFLA: The Legislature (Finally) Steps In

In 2016, some semblance of direction was obtained for municipalities with the Legislature's passage of the Medical Marihuana Facilities Licensing Act (MMFLA). This legislation created a State licensing and regulatory framework for the commercialization of medical marijuana. Importantly, municipalities were not required to allow any of the five permitted classes of licensed businesses (growers, processors, safety compliance centers, secure transporters, or provisioning centers) to operate within their borders. Instead, a municipality had to affirmatively "opt-in" to the MMFLA. For those communities that did so, they weren't allowed to regulate price, purity, or adopt an ordinance conflicting with state administrative rules. But local officials were granted broad authority in terms of adopting licensing and zoning regulations pertaining to commercial marijuana businesses and could limit the number and types of medical marijuana facilities allowed. However, just as municipalities were coming to grips with the commercialization of medical marijuana, Michigan voters were being urged to legalize recreational marijuana.

The MRTMA: Legalizing Recreational Marijuana

As predicted by Judge O'Connell in his Redden concurrence, the MMMA was a precursor for a citizen-initiated proposal to legalize recreational or adult use marijuana in Michigan. Although competing proposals failed to garner enough signatures to put the question on the November 2016 ballot, legalization advocates came together as the Coalition to Regulate Marijuana Like Alcohol to put the question to voters in November 2018. Like the MMMA of ten years earlier, voters overwhelmingly approved the Michigan Regulation and Taxation of Marihuana Act (MRTMA) which legalized and permitted the most generous quantities for the personal possession of marijuana by persons 21 and older in the United States.

“

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MARIJUANA STATUTES.

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Although the MRTMA could have, and perhaps should have, more closely paralleled the MMFLA, it did not. Instead, it imposes greater limitations on the degree of municipal regulatory and zoning discretion. Unlike the MMFLA, the MRTMA requires municipalities to affirmatively “opt-out” if they do not want recreational marijuana commercial businesses to locate in their communities. According to the Marijuana Regulatory Agency (MRA) website within the Michigan Department of Licensing and Regulatory Affairs, only 43 municipalities (and nearly all with some restrictions) currently permit recreational commercial establishments. The observation by a unanimous Supreme Court in *People v. Hartwick* regarding the MMMA is likely equally apt to the MRTMA—that the use of the initiative process leads to the creation of inconsistent or unclear law that may be difficult to interpret and harmonize. Like the MMMA, the provisions of the MRTMA lack consistency and are susceptible to conflicting interpretations.

The MRTMA permits individuals to petition to initiate an ordinance to provide for the number of marijuana establishments allowed within a municipality or to completely prohibit marijuana establishments within the municipality. In 2019, elections were held in 15 Michigan communities. Commercial adult-use marijuana businesses were rejected in 11 of those instances (see article p. 23).

If a community attempts to limit or cap the number of adult-use marijuana businesses, the MRTMA requires it to use “a competitive process intended to select applicants who are best suited to operate in compliance with (the MRTMA) within the municipality.” Any objective scoring system intended to comply with this requirement is likely an invitation to a lawsuit by those applicants who don’t get a license.

The MRTMA also required LARA to adopt a rule to encourage participation in the marijuana industry by people “from communities that have been disproportionately impacted by marijuana prohibition and enforcement.” The MRA rolled out its “Social Equity Plan” which waives 25 percent of the state application, licensing, and renewal fees for five-year residents of 41 identified communities who agree to locate their business within an impacted community. Additional waivers of 25 percent if applicants have a prior marijuana-related conviction (excluding delivery to a minor), and 10 percent if they were a registered medical marijuana caregiver for at least 2 years between 2008-2017 are available (see article p 23). However, in direct contrast with this mandate, the MRTMA for the first two years after going into effect largely limits the availability of adult-use licenses to those marijuana businesses holding a medical marijuana license.





This provision effectively shuts residents of communities impacted by marijuana enforcement out of the market. In addition to creating the “microbusiness” category (a 150 plant grow, processing, and sale operation), the MRTMA permits the State to create additional categories of businesses. The MRA announced that it will also issue four types of licenses, if permitted by the local municipality: Excess Grower operations (limited to Class C Growers); Designated Consumption Establishments (a commercial space where persons age 21 and older may consume marijuana); Marijuana Event Organizers (who are eligible to apply for and hold); and Temporary Marijuana Events (which permit the onsite sale/ consumption of marijuana on the dates of the event with the approval of the municipality where the event is being held). Municipalities will likely face many of the same legal issues in the attempt to zone and license adult use marijuana establishments that were presented by the implementation of the medical marijuana statutes. This has prompted caution on the part of many municipalities, which explains the overwhelming number of “opt-outs.” Because it is very likely that municipalities attempting to implement the MRTMA will be faced with similar legal issues that were encountered with the implementation of the MMMA and MMFLA, taking a measured approach, until “the smoke clears” is a prudent course of action. 

Clyde J. Robinson has practiced municipal law for nearly 40 years, serving as the city attorney for Battle Creek and Kalamazoo. He is a past chair of the Government Law Section of the State Bar and past president of the Michigan Association of Municipal Attorneys. You may contact him at 269.337.8185 or robinsonc@kalamazoocity.org.



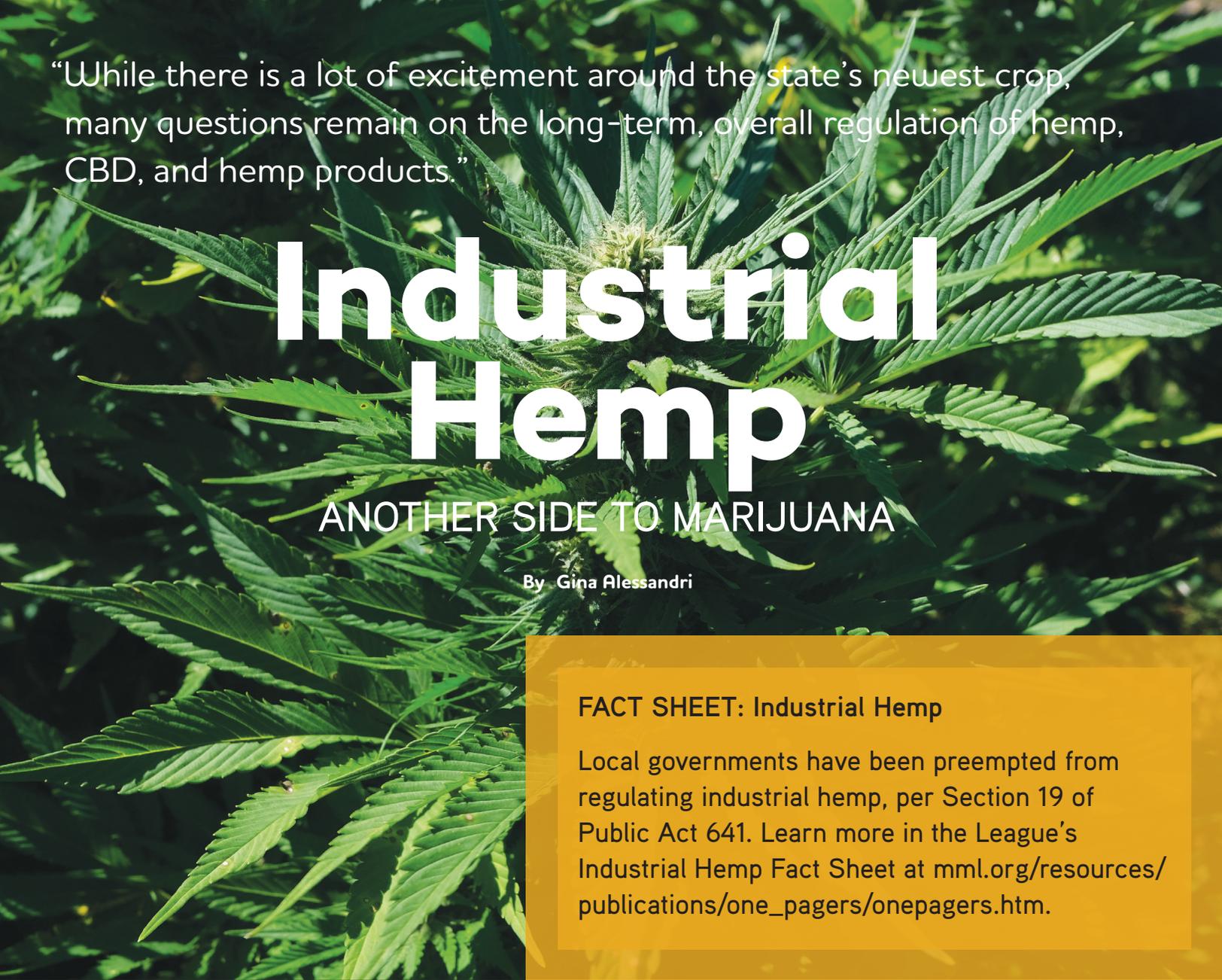
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“While there is a lot of excitement around the state’s newest crop, many questions remain on the long-term, overall regulation of hemp, CBD, and hemp products.”

Industrial Hemp

ANOTHER SIDE TO MARIJUANA

By Gina Alessandri

FACT SHEET: Industrial Hemp

Local governments have been preempted from regulating industrial hemp, per Section 19 of Public Act 641. Learn more in the League’s Industrial Hemp Fact Sheet at mml.org/resources/publications/one_pagers/onepaggers.htm.

In April 2019, the Michigan Department of Agriculture and Rural Development (MDARD) launched the state’s first industrial hemp program, adding a new crop to the state’s farming community.

Hemp (also known as industrial hemp) is one of the largest new opportunities for growers in Michigan after it was legalized in the 2018 U.S. Farm Bill. Hemp is Cannabis (*Cannabis sativa* L.) with less than 0.3 percent tetrahydrocannabinol (THC), the psychoactive component found in marijuana. Hemp is cultivated to produce fiber, grain, biomass, or non-intoxicating medicinal compounds such as cannabidiol (CBD).

Michigan is uniquely positioned to grow, process and manufacture industrial hemp as one of the nation’s most agriculturally diverse states. This emerging crop not only creates new opportunity for our farming community, but it also offers an avenue for new businesses to develop across the state.

Federal Legislation

The 2018 U.S. Farm Bill authorized the commercial production and processing of industrial hemp in the United States. The United States Department of Agriculture (USDA) published its interim final rules on the establishment of a domestic hemp program and is seeking public comments before finalizing a national program. In the meantime, MDARD is utilizing authority in the 2014 Farm Bill for an Industrial Hemp Ag Pilot Program and, will continue it into 2020.

The USDA Interim Final Rules provide guidance on federal requirements as states across the nation draft state hemp plans for approval. MDARD is currently reviewing the rules to identify needed changes to state law. Once statute changes are made, MDARD will submit Michigan’s industrial hemp plan, and once approved, will provide oversight of the department’s commercial hemp program.

State Legislation and Hemp Pilot Program

While there is a lot of excitement around the state's newest crop, many questions remain on the long-term, overall regulation of hemp, CBD, and hemp products. There is a steep learning curve for everyone involved in this budding commodity—farmers, federal and state regulators, and local authorities. The 2019 and 2020 Industrial Hemp Ag Pilot programs have, and will continue, to provide an opportunity for all to learn.

Michigan's Public Act 641 of 2018 authorizes the growing and cultivating of hemp and requires the registration and licensing of certain persons who are interested in growing, processing, and handling hemp.

Some of the highlights of the Michigan Industrial Hemp Research and Development Act of 2018 are below:

- Prohibits a person from growing hemp in Michigan unless registered as a grower
- Requires growers to identify all growing locations on their grower application
- Prohibits a person from processing, handling, brokering, or marketing hemp unless licensed as a processor-handler
- Requires signage to be placed at the boundaries of each growing area

- Requires growers to have their crops tested for THC content prior to harvest
- Requires individuals to be able to show proof of registration and licensing upon request by law enforcement
- Pre-empts local units of government from adopting any rule, regulation, code, or ordinance to restrict or limit any hemp cultivation or processing

People growing or processing hemp in the state must have a current and valid license from MDARD. Licenses to grow or process hemp in Michigan are available at any time. Those interested can download and complete the Hemp Grower Registration Application and the Hemp Processor-Handler Application on Michigan's Hemp website. The cost for the grower registration is \$100 and the processor-handler license is \$1,350. MDARD is currently issuing licenses for the 2020 Hemp Ag Pilot program as licenses expire annually on November 30.

For more information on Michigan's Industrial Hemp Ag Pilot Program, visit www.michigan.gov/industrialhemp. 

Gina Alessandri is the industrial hemp program director for the Michigan Department of Agriculture and Rural Development. You may contact her at AlessandriG@michigan.gov.



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Sue Jeffers is a legal consultant to the League. You may contact her at sjeffers1@me.com.

Michigan Supreme Court Holds that a Tribal Government Is Not a Local Government under the Michigan Constitution

NOTE: The Michigan Court of Appeals' ruling in this case was discussed in the March 2018 issue of *The Review*.

FACTS:

Fred Paquin served the Sault Tribe of Chippewa Indians, a federally recognized Indian tribe located within Michigan, as chief of police and as an elected member of the tribe's board of directors. In 2010, Paquin pleaded guilty to conspiracy involving the misuse of federal funds granted to the tribe. In 2013, he sought to run for a position on St. Ignace's city council. The city manager denied Paquin's request to be placed on the ballot and cited provisions of the Michigan Constitution and an Attorney General's Opinion in support of his denial.

The Michigan Constitution of 1963, art 11, § 8 provides:

A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and conviction was related to the person's official capacity *while the person was holding any elective office or position of employment in local, state, or federal government.* (Emphasis supplied.)

On August 15, 2013, the Attorney General issued OAG, 2013-2014, No. 7273 concluding that the Constitutional provision applies to a person convicted of a crime based on that person's conduct as a governmental employee or elected official of a federally recognized Indian Tribe.

In 2015, Paquin again asked to be placed on the ballot and again the city manager denied the request. Paquin then filed a declaratory action seeking a ruling that the constitutional provision did not apply to him because his position had been in tribal government and not "local, state, or federal government." The circuit court dismissed the action and the Michigan Court of Appeals affirmed, noting that the only issue was whether Paquin's position of employment in tribal government constituted employment in "local, state, or federal government." Specifically, the Court of Appeals held that the tribe qualified as a local government under the Constitution.

QUESTION:

Does the tribe qualify as a "local, state, or federal government" under the Michigan Constitution?

ANSWER:

NO. The Michigan Supreme Court reversed, noting that the Court of Appeals and the Attorney General relied upon an incomplete definition of "local government" as defined in *Merriam-Webster's Collegiate Dictionary*. The complete definition contained language that "strongly suggests" that a local government be understood as a subdivision of another body of government. The tribe could not be considered a local government under that analysis. The Supreme Court noted that the "error significantly undermines the Court of Appeals' textual analysis" in seeking to understand "the common understanding of the people at the time the constitution was ratified." The Court further noted that an analysis of the term "federal government" allows only for an interpretation that the reference is to the United States federal government.

Paquin v. City of St. Ignace, No. 156823 (July 8, 2019)

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mml.org/resources/information/mi-med-marihuana.html

PINCANNA

Marijuana as a Budget Booster

By Rick Haglund

New retail provisioning center in Kalkaska.

Like many other local units of government, the Village of Kalkaska has struggled to provide police, fire and other basic government services in the face of stagnating tax collections and the decline of its oil industry. But local officials think they've found a way to puff up budget revenue: marijuana.

Kalkaska has embraced legal marijuana like no other municipality in the state, opening its arms to growers, processors, transporters, medical dispensaries and retail recreational marijuana shops. The village of about 2,000 residents also is the only community in Michigan to hold a marijuana event license. "We're using it to our full advantage," said village President Harley Wales. "I look at it kind of like a millage."

The state allows municipalities to charge a \$5,000 licensing fee, which the village instituted. And the village charges quarterly inspection fees of 20 cents per square foot. A 40,000 square-foot growing operation, for example, pays an \$8,000 inspection fee every three months. "We make sure there are no bad actors," Wales said.

Reaping the Rewards

Kalkaska has three large growers operating out of formerly vacant buildings in its industrial park, a transport business and a processing facility. Two licensed retail marijuana shops are preparing to open and several more are expected. So far, the village has licensed 31 marijuana-related businesses.

Taxes and fees generated by those businesses have already allowed the village to remodel its police department and purchase a new police vehicle. The village expects to hire two more police officers in the current fiscal year, thanks to marijuana-fueled economic growth.

Property values of growers operating in the industrial park are skyrocketing. One such property that sold for \$40,000 less than two years ago recently sold again for \$175,000, Wales said. Last year, Kalkaska officials projected that the expansion of marijuana businesses will lead to a doubling of the village's state equalized valuation to \$100 million by 2023.

"I've stopped making projections because we keep blowing right through them," Wales said.

Future of Benefits to Municipalities

But others say it's unclear how much municipalities will benefit from marijuana legalization. "Nobody knows because nobody has hard figures," said Clyde Robinson, the city attorney of Kalamazoo, which is delaying the licensing of recreational marijuana stores in the city until June. But the potential market for recreational marijuana—and taxes assessed on sales—is much bigger than for medical marijuana.

Robinson, who has extensively studied the issue, said only about 3 percent of Michigan's 10 million residents have medical marijuana cards, while nearly 7 million adults can legally purchase recreational marijuana. The state levied a 3 percent excise tax on medical marijuana, which was phased out after adult-use marijuana was voted in and replaced with a 10 percent excise tax on recreational. Some of that revenue gets shared with local units that allow adult-use marijuana retail sales.

Under a "back of the envelope" estimate, Robinson said Kalamazoo would likely receive a state tax share equal to just 0.2 percent of the city's annual budget from marijuana sales. And he said communities are unlikely to see tax revenues flow from Lansing until 2021 or 2022. "But the beauty of it is that there are no strings attached," he said. "Communities can do with it whatever they want. Most will probably use it fund police or other public services."

Hazel Park City Manager Ed Klobucher said he hopes marijuana businesses will provide a boost to his economically struggling community, although he says he doesn't know how much they might generate in taxes. "There is a potential for communities to receive revenues from recreational marijuana," he said. "That's one reason we opted in. We'll see how it shakes out. Michigan's system of municipal finance is fundamentally broken. We're always going to be scrambling for revenues."

Three marijuana-related businesses—a grower, a transporter and a testing lab—were operating in Hazel Park prior to the legalization of recreational marijuana. And in March, Oakland County’s first retail marijuana shop, Breeze Provisioning Center, opened in the city. “The cool thing about this business is they have employed a dozen Hazel Park residents,” Klobucher said. “They took a vacant storefront and made it look very nice. It looks like this is going to be a net positive.”

The Stigma May Fade

More than 1,400 Michigan cities, villages and townships—about four out of every five in the state—have opted out of the retail recreational marijuana market. Most that are allowing recreational marijuana are older, industrial communities “that kind of look like Hazel Park,” Klobucher said. Voters in Ecorse, a Downriver Detroit community that has struggled with the decline of the steel industry, in March voted to allow marijuana businesses to locate in the city. The vote came after the Ecorse City Council voted in September to prohibit marijuana businesses.

While Michigan voters approved legalizing recreational by a wide margin in 2018, many local officials remain uneasy about it. “For some, there is still the stigma of having businesses selling what not too long ago was an illicit substance,” as well as concerns about public safety, said Eric Lupher, president of the Citizens Research Council of Michigan.

Like others, Lupher said marijuana sales could provide a badly need lift to local government tax revenues, although the potential amount is unclear. “We don’t know how big the black market was, so we’re not sure how much revenue will be there,” he said. “But the obvious benefit is the tax system was structured to send back money to communities that have marijuana businesses within their borders.” To receive proceeds from the 10 percent excise tax, municipalities must allow retail sales of recreational marijuana.

Lupher said he thinks communities that opted out of recreational marijuana may reconsider as the stigma against its use fades. For example, most Michigan cities that once outlawed alcohol sales, now allow it. “I think it’s such a new business and the state is still trying to sort out the regulations,” he said. “As more and more of the stigma goes away, more communities will say, ‘Why not us?’” Many will likely be keeping a close eye on Kalkaska and others that have embraced marijuana to see how it’s playing out. 

Rick Haglund is a freelance writer. You may contact him at 248.761.4594 or haglund.rick@gmail.com.



Real Leaf Solutions active grow facility in Kalkaska.



New build-out for Freedom Green's Kalkaska marijuana operations.



63

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Opting-in to Economic Opportunity

By Gerard Valesano



CRYSTAL FALLS
pop. 1,469

Crystal Falls courthouse.

Crystal Falls needed a long-term solution for its declining population. The city of about 1,469 residents along the northern Wisconsin border has been faced with the challenge of trying to rebound from lost industry and job opportunities. In November 2018, a possible boost to the city's economy came along when Michigan voters legalized adult use marijuana. In Crystal Falls, the vote was 370 in favor, and 308 opposed to legalization. So, the city began preparing for this opportunity.

At that time, along with many other municipalities, Crystal Falls opted out (Ordinance 2.30). They just weren't sure of the provisions that would be in the State of Michigan's guidelines. But that started the ball rolling for the city's administration to get an ordinance in place and possibly get some business opportunity growing in Crystal Falls.

Crafting an Opt-in Ordinance

After learning of the potential sales and property tax revenue and license fees, not to mention possible jobs in the area, our proactive planning commission and city council drafted and voted in Ordinance 4.20 on October 14, 2019. The opening lines describe its purpose: "An Ordinance to

restate Ordinance 2.30 to the City of Crystal Falls to provide and establish a process and procedure for the application and licensing requirements for marijuana establishments within the City of Crystal Falls and to provide for the suspension and revocation for violations thereof." Included in Ordinance 4.20, with the expectation of bringing new business to the city, our administration established zoning for these types of licenses permitted within the city:

- A. Marijuana Grower
- B. Marijuana Processor
- C. Marijuana Secure Transporter
- D. Marijuana Retailer or Marijuana Microbusiness
- E. Marijuana Safety Compliance Facility

In the Business 1 District (downtown area), no more than two establishment licenses will be issued in these categories: Marijuana Retailer or Marijuana Microbusinesses. Unlimited licenses will be issued within the Industrial District from the following categories: Marijuana Grower, Marijuana Processor, Marijuana Secure Transporter, and Marijuana Safety Compliance Facility.



The Sentinel building and a former church in downtown Crystal Falls are being remodeled into retail marijuana facilities.

Preparing for an Influx of Business

In February, the city held its latest public hearing to finalize preparations for businesses to locate their facilities in our town. The city started receiving interest soon after our ordinance was in effect. Because of the potential size of buildings needed, areas in our industrial park were divided and platted to meet the needs of interested grow facilities.

We also felt it was a good idea to approach owners of empty buildings along the city’s Business I District. As stated earlier, Ordinance 4.20 would allow two retail facilities within that district. Some of these buildings were already owned by established business owners, a respected, hardworking, community-minded group. They had purchased these empty buildings with the vision of possibly adding something to Crystal Falls’ downtown. We met with these business owners to discuss the possibility of selling their buildings for potential adult use marijuana retail stores. All were very positive about the idea and the sales of these buildings are underway.

Looking Forward to Big Economic Benefits

It has been many years since there has been industry located within Crystal Falls. It is very beneficial to have the community and city council accept the new laws of the State and pass a local ordinance. The largest gain is the significant number of jobs that will be generated. We anticipate that as many as 50 jobs will come to the community. Even better, they will be good-paying jobs with a benefit package.

The new recreational marijuana facilities will also be a large boost to the local economy. Annual license fees, tax income (both state and local), and utility use will be significant. This is all new to the people of Michigan and the local communities. I feel fortunate to be part of a community interested in new ideas and opportunities. I’m pleased to say that the Crystal Falls community has been very proactive and positive without negative feedback. 

Gerard Valesano is the city manager of Crystal Falls. You may contact him at 906.875.3212, x101 or citymanager@crystalfalls.org.



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Hamtramck Home Run

By Shanna Draheim



Hamtramck Stadium will be getting a facelift.

A comprehensive plan that honors the community's values is now on deck for Hamtramck's Recreation District. With the help of a stellar consulting team made up of TenXTen Studio, Quinn Evans Architects, Huron River Group, and Global Detroit, the community and regional partners came together to reimagine a future for the area that is inclusive for all, reflects Hamtramck's significant cultural diversity, offers many different recreational amenities and community gathering spaces, and which could be financially self-sustaining.

In 2019, the Michigan Municipal League Foundation and the Michigan Municipal League's Policy Research Labs Team, through generous financial support from the Ralph C. Wilson Foundation, partnered with the City of Hamtramck, Hamtramck Public Schools, Detroit City Football Club, and Friends of Historic Hamtramck Stadium to develop a plan for the 26-acre Veterans Memorial Park area (originally named for the historic Veteran's Monument, where Colonel Jean-Francois Hamtramck is buried). Now called the Hamtramck Recreation District, the park features the historic Hamtramck Stadium where the Negro National League Detroit Stars once played—one

of only five remaining Negro League ballparks in the country. It is also home to Keyworth Stadium where the Detroit City Football Club, a community funded and locally supported professional soccer team, now plays as well as the Hamtramck High School team.

The recreation district is jointly owned by the city and the school district. Over the years, despite significant maintenance efforts by both parties, it has fallen into disrepair. The historic Hamtramck Stadium is dilapidated, and the grandstand is unusable without significant repair. The park is an important local resource for this diverse community, but not terribly welcoming or engaging.

Engaging the Community

The process to create the plan involved extensive and inclusive community engagement of Hamtramck residents. Over 435 members of the community contributed to the development of the plan, through community conversations, focus groups with specific community sectors (e.g., women and teens), door-to-door conversations with residents, and other outreach events. More than 40 percent of the Hamtramck population is foreign born, and 67 percent of

the households speak a primary language other than English, so a broad outreach approach was intentional and thoughtful. Guidance from the community directly impacted the plan's development in every way, whether that was the need for fields that double as baseball and cricket pitches, or the desire to have some outdoor spaces that could provide a bit of privacy for women to informally gather away from the view of men (a culturally important need for Muslim women, as identified through the focus groups).



The Hamtramck community came together to help develop a robust plan for the Recreation District.



A bright new mural takes shape in Hamtramck's Recreation District.

The inspiring and comprehensive plan, finalized in February, set out a clear vision and sustainable financial path for creating an outstanding community asset while preserving the historic nature of the district. Across four distinct “neighborhoods” in the park, the plan makes recommendations for organized recreational offerings (e.g., baseball, soccer, cricket, futbol, street hockey); informal recreation infrastructure; outdoor living rooms and other gathering/event spaces; community gardens; renovations and celebrations of historic elements of the park; and trails and pedestrian alleys. It makes recommendations for specific physical and capital improvements, management structure, and operational budgets in the coming years that will radically transform these 26 acres of underutilized open space, recreation fields, and disconnected historic sites into a community-invested, inclusive, world class park.

Improving Community Life

The importance of the Hamtramck Recreation District to the social, economic, physical, and cultural well-being of this community cannot be overstated. Hamtramck is one of the poorest cities in our state. It was under state emergency management until just two years ago and the median income of residents is only \$26,000. The city is also the most densely populated municipality in the state of Michigan and, as such, lacks the amount of green space that other communities enjoy. The average amount of public green space in the city

is just over one acre/1,000 people compared to eight acres in Detroit, 11 acres in Toledo, and 13 acres in Indianapolis. Realizing the vision to make the Hamtramck Recreation District an outstanding local community asset will help improve the lives of residents: attract visitors, new residents, and businesses; and be a key part of building local community wealth in Hamtramck.

The League and the League Foundation are honored to be a partner in this effort, and we look forward to working with the city and school district as they make this plan happen. The efforts in Hamtramck are truly a model of how a community can engage its residents in meaningful ways and set forth plans for improving and enriching their daily lives. 

Shanna Draheim is the director of policy research labs for the League. You may contact her at 517.908.0307 or sdraheim@mml.org.



Coronavirus Resources

For information that is up-to-date and relevant to your community visit:

mml.org/coronavirus

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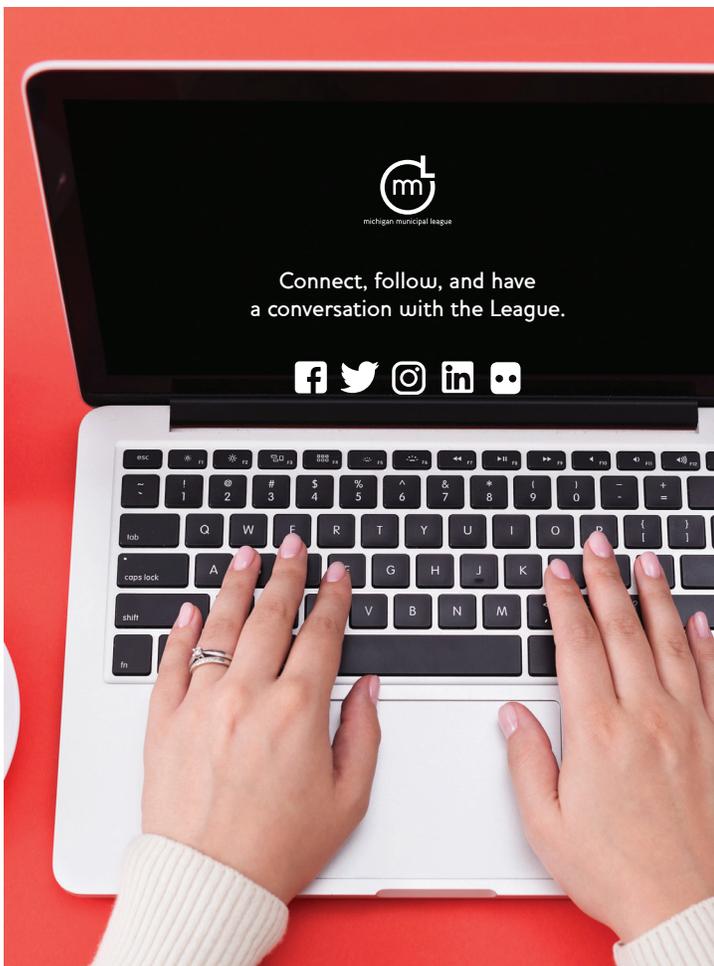
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Recreational Marihuana Q&A

Questions
and answers
from League
training seminars
and webinar.



The Q&A—plus our white paper, sample ordinances, and other resources—are available on the Marijuana in Michigan page at www.mml.org.

*answers from the Marijuana Regulatory Agency (MRA)

Q. Has the \$5,000 municipal licensing fee (under the MMFLA) been challenged (if municipality is not even doing fire inspections, etc.)?

A. You must be able to demonstrate that the enforcement and administrating of the law is costing the local government approximately \$5,000. If those costs are substantially less than \$5,000, the fee needs to be reduced to reflect the actual cost of those services.

Q. Do the designated consumption establishment provisions preclude bars and other establishments currently holding a marijuana night from continuing to do so? In addition, can a designated consumption establishment also hold a liquor license?

A. Once MRA starts taking applications, you would need a license for a designated consumption establishment. Generally speaking, MRA doesn't allow the co-location of a marijuana facility or marijuana establishment with any other type of business activity. If you are a marijuana establishment, that's what you are. MRA doesn't allow them to serve food or beverages of any kind. We might get some pushback from stakeholders in the industry. But I think as we move toward a normalized atmosphere for these businesses, we're taking a fairly restrictive approach in terms of what they're allowed to do, especially when it comes to overlapping issues with other types of regulated industries.

Q. Do we have to allow outdoor grow operations or can we zone them out?

A. MRA—When it comes to zoning issues, there are a couple of provisions in the rules related to grow licenses that are similar to what exists on the medical side. Beyond that, MRA wouldn't dictate what a municipality has to do. You should consult with your legal counsel to determine what your authority is when it comes to zoning. And where you allow those facilities, ensure that any actions you take are going to stand up to legal challenge.

Q. One of the biggest issues in our community is the smell coming from people growing in their houses. I haven't seen any rules allowing municipalities or the state to regulate odor. Is this something MRA will be looking into with the permanent rules?

A. The MRA doesn't currently have any odor control requirements specifically for regulated facilities, except in sort of a roundabout way with designated consumption facilities. There's not an accepted standard for MRA to adopt. We've seen that when that's been handled at a municipal level that seems to have assuaged the concerns that have come to our attention. When it comes to home operations, we do not have any state level regulatory oversight. Whether municipalities have any authority to regulate home grow operations is the subject of a case that is working its way through the courts—the DeRuiter (*DeRuiter v. Byron Township*) case. So that may be something you want to pay attention to. Whether that would be applicable then to adults growing at home is a challenging question since that lawsuit started well before the ballot initiative was passed. But I don't anticipate, barring some significant change in law, that there will be any state level regulatory oversight of home grow operations.

Q. How is enforcement going to happen? Is it going to be in the line of an LCC [Liquor Control Commission] violation?

A. MRA has field operations in existence now for medical facilities. We do pre-licensure inspections of every facility on the medical side. We intend to do the same thing on the adult use side. We have required that an applicant who submits a completed application be available for inspection within 60 days. We are trying to really encourage applicants to consider when their facility is going to be operational to ensure we can meet our statutory deadlines—the 90 days to review those applications. And we're going to have continued oversight. So, we'll continue to do ongoing inspections. On the medical side, as well as the adult use side, we intend to try to get to every operation at least twice a year. And we would continue to do investigations as well. When it comes to investigations, we'll take complaints from anyone—including a municipality. We'll want to stay in communication with municipalities, particularly if you find that a licensed operation is violating your ordinance. And, at the time of renewal on both the medical and adult use side, we will expect an applicant for renewal to provide some form of attestation for the municipality about the state of that facility and whether there have been any concerns at the municipal level when it comes to abiding by ordinances.

Marijuana Resources



michigan municipal league



By Kim Cekola

When deciding whether to allow and regulate medical and/or recreational marijuana, a multitude of factors apply. Ultimately, municipalities are responsible for the health, safety, and welfare of their citizens and community and the responsibility is a heavy one. The marijuana industry is frustrated and applying pressure. But the weight of the decision is on you, not them. Many municipalities opted out as a temporary measure, to see what developed with state rules and to see how regulation progressed in other municipalities. Most likely, more cities, villages, and townships will be choosing to allow and regulate recreational/adult-use marijuana in the near future.

Our aim is to provide you with the tools and resources you need to make informed decisions. The League has been immersed in the topic of marijuana since the first Act was passed in 2008. We have collected as much material as we could get our hands on. In addition, we have created white papers and resources for our members so you can tackle the issue, dispel myths and fears, and make informed decisions.

Michigan Municipal League Original Resources

We created a resource page with information on the Michigan Medical Marijuana Act (MMMA), Michigan Medical Facilities Licensing Act (MMFLA), and the Michigan Regulatory and Taxation of Marijuana Act (MRTMA). Included are our white papers on medical and recreational marijuana:

1. Medical Marijuana Facilities—Opt In/Opt Out

Written by Tom Schultz, from the law firm of Rosati, Schultz, Joppich & Amtsbuechler (current chair of the Michigan Association of Municipal Attorneys). This publication is for municipal lawyers whose clients are considering “opting in” to allow medical marijuana uses. The publication suggests things they should consider when evaluating their options under the state regulatory scheme. It addresses whether to authorize the medical marijuana uses now allowed, and what sort of things should be in the regulatory ordinance(s) that must be adopted in order to do so.

2. **Recreational Marijuana Proposition**—Written by Clyde Robinson, city attorney, City of Kalamazoo and League trainer (past chair of the Michigan Association of Municipal Attorneys) The scope of this paper outlines the provisions of the initiated statute and addresses some of the practical consequences for municipalities while raising concerns that local governmental officials should be prepared to confront.
3. **Webinar**—Adult Use Marijuana: It's Decision Time (\$20) Marijuana Regulatory Agency Executive Director Andrew Brisbo discusses the Adult Use Marijuana Emergency Rules.
4. **Recreational Marijuana Q&A**—assembled from the League's webinar and trainings
5. **Fact Sheets**—one page, easy-to-read summaries
 - Medical Marijuana Facilities Licensing Act
 - Medical Marijuana Facilities Licensing Act Q&A
 - Comparing MMFLA to Recreational Marijuana Proposal
6. **Chart Comparing Key Provisions of Michigan's Marijuana Statutes**
7. **League Training PowerPoints**
8. **Podcasts**
 - **Marijuana Legalization in Colorado (Episode 3)**
Guest: Chelsey Clarke, strategic intelligence unit supervisor, Rocky Mountain High Intensity Drug Trafficking Area Marijuana Legalization in Colorado (Episode 9) Guest: Charles Mitchell, senior assistant city attorney, City Attorney's Office, City and County of Denver
 - **Recreational Marijuana—What Should Municipalities Be Talking and Thinking About?** (Episode 13)
Guests: Clyde Robinson, city attorney, City of Kalamazoo; Christopher Johnson, general counsel, Michigan Municipal League; Jennifer Rigterink, legislative associate, Michigan Municipal League
 - **Recreational Marijuana—What You Need to Know About Michigan's New Law** (Episode 16)
Guests: Andrew Brisbo, director, Bureau of Marijuana Regulation; Jennifer Rigterink, legislative associate, Michigan Municipal League
 - **New Emergency Rules for Recreational Marijuana** (Episode 19) Guests: Andrew Brisbo, executive director, Marijuana Regulatory Agency; Christopher Johnson, general counsel, Michigan Municipal League; Jennifer Rigterink, legislative associate, Michigan Municipal League

Municipal Samples

It is helpful to see what other municipalities are doing when thinking through your own responses and actions. To assist with this, the League gathers municipal documents. We currently have in our files: planning commission recommendations; many ordinances for MMFLA and MRTMA; citizen surveys on desires for both medical and recreational marijuana facilities; municipal staff compiled Q&As (e.g. the City of Berkley compiled questions from those attending a public hearing on recreational marijuana and wrote them up along with the city attorney's answers); and PowerPoint presentations from municipal public hearings.

We've also assembled information on petitions to either block recreational decisions made by councils or to initiate citizen-desired ordinances that either amend a council decision or overturn a council decision. There have been initiatory petitions in the cities of Big Rapids, Ecorse, Highland Park, Mt. Pleasant, Petoskey, Romulus, South Haven, Traverse City, and Walled Lake, and the villages of Empire and Vanderbilt. It is likely that more municipal clerks will be handed petitions in the future, either by citizen action solely or from marijuana advocates starting movements in individual municipalities.

State of Michigan

Last, but not least, we have a collection of documents from the Michigan Department of Licensing and Regulatory Affairs (LARA) and the Marijuana Regulatory Agency within LARA. These include the three state statutes and the administrative rules for each, MRA's two lists: MRTMA opt out municipalities and the other of municipalities that have decided to allow and regulate recreational/adult use (MRAs preferred term) and which of the license types they have chosen to opt out of or allow. Finally, we have the state's report from its Impaired Driving Safety Commission (March 2019).

Please browse our Marijuana in Michigan web page. To request any of these resources, send an email to info@mml.org, or call 1.800.653.2483. 

Kim Cekola is a research specialist/editor at the League. You may contact her at kcekola@mml.org or 734.669.6321.



michigan municipal league

1675 Green Road
Ann Arbor, MI 48105

2020 COMMUNITY EXCELLENCE AWARD COMPETITION ON HOLD

In light of the coronavirus crisis that is gripping our communities, our state, and the world, we have chosen to put the 2020 Community Excellence Award competition on hold.

We will continue to be here for you with information and resources to help you deal with this pandemic in your community. For the latest news and guidance, check out our Coronavirus Resources site at mml.org/coronavirus.

Stay healthy!

MEMORANDUM

To: Township Board

From: Deborah Guthrie, Clerk, and Pat Herring Jackson and Dan Opsommer, Trustees

Date: February 11, 2021

Re: The Michigan Medical Marihuana Act (MMMA), Medical Marihuana Facilities Licensing Act (MMFLA) and Michigan Regulation and Taxation of Marihuana Act (MRTMA)

INTRODUCTION

We believe the Township should opt in under the MRTMA (i.e. adult-use marihuana) utilizing the framework of our existing medical marihuana ordinance, which the Board invested nearly a year developing from August 9, 2018 through July 9, 2019.

Meridian Township's ordinance opting in under the MMFLA (i.e. medical marihuana) was largely based on the model the city of East Lansing adopted, utilizing overlay districts to narrow where facilities could go and the total number of facilities. We also used the overlays to geographically disperse the 6 retail facilities across the Township by allotting one permit per overlay district. East Lansing's ordinance authorizes 7 retail facilities, whereas, our ordinance authorizes 6.

Most importantly, we followed East Lansing's model of avoiding a point-scoring system to select facilities, which is subjective by nature, and often subjects the municipality to lawsuits as a result.

Since we opted in under medical marihuana, the city of East Lansing amended their ordinance to opt in under adult-use and successfully avoided lawsuits again by simply grandfathering their existing medical permit holders under the MRTMA. We propose the Township Board continues to follow the city of East Lansing's best practices because they're tested and work.

By amending our medical ordinance to opt in under adult-use and grandfather our existing permit holders, we avoid having to open a new application window that would unnecessarily consume our Community Planning and Development staff's limited time and resources. It would also avoid the possible legal challenges we would face by having to conduct a point-scoring system in accordance with section 9, subsection 4 of the MRTMA.

Lastly, we propose learning from the city of East Lansing's ordinance in one other important way by establishing a community benefit requirement, which is outlined in the next section.

The subsequent sections of this memo outlines other factors we should consider, such as: revenue to the Township, how to dedicate that revenue for the public good, the realities we face relative to the medical and adult-use marketplaces, comparing the number of retail facilities on a per capita basis in the Lansing region, and other information that will be helpful to the Board.

ESTABLISHING A COMMUNITY BENEFIT PROGRAM BASED ON EAST LANSING

[The city of East Lansing requires each facility to donate 1% of profits annually, or \\$5,000, whichever amount is greater, to a nonprofit organization within the city's boundaries.](#)

[Specifically, the city of East Lansing's ordinances pertaining to medical and adult-use marihuana each contain the following clause \(see page 7, subsection 5\):](#)

The operators of the marihuana retail establishment shall provide an annual donation in the amount of 1% of net profits from its operations or \$5,000.00, whichever amount is greater, to an organization qualifying for exemption from taxation pursuant to 26 USC 501(c)(3) largely benefitting the residents of East Lansing and organized and operated exclusively for purposes of improving the lives of people with low to moderate income, conserving or improving natural resources, or preventing cruelty to children or animals, and with the use of the funds being in accordance with MCL 125.3504.

If we opt in as proposed, this provision would generate a minimum of \$30,000 being donated annually to help meet needs in the community. We could also suggest organizations that meet the criteria we put in the ordinance, such as Meridian Cares, our food banks, Meridian Garden Club, Haslett Beautification Association, Rotary Foundation, Kiwanis Foundation, Okemos Education Foundation, etc.

Increasing diversity is also a goal for the board. We could establish a new angel investment fund operated by the EDC to help support minority- and female-owned businesses with angel investments and suggest this as an entity that the permit holders could donate to.

HOW DID EAST LANSING GRANDFATHER EXISTING MEDICAL SPECIAL USE PERMIT HOLDERS TO AVOID LAWSUITS AND THE COSTS OF HOLDING A NEW APPLICATION WINDOW?

The city of East Lansing's ordinance simply requires adult-use provisioning centers to have an approved SUP for a medical marihuana provisioning center:

The marihuana retailers must have been issued a special use permit for a medical marihuana provisioning center facility and have an equivalent license issued by the State as defined by the administrative rules for the Michigan Regulation and Taxation of Marihuana Act for the same.

This provision also prevents there being 14 different retail facilities in their community (i.e. 7 medical, 7 adult-use), when only 7 medical and adult-use facilities are necessary.

The city of Lansing did the opposite, they have 28 permits for medical provisioning centers and 28 for adult-use provisioning centers. Therefore, they could end up with 54 facilities total.

We should go in the direction of the city of East Lansing, which is using best practices by requiring a adult-use facility to have an approved medical permit (i.e. SUP). Not in the direction of the city of Lansing, which has created a situation where they're creating duplicative facilities.

GRANDFATHER EXISTING MEDICAL PERMIT HOLDERS IS ALSO KEY TO CREATING A MEDICAL MARKETPLACE IN A REASONABLE TIMEFRAME

Lastly, this provision that the city of East Lansing used also ensures medical card holders have access to medical marihuana.

It's unlikely that medical-only provisioning centers will be built in the immediate future as they're far less profitable than adult-use or adult-use/medical provisioning centers. If we establish

separate permits for adult-use retail stores, these stores won't be able to apply for our existing medical permits until those permits are freed up and available.

The only way around this would be to revoke those medical permits after we have already approved special use permits for them or to create extra medical permits that the new adult-use applicants can apply for, but then we run the risk of having more than 6 facilities like Lansing is experiencing with their ordinance.

If we were to revoke the existing medical permits without cause, we may be sued as the Planning Commission recommended approval of those permits and the Board approved them.

IS THERE A DIFFERENCE BETWEEN MEDICAL AND ADULT-USE PROVISIONING CENTERS?

No, the facilities are identical and operate the same regardless.

The SkyMint facility Township Board members toured in the city of East Lansing (which is a adult-use and medical facility) is nearly identical to the medical facility SkyMint proposed in Meridian Township, which the Board approved the SUP for.

RETAIL FACILITIES ON A PER CAPITA BASIS IN THE LANSING REGION

We have the fewest permits for retail stores on a per capita basis in the Lansing region. Lansing has 2.2 to 3.94 the number of retail permits on a per capita basis and East Lansing has 1.04 times more per capita.

	Retail Facility Cap	Population	Facilities per Capita
Meridian	6	43,318	1 facility per 7,220 residents
East Lansing	7*	48,729	1 facility per 6,961 residents
Lansing	36-64*	117,159	1 facility per 3,254-1,831 residents

*East Lansing's medical ordinance allows for 7 medical provisioning centers. Under their ordinance, you must have an approved SUP as a medical provisioning center in order to open a adult-use provisioning center, so there is no duplication of facilities like the city of Lansing outlined below.

**The city of Lansing doesn'tan approved SUP as a medical provisioning center in order to open a adult-use provisioning center. They created 28 medical permits and 28 adult-use permits that are wholly separate. Therefore, they could end up with 54 provisioning centers total. They also approved 4 micro businesses and 4 social club permits, for a total of 36-64 retail facilities total.

REVENUE

We would likely generate \$155,273-\$194,773 annually in revenue under our existing ordinance, if we opt-in under the MRTMA and grandfather our current 6 permit holders:

\$60,000 Annual Fee Revenue
 \$58,500-\$98,000 Annual State Excise Tax Revenue
 \$36,773 Annual Property Tax Revenue

Annual Revenue to the Township: \$155,273-\$194,773
Total Annual Donations: \$30,000+

Thoughts on using this new revenue: We have discussed this before, but our Township's Police and Fire Departments are both very far below their staffing levels prior to the Great Recession. When you look at best practices for staffing on a population basis, both departments are about 50% below recommended staffing levels we used when developing our 2017 Police and Fire Millage.

Opting in under the MRTMA with our current ordinance generates enough revenue to hire one more firefighter and one more police officer with no impact on the General Fund.

Current Township Police and Fire/EMS Staffing Relative to 2003								
Year	Police	Personnel per 1k residents	Recommended Staffing per Capita*	% Below recommended level	Fire/EMS	Personnel per 1k residents	Midwest Avg	% Below Midwest Avg
2003	47	1.20	1.8	-33.28%	35	0.89	1.4	-36.12%
2021	39	0.90 (-25%)	1.8	-48.98%	30	0.69 (-22%)	1.4	-51.00%

*Bureau of Justice Statistics

2019-2021 Actual Revenue: We have already generated \$135,000 in revenue from the nonrefundable fees paid by the original 21 applicants in August of 2019, 5 renewal fees in 2020, and the new applicant that applied in the Hagadorn Rd overlay district in January of 2021.

The five current permit holders owe renewal fees in 2021 totaling \$25,000, bringing the total to \$160,000 before we even opt in on adult-use marihuana.

This actual revenue accounts for over half of our record investment of \$300,000 in solar energy this year.

Background information on Annual Fee Revenue

We are allowed to assess a \$5,000 annual fee under both the MMFLA and MRTMA, a total of \$10,000 per facility annually.

Therefore, we would generate \$60,000 annually under our existing ordinance, if we opt-in under the MRTMA and grandfather our current 6 permit holders.

Background information on Annual State Excise Tax Revenue

Under the MRTMA, 15% of the revenue generated by the 10% excise tax is set aside to be distributed to local units (i.e. townships, cities, and villages) that opt in under adult-use marihuana.

Revenue is distributed by taking this 15% of excise tax revenue, dividing by the number of retail/provisioning and microbusiness stores, and multiplying by the number of retail/provisioning stores a community has.

There is a provision requiring that the first \$20 million in revenue be set aside for two out of the first three fiscal years for federal studies. However, marijuana remains illegal under federal law so no such studies are being conducted and the Legislature may amend the act to appropriate this funding under the existing distribution as it's currently sitting idle.

Regardless, this revenue being set aside for studies won't impact Meridian Township as the earliest we would be able to amend our ordinance to opt in and get our facilities opened/eligible at this point would be 2022, after this provision to set aside funds for federal studies has expired.

Therefore, let's examine what communities would receive in 2020 in actual revenue under the first year of adult-use marijuana without this provision to set aside funds for federal studies as it won't impact revenue the Township would receive in 2022 and beyond:

Fiscal Year	Actual Revenue (Source: House Fiscal Agency)	Number of LARA Approved Facilities (Source: LARA)	Meridian Township Would Have Received
2020	\$31,000,000.00	180	\$155,000.00

According to state economists at the House Fiscal Agency, this number is inflated right now as the revenue generated by a single retail facility (i.e. provisioning center or micro business) is high due to the limited number of facilities. Meaning people are traveling to the neighboring communities to purchase the product, inflating average sales per facility.

For instance, Meridian Township residents are currently going to East Lansing and Lansing retail facilities, increasing the average sales of their facilities, resulting in more revenue going to those communities annually.

The average sales per facility will decrease somewhat over time as more communities opt in and spread the sales geographically.

According to LARA, 15 new retail facilities are being approved per month on average and LARA expects this to continue through 2021 resulting in 180 new retail facilities that are eligible for revenue sharing under the act. An estimated total of 360 eligible facilities for 2021.

The House Fiscal Agency, Senate Fiscal Agency, Treasury just held the Consensus Revenue Estimating Conference (CREC) and project excise tax revenue to be \$75 million in Fiscal Year 2021.

Therefore, if we had opted in, we would have received about \$31,250 per facility for a total of \$187,500 in 2021.

Fiscal Year	CREC Estimate	LARA Estimates on # of Facilities	Township Revenue Estimate	Estimated Revenue per Facility
2022	\$75,000,000	360	\$187,500.00	\$31,250.00

If we opt in, Ingham County also gets the same amount of revenue per facility authorized in the Township under the MRTMA.

As previously noted, revenue per facility will decrease over time. If we look at industry averages in Colorado and Washington (i.e. the first two states to legalize adult-use marijuana), retail stores usually do \$650,000 to \$1 million in sales annually once the market is mostly built out and sales average out across the state. Using these figures, longterm, we could expect to receive \$58,500 to \$90,000 in state revenue annually. However, we would receive a lot more than this in 2022 and in the years before the market fully matures.

Background Information on Annual Property Tax Revenue

There are four undeveloped parcels among the 6 current permit holders in the Township.

The other 2 permit holders are in strip malls. We won't see any increase in property taxes paid by these strip malls until the properties are sold or redeveloped, which would uncap the taxable value under Proposal A.

Of the 4 undeveloped facilities, the current 2020 taxable values are:

- 1838 Towner Rd: \$73,229
- Parcel #20-127-003 (Northwind Dr): \$48,982
- 1614 W Grand River Ave: \$133,400
- 4366 Hagadorn Rd: \$25,271

The SkyMint facility in East Lansing is a good comparable property for assessing the taxable value of these four properties if they are developed as medical and adult-use retail stores. In fact, SkyMint is one of our 6 permit holders, and has obtained a Special Use Permit from the Township Board to build a nearly identical facility to the one in East Lansing.

The estimated taxable value for the SkyMint facility in East Lansing is \$950,000. Using this comparable property, developing the four undeveloped sites would produce the following increases in taxable value:

- 1838 Towner Rd: \$73,229 to \$950,000 (Increase of: \$876,771)
- Parcel #20-127-003 (Northwind Dr): \$48,982 to \$950,000 (Increase of: \$901,018)
- 1614 W Grand River Ave: \$133,400 to \$950,000 (Increase of: \$816,600)
- 4366 Hagadorn Rd: \$25,271 to \$950,000 (Increase of: \$924,729)

Cumulative increased taxable value: \$3,519,118.

The Township currently levies 10.4499 mills.

Therefore, in the first year, we would generate approximately \$36,773 in property tax revenue to the Township if these four sites are developed in this manner.

MEDICAL VS. ADULT-USE MARKETPLACE

There are approximately 7 million adults, age 21 and up, who can legally purchase adult-use marijuana in Michigan ([Source: The Review - Kalamazoo City Attorney Clyde Robinson, page 36](#)). However, there are only 244,804 medical card holders in Michigan.

Meaning the medical marketplace is only 3.4% of the adult-use marketplace ([Source: LARA 2020 Report, page 78](#)).

Other communities have already opted in under adult-use and more communities continue to opt in every month.

There is no difference between a medical-only facility and a medical/adult-use facility. Meaning these businesses are investing a finite amount of money to build and open new facilities.

Therefore, they're prioritizing communities that have opted in under adult-use as the medical marketplace is only 3.4% of the adult-use market.

These two factors are why we can't test the medical marketplace before we opt in under the adult-use. We can wait, but we won't see any medical facilities open.

OTHER RESOURCES AND INFORMATION

- [The May/June 2020 Edition of MML's The Review, which focused on medical and adult-use marijuana.](#)