

Owosso Planning Commission



*Regular Meeting
6:30pm, Monday, March 27, 2017
Owosso City Council Chambers*



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: January 23, 2017

TO: Chairman Wascher and the Owosso Planning Commission

FROM: Susan Montenegro, asst. city manager/director of community development

RE: Regular Planning Commission Meeting: March 27, 2017

The planning commission shall convene at 6:30 pm on Monday, March 27, 2017 in the city council chambers of city hall.

On the schedule is the continuation of the sign ordinance updating. More specifically, the commission will be looking at off-premise signage. I have asked Paul Cook from Wolverine Sign Company to join us for discussion this evening.

An update on the Medical Marijuana workshop will also be given. I am attaching handouts from that evening.

Please **RSVP for the meeting**. Feel free to contact me at 989.725.0544 if you have questions.

Sue

AGENDA
Owosso Planning Commission
Regular Meeting
Monday, March 27, 2017 at 6:30 p.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA: March 27, 2017

APPROVAL OF MINUTES: January 23, 2017
February 27, 2017 (no meeting, no agenda items)

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from January 23, 2017.
3. Alpena's Off-Premise Sign Ordinance language and chart.
4. Medical Marijuana workshop materials.

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

None.

SITE PLAN REVIEW:

None.

BUSINESS ITEMS:

None.

ITEMS OF DISCUSSION:

1. Continuation of sign ordinance updating – off-premise language example and chart.
2. Medical marijuana workshop update.

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: **Next meeting will be Monday, April 24, 2017**

Commissioners, please call Sue at 725-0544 if you will be unable to attend the meeting on Monday, March 27, 2017.

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: www.ci.owosso.mi.us

Affirmative Resolutions
Owosso Planning Commission
Regular Meeting
Monday, March 27, 2017 at 6:30 p.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

Resolution 170327-01

Motion: _____

Support: _____

The Owosso Planning Commission hereby approves the agenda of March 27, 2017 as presented.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

Resolution 170327-02

Motion: _____

Support: _____

The Owosso Planning Commission hereby approves the minutes of January 23, 2017 as presented.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

Resolution 170327-03

Motion: _____

Support: _____

The Owosso Planning Commission hereby adjourns the March 27, 2017 meeting, effective at _____pm.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

**MINUTES
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
MONDAY, JANUARY 23, 2016 – 6:30 P.M.**

CALL TO ORDER: Chairperson Bill Wascher called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE: Recited.

ROLL CALL: Deputy City Clerk Roxane Cramer

MEMBERS PRESENT: Chairperson Bill Wascher, Secretary Janae Fear, Commissioners Michelle Collison, Tom Cook and Frank Livingston.

MEMBERS ABSENT: Vice-Chair Craig Weaver, Commissioners Brent Smith and Tom Taylor

OTHERS PRESENT: Jeffrey Drown, from Kincaid Henry, David Russell, Owner of 344 West Main Street, Susan Montenegro, Assistant City Manager/ Director of Community Development.

APPROVAL OF AGENDA:
MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER COOK TO APPROVE THE AGENDA FOR JANUARY 23, 2017.

YEAS ALL. MOTION CARRIED.

APPROVAL OF MINUTES:
MOTION BY COMMISSIONER LIVINGSTON SUPPORTED BY COMMISSIONER COLLISON TO APPROVE THE MINUTES FOR THE DECEMBER 13, 2016 MEETING.

YEAS ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. PC minutes for December 12, 2106.
3. Site plan application packet – 344 W. Main.

COMMISSIONER/PUBLIC COMMENTS

None.

PUBLIC HEARINGS:

None.

SITE PLAN REVIEW:

344 West Main Street

Jeffrey Drown from Kincaid Henry detailed the project. Plans are to repurpose the current units there and continue with commercial on the first floor. They will be removing the garage area. There will be narrowing the sidewalk and creating more green space in front of the building. They will be repaving and restriping the parking lot. No residential on the ground floor it will be commercial.

Commissioners questioned if there will be designated spaces for the residents. Mr. Drown explained that didn't feel that was necessary due the amount of ample parking. Ms. Montenegro stated that parking is not an issue with the parking available in the parking lot, the parking at the Pay Master Building and a lot across from the Arts Council.

Chairman Wascher asked about tying into new utilities and lighting. They will use existing lighting and add some for security. Ms. Montenegro explained to that they need work with the utilities director to properly identify the sewer and storm drain lines because where they are depicted on the drawings is not where the city shows them.

Commissioner Cook asked if the dumpster is going to be enclosed. Mr. Drown explained it will be enclosed and there will be landscaping around the dumpster. The commissioners were pleased about the landscaping around the dumpster.

Mr. Drown explained there will be 3 entrances to the retail (2 on the east side and the front entrance that is currently there). There will be 2 entrances to the living areas on the second level. These are located on the east side of the building both will be moved closer to each other allowing easier access for the residents to the second level.

Commissioner Fear asked if there was going to be access from the retail to the living spaces. Mr. Drown explained that there will not be any access from the commercial area to the residential area

Chairman Wascher asked if anything was going to be done to west side of the building. Mr. Drown also explained that any of the façade falling off will be replaced; all around the windows will be new. The brick will be washed and the windows that are now blocked off will be opened back up.

Chairman Wascher asked where the loading zone will be. Mr. Drown explained any loading will have to be done at the entrances in the parking lot. Chairman Wascher also asked about the grades and repaving the parking lot. Mr. Drown explained they would be putting 1 inch and ½ inch topcoat. Mr. Wascher expressed without the grades you couldn't tell where the water was going. He noted there was a catch basin but it doesn't mean it goes there. Ms. Montenegro stated that would be something that they would have to work with the city engineer on this issue.

Ms. Montenegro stated that there was concern from city staff about the downspouts. Chairman Wascher expressed concern about the east roof drain running across the sidewalk or parking lot. The engineer reports suggested some type of rain garden retention facility. The city engineer does not want the water to run across the parking lot or sidewalk. Mr. Drown said they will run a drain to the catch basin.

MOTION BY COMMISSIONER COOK TO APPROVE THE SITE PLAN AT 344 W. MAIN ST, CONTINGENT UPON WORKING WITH THE ENGINEER TO ADDRESS THE SANITARY SEWER AND STORM DRAIN ISSUES, SUPPORTED BY COMMISSIONER LIVINGSTON.

ROLL CALL VOTE:

**AYES: COMMISSIONERS FEAR, COOK, LIVINGSTON, COLLISON AND
CHAIRPERSON WASCHER,**

NAYS: NONE

ABSENT: VICE-CHAIR WEAVER, COMMISSIONERS SMITH AND TAYLOR

MOTION PASSED.

BUSINESS ITEMS:

None.

ITEMS OF DISCUSSION:

None.

COMMISSIONER/PUBLIC COMMENT:

Ms. Montenegro encouraged the commissioners to attend a workshop at Michigan State on February 28th from 6 p.m. – 9 p.m. The workshop will cover new regulations on medical marijuana facilities. She also shared that on Monday, January 30th city council will be discussing the new regulations as well. Ms. Montenegro also invited commissioners to attend the parks and recreation to be held on Tuesday, January 24 at 7:30 p.m.

Commissioner Cook asked if the city sold the South Washington piece of property to Trust Thermal. He asked about the large storage of large containers on their property line and also when they were granted abatement on the property 6 – 8 years ago they talked about improving the fence along the walkway. He felt this would be a good time to address that. Ms. Montenegro reported that they did sell that property to Trust Thermal and that Trust Thermal also purchased the property directly to the north next to Reeves. They have plans to use that property for storage as well. Ms. Montenegro stated that any improvements will have to be brought to the planning commission.

Chairman Wascher inquired if the council representative had been appointed to the planning. Ms. Montenegro reported that they were working on it.

Commissioner Fear asked about the follow up on a complaint regarding a sign. Ms. Montenegro explained signs are not allowed in residential area and they have been issued a violation notice. She also reported the code enforcement is following up on it.

Chairman Wascher asked if the wetlands at Osburn Lakes are going to be staked. He also expressed his concern that a licensed surveyor should do the marking of the wetlands.

Commissioner Fear asked about an update on Qdoba. Ms. Montenegro reported that they are going to be starting on the vapor barrier installation in February. Construction on the inside of the building will begin shortly after that and hopefully be open in a couple of months.

Commissioner Fear asked Ms. Montenegro if she could make a note to address the dead landscaping at the Dollar General on M-52 closer to spring.

Ms. Montenegro stated that the construction on the Advanced Eye Care building on the Corner of M-52 and Clinton Street is moving along.

Chairman Wascher asked about the Armory. Ms. Montenegro reported it is still moving forward. It is a continual process.

ADJOURNMENT:

**MOTION BY COMMISSIONER COOK, SUPPORTED BY COMMISSIONER LIVINGSTON TO
ADJOURN AT 7:16 P.M. UNTIL THE NEXT MEETING ON FEBRUARY 27, 2017.**

YEAS ALL, MOTION CARRIED.

Janae L. Fear, Secretary

rc

**MINUTES
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
MONDAY, FEBRUARY 27, 2016 – 6:30 P.M.**

There was no meeting due to a lack of agenda items.

A. OFF-PREMISE ADVERTISING

The regulation of off-premise signs is intended to enhance and protect community character and image by minimizing visual blight and pollution, and to minimize traffic safety hazards due to diversion of the driver's attention and blockage of sight distances. Off-premise sign regulations address the location, size, height and related characteristics of such signs.

1. **Area and Height Limitations:** No off-premise sign may be erected or maintained of a greater surface area than three hundred (300) square feet for each side of such sign. The top of the sign shall be no more than twenty-five (25) feet above the ground and the bottom of the sign shall be at least eight (8) above the ground. Double faced off-premise sign structures (i.e., structures having back-to-back faces) and V-type structures having only one face visible to traffic proceeding from any given direction on a street or highway shall be considered as one off-premise sign.
2. **Location:** Static and digital off-premise signs may be erected only in an Industrial District along a State trunkline. No off-premise sign may be erected or maintained within fifty (50) feet of street lines at any street intersection and shall have a minimum setback from the front property line of twenty-five (25) feet. No off-premise sign shall be installed or placed on top of, cantilevered or otherwise suspended above the roof of any building.
3. **Spacing:** Off-premise signs shall be located no closer to one another than **five hundred (500)** feet.
4. **Material Required:** All off-premise signs shall have a surface or facing of noncombustible material.
5. **Illumination:** An off-premise sign may be illuminated, provided such illumination is concentrated on the surface of the sign and is so located as to avoid glare or reflection onto any portion of an adjacent street or highway, into the path of oncoming vehicles, or on any adjacent premises. In no event shall any off-premise sign have flashing or intermittent lights, nor shall the lights be permitted to rotate or oscillate.
6. **Digital Off-Premise Signs:**
 - a) **Rate of Change:** The rate of change between static messages or images shall not exceed more than one (1) change per six (6) seconds. Each change shall be complete in one (1) second or less.
 - b) **Luminance:** The maximum daylight sign luminance level shall not exceed 62,000 candelas per meter squared at 40,000 lux illumination beginning ½ hour after sunrise and continuing until 1/2 hour before sunset and does not exceed 375 candelas per meter squared at 4 lux illumination at all other times.
 - c) Digital off-premise signs shall be configured to default to a static display in the event of mechanical failure.
7. An off-premise sign must be constructed in such a fashion that it will withstand all wind and vibration forces which can normally be expected to occur in the vicinity. An off-premise sign

must be maintained so as to assure proper alignment of structure, continued structural soundness, and continued readability of the message(s).

8. An off-premise sign established within an industrial area, as defined in the Highway Advertising Act of 1972 (1972 PA 106, as amended) bordering interstate highways, freeways or primary highways as defined in said Act shall, in addition to complying with the above conditions, also comply with all applicable provisions of said Act and the regulations promulgated thereunder.

B. COMBINATION OFF-PREMISE & ON-PREMISE ELECTRONIC MESSAGE BOARDS

Digital signs which are used to advertise both on-premise and off-premise establishments shall comply with the following regulations:

1. A permanent, static on-premise primary sign must be in existence totaling at least twenty-five (25) percent of the allowable sign size in the district. The balance of the total allowable sign area may consist of the Combination Off-Premise/On-Premise Sign.
2. The Combination Off-Premise/On-Premise Sign shall adhere to the regulations contained in **§4.7(B)(2-6)**.
3. Over fifty (50) percent of the digital messages contained on such sign shall advertise the on-premise establishment. The balance of the messages may advertise off-premise establishments under the same ownership and/or public service announcements.
4. Each message shall remain readable for at least six (6) seconds.
5. Combination Off-Premise & On-Premise Digital Signs shall be spaced at least one thousand (1,000) feet apart in all Districts.
6. Combination Off-Premise & On-Premise Digital Signs shall be allowed in the **OS-1, B-2, B-3, CBD, CCD, I-1 and I-2 Districts**.
7. Combination Off-Premise/On-Premise Signs shall count toward the total sign area allowed for the property.

C. OFF-PREMISE DIRECTIONAL SIGNS

1. **Private Off-Premise Directional Signs:** Private off-premise directional signs which provide directions to a commercial or industrial establishment which is not located on a primary street within the city shall be allowed on private property provided there exists a written agreement between the property owner and the business/industry. Said agreement shall be filed with the City of Alpena.
 - a) Off-premise directional signs shall be no greater than six (6) square feet.
 - b) Off-premise directional signs must be located at intersections.
 - c) Sign lettering may display the off-premise business name, address, and an arrow indicating direction.

d) Off-premise directional signs shall only be located on commercial or industrial property on the streets designated on **Map 4.1**.

e) One (1) off-premise direction sign is permitted per commercial or industrial zoning lot.

2. Public Off-Premise Directional Signs: Public off-premise directional signs erected by the City, State of Michigan, or the Downtown Development Authority shall be permitted in the street right-of-way.

D. OFF-PREMISE PRIVATE SIGNS IN THE PUBLIC RIGHT-OF-WAY: Private A-frame signs may be allowed in the public right-of-way. The following regulations shall apply:

1. Signs shall be approved by the City Council.

2. Signs shall be removed each night.

3. Signs shall only be located at intersections on the streets designated in **Map 4.1**.

4. Maximum size 2' wide by 4' in total height for each panel with a maximum of 2 panels per sign. Maximum spread between the two panels at the base shall be 2'6".

5. The owner of the property abutting the right-of-way on which the sign is placed shall be notified, prior to City Council approval, that the sign is being requested.

TABLES OF SIGN REGULATIONS

<p align="center">TABLE 4D OFF-PREMISE SIGNS & COMBINATION OFF-PREMISE/ON-PREMISE ELECTRONIC MESSAGE BOARDS</p>			
	<p align="center">   </p>	<p align="center">      </p>	<p align="center">   </p>
<p>Exclusively Off-Premise</p>	<p>Not Allowed</p>	<p>Not Allowed</p>	<ul style="list-style-type: none"> ▪ Allowed along State trunklines. ▪ 300 ft² per side. ▪ Height = 15' (the bottom of which is at least 3 ft above the surface of the ground). ▪ Not within 500' of public park, recreation area, public reservation, bridge, school or church. ▪ Not within 50 feet of street lines at any intersection. ▪ Minimum setback of 25' from front property line. ▪ Spacing requirement: 2,000' ▪ Digital off-premise signs allowed as per regulations stated. In 4.8(A)(6)
<p>Combination Off-Premise/On-Premise Electronic Message Boards.</p>	<p>Not Allowed</p>	<ul style="list-style-type: none"> ▪ Must be used in conjunction with permanent static primary signs. ▪ Primary sign must total at least 25% of allowable sign area. The balance of the sign may consist of combination off-premise/on-premise digital sign. ▪ Majority of messages must relate to on-premise establishment. ▪ Balance of messages may relate to off-premise establishment under the same ownership and/or public service announcements. ▪ Shall be spaced 1,000' apart in all Districts. 	<ul style="list-style-type: none"> ▪ Must be used in conjunction with permanent static primary signs. ▪ Primary sign must total at least 25% of allowable sign area. The balance of the sign may consist of combination off-premise/on-premise digital sign. ▪ Shall be spaced 1,000' apart. ▪ Majority of messages must relate to on-premise establishment. Balance of messages may relate to off-premise establishment under the same ownership and/or public service announcements.

Materials on the Michigan Marijuana Laws

**This includes handouts from the
Michigan State University Workshop
February 28, 2017**

LB and PC starts the conversation with other officials, community members, and neighboring communities

Prohibit all facility types

Decide to prohibit or allow facilities

Allow one or more facility type

LB prepares and passes a resolution declaring no facilities will be allowed

PC creates advisory committee and names citizen members to draft zoning standards

LB begins drafting police power ordinance to allow one or more facility type

PC committee holds several work sessions to study and discuss issue and decide to:

Concentrate facilities

Disperse facilities

Or other approach

Determine the zoning district(s) to allow facilities

Determine which facility types will be allowed in which zoning districts

Develop discretionary and nondiscretionary standards to review facility applications as a special land use

Develop discretionary and nondiscretionary standards to review facility applications as a special land use

PC holds public open house to share draft zoning standards and police power ordinance for input

LB/PC work informs the other

PC refines zoning standards then holds public hearing

LB refines police power ordinance

PC recommends adoption of zoning amendment to LB

LB adopts police power ordinance and zoning ordinance

LB = Legislative Body
PC = Planning Commission

This flowchart is not a substitute for following the statutorily required process for adopting a zoning ordinance amendment as detailed in the Michigan Zoning Enabling Act

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“I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.”

– Thomas Jefferson

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Regulating Medical Marijuana Facilities: A Workshop for Local Government

February 2017

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- **Mark Wyckoff, FAICP**
 - Professor, Director, Planning & Zoning Center at MSU
 - Sr. Associate Director, MSU Land Policy Institute

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Today's Presenter

- **Brad Neumann, AICP**
 - Educator, Land Use
 - MSU Extension, Greening Michigan Institute
 - Government and Public Policy Team
 - neuman36@msu.edu; 906-315-2661
 - www.msue.msu.edu

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What We Will Cover

- A. The Regulatory Context
- B. Introduction to the New Laws
- C. Application to Zoning
- D. Sample Ordinances
- E. Implementation
- F. Next Steps
- G. Questions Remain
- H. Additional Resources

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Handouts

PLANNING & ZONING NEWS

- PowerPoint handout
- *Planning and Zoning News* – Sept. 2016 Issue
- Medical Marijuana Facilities Licensing Act (PA 281 of 2016)
- "Health Effects of Cannabis & Cannabinoids: Committee's Conclusions." *National Academies*. 1/17.
- Sample Ordinances; Sample Resolution
- Sample Process Flowchart; Municipalities Taking Action
- *Spartanville* Exercise handouts
- 'To do' list
- Evaluation; Civil Rights sheet (please return)

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Disclaimer

The information presented in this program is for educational purposes only and should not be interpreted as legal advice. Local officials are strongly encouraged to consult with a municipal attorney who is highly experienced in Michigan planning and zoning law.

Michigan State University does not endorse or oppose medical marijuana.

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A. The Regulatory Context

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Federal Controlled Substances Act of 1970

The manufacture, distribution, or possession of marijuana is a felony.

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Schedule 1 Drug

- High potential for abuse
- No currently accepted medical use in treatment
- Lack of accepted safety for use under medical supervision

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Recent Medical Study

National Academies of Sciences, Engineering and Medicine study published in January 2017 found:

- There is "conclusive or substantial" evidence that marijuana is an effective treatment for chronic pain, chemotherapy-induced nausea, and multiple sclerosis spasticity symptoms.



<http://nationalacademies.org/CannabisHealthEffects>

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Recent Medical Study

Also warns of dangers from use:

- increased risk of car crashes;
- lower birth weight babies;
- problems with learning, memory, attention; and more.

It also found a strong connection between frequent cannabis use and the development of schizophrenia and other psychoses.



<http://nationalacademies.org/CannabisHealthEffects>

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Marijuana Legalization Status

- Medical marijuana legalized
- Marijuana legalized for recreational use
- No laws legalizing marijuana

State Marijuana Laws as of November 11, 2016
Source: Governing Data

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No state marijuana law has been invalidated under federal preemption.

- Decriminalizing use and possession under state law does not bar federal law enforcement.
- States cannot be compelled to enforce federal law.



Marquette University Law School

Unclear what the new Administration will do!

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Tribal Government and Marijuana

- Oct. 2014 U.S. DOJ Memo: Policy Statement Regarding Marijuana Issues in Indian Country
- Extended "Cole Memo" policy to marijuana activities on tribal lands
- Recognizes sovereignty; Government to government relations



Michigan American Indian Tribal Communities

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2008 Michigan Medical Marijuana Act (MMA)

"A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act."

MCL 333.26424

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2008 Michigan Medical Marijuana Act

Qualifying patient - a person who has been diagnosed by a physician as having a debilitating medical condition.



MCL 333.26423

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2008 Michigan Medical Marijuana Act

A qualifying patient can:

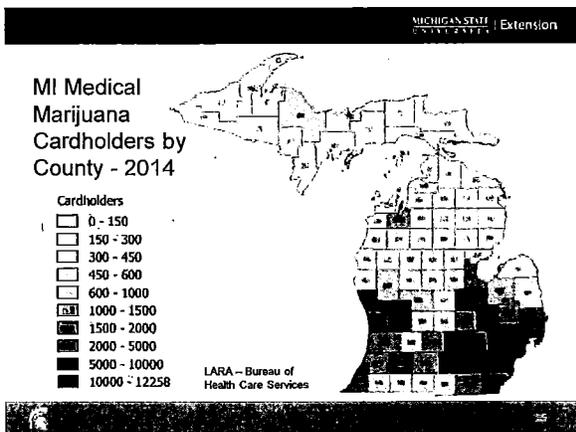
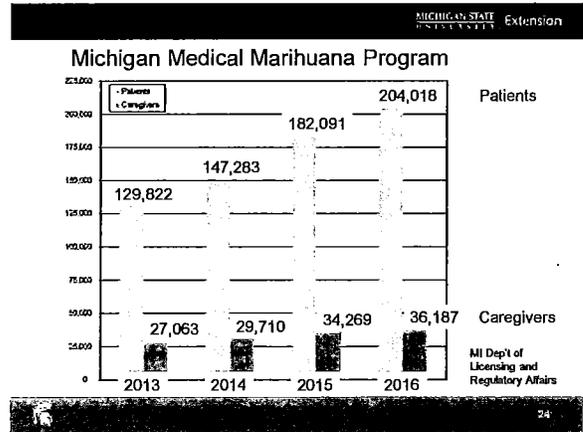
- Possess up to 2.5 ounces of usable marijuana
- Cultivate 12 marijuana plants kept in an enclosed, locked facility
 - If the qualifying patient has not specified a primary caregiver

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2008 Michigan Medical Marijuana Act

For each of up to 5 qualifying patients, a registered primary caregiver may:

- Possess up to 2.5 ounces of usable marijuana
- Cultivate 12 marijuana plants kept in an enclosed, locked facility



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Challenges Under MMMA

- Access – delayed or poor harvest
- Excess – disposal
- Facilities –
 - compassion care clubs and clinics
 - dispensaries
 - cooperative grow facilities

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Uneven Regulation and Enforcement

- Moratoria
- Prohibiting as illegal uses under zoning
- Closing dispensaries
- Ignoring or acting only on complaints



Phabay.com

27

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Uneven Regulation and Enforcement

- Welcoming dispensaries as retail use
- Treating caregivers as home occupation or commercial use
- Allowing cooperative grows as agricultural or industrial use



28

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Lack of Direction

- State legislature
 - Voter initiated law
 - Can only be amended by 3/4 vote of both houses
- MI Department of Community Health
 - Limited role



29

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People v. Bylsma (2012)

Holding: Cooperative grow operations not allowed under MMMA.

Each patient's plants must be grown and maintained in a separate, enclosed, locked facility only accessible to one person at a time (the patient or the patient's caregiver).

30

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State of Michigan v. McQueen (2013)

Holding: Consignment model dispensaries not protected under MMMA.

Operators deemed to possess the marijuana stored in the dispensary's lockers and held to be engaged in patient-to-patient sales not authorized by MMMA.

31

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People v. Carruthers (2013)

Holding: Edible containing THC extract from marijuana resin is not "usable marijuana" under the MMMA.

A substance must contain plant material to be considered "usable" under Section 4 of the MMMA.

32

Ter Beek v. City of Wyoming (2014)

Holding: Communities cannot enact ordinances banning medical marijuana within their borders.

City ordinance is preempted by MMMA, i.e., cannot prohibit what a state statute permits.



35

Questions?



PA 281 of 2016 - Medical Marijuana Facilities Licensing Act

- Creates a licensing and regulatory structure for five types of medical marijuana facilities
- Provides immunity from criminal and civil prosecution, penalties, and sanctions under state law or local ordinances
- Does not change existing immunity for qualifying patients and registered caregivers



37

EXERCISE

Turn to one of your neighbors and talk through some of the pros and cons of allowing medical marijuana facilities in your community.

Consider the varied perspectives on this issue.



34

B. Introduction to the New Laws

PA 281, 282, and 283 of 2016



PA 282 of 2016 - Marijuana Tracking Act



- Requires statewide internet-based system for seed-to-sale tracking of commercial marijuana and products
- Requires licensees to interface with statewide system via secure third-party inventory system that tracks all activity



36

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PA 283 of 2016 - MI Medical Marijuana Act amendment



- Amends the MMMA to regulate the manufacture and transport of marijuana-infused products
- Adds extraction and marijuana-infused products to definition of medical use of marijuana

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Grower License

Commercial entity that cultivates, dries, trims, or cures and packages marijuana for sale




- MCL 333.27102(f)

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Grower – What are Similar Land Uses?

- Statute requires growers be in areas zoned for industrial or agricultural uses.
- In your community, which zoning districts does that include?




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Processor License

Commercial entity that purchases marijuana from a grower and extracts the resin or creates a marijuana-infused product for sale in packaged form to a provisioning center



- MCL 333.27102(q)

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Processor – What are Similar Land Uses?

- In your community, what zoning districts allow similar types of land uses?




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Provisioning Center License

Commercial entity that purchases marijuana from a grower or processor and sells or provides marijuana to registered qualifying patients, directly or through the patients' registered primary caregivers.



- MCL 333.27102(r)

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Provisioning Center – What are Similar Land Uses?

- In your community, what zoning districts allow similar types of land uses?



Brad Neumann



Kurt Schindler

47

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Secure Transporter License

Commercial entity that stores marijuana and transports marijuana or money associated with its purchase or sale between marijuana facilities

- MCL 333.27102(x)



CNN Money

48

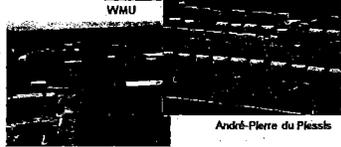
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Secure Transporter – What are Similar Land Uses?

- In your community, what zoning districts allow similar types of land uses?



WMU



André-Pierre du Plessis

Kurt Schindler

49

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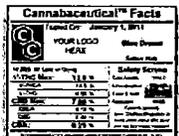
Safety Compliance Facility License

Commercial entity that receives marijuana from a marijuana facility or registered primary caregiver and tests it for contaminants, THC, and other cannabinoids

- MCL 333.27102(v)



CBS Denver



50

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Safety Compliance Facility – What are Similar Land Uses?

- In your community, what zoning districts allow similar types of land uses?



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USDA

Kurt Schindler

51

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Facility Licenses

DECEMBER 15

Applications for state operating licenses for all five facility types available beginning December 15, 2017

52

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Local Regulation

Prohibits a marijuana facility in a municipality that has not adopted an ordinance authorizing that facility type

- **To say no, do nothing**
 - Statute does not require action
- **Or, adopt a resolution or policy statement saying 'No'**
 - Makes your intent clear



53

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Sample Resolution

- 4 paragraphs
- References MMFLA
- Municipality has decided it shall NOT adopt an ordinance to authorize any facilities
- Municipality hereby makes a record of its decision to prohibit any facilities

54

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Local Regulation

A municipality may adopt an ordinance:

- Authorizing 1 or more facility types
- Limiting the number of each type
- Establishing an annual license fee not exceeding \$5,000



55

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Setting the Fee

To defray administrative and enforcement costs associated with facilities. Can include:

- Attorney costs
- Legal defense
- Consultant costs
- Planner/ZA costs
- Cost of office space
- Meeting costs
- Noticing, mailing, publishing costs
- Cost of keeping files
- Mileage costs
- Printing costs
- Enforcement costs
- Other?

56

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Questions?

57

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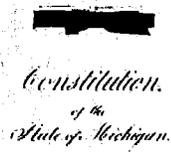
C. Application to Zoning

58

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Source of Zoning Authority

- Derived from state's sovereign police power to protect health, safety and welfare
- The state chooses to delegate some of that authority to local units of government through enabling acts.



Constitution of the State of Michigan

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Michigan Zoning Enabling Act

- Michigan grants all local general purpose governments the ability to independently develop and adopt zoning ordinances.
- Cities, villages, townships and counties: MZEA, PA 110 of 2006, as amended, MCL 125.3101 *et seq.*



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State and Federal Preemption

The state legislature modifies, from time to time, local governments' authority to regulate certain uses:

<ul style="list-style-type: none"> Manufactured homes Animal agriculture regulations Foster care homes Group homes Daycare centers Public schools Wetlands Mineral resources 	<ul style="list-style-type: none"> Home fine arts and crafts instruction Sanitary landfills Hazardous waste facilities Gun clubs Prisons Oil and gas wells And more
--	--

http://msue.anr.msu.edu/topic/planning/planning_and_zoning

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Partial Preemption

- MMLFA is closer to partial preemption in that the state is setting the rules by which medical marijuana facilities can be allowed in the jurisdiction.



FEDERAL
↓
STATE
↓
LOCAL

University of Florida Levin College of Law

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Zoning vs. Other Police Power Regs

- Generally, three types of ordinances:
 - Police power ordinance
 - Zoning ordinance
 - Budget or appropriations ordinance
- Cities, villages and townships have general police power ordinance authority
- Counties do not

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Police Power Regulations

- Zoning is a valid application of a community's police power.
- The right to adopt regulations reasonably designed to protect public health, safety and welfare
 - Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926)
 - Alderton v. City of Saginaw*, 367 Mich. 28 (1962)



David Loudon

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Zoning vs. Other Police Power Regs

- Do not mix elements of each together.
 - Adoption of zoning has more due process and property rights protections
- Attempting to regulate land use with a separate police power ordinance may not be upheld in court
 - Square Lake Condo Assn v. Bloomfield Twp*, 437 Mich 310 (1991)
 - Forest Hill Energy-Fowler Farms, LLC v. Township of Bengal*, Mich App (unpublished, No. 319134, Dec. 4, 2014)

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What the MMFLA Allows

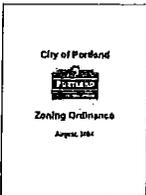
- A municipality may adopt an ordinance authorizing 1 or more facility types
 - Separate police power ordinance
- Limiting the number of each type of facility



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What the MMFLA Allows

- A municipality may adopt other ordinances relating to marijuana facilities, including zoning (Sec. 205(1)).
 - Cannot regulate purity or pricing or conflict with statutory regulations for facility licensing
 - Recall, partial preemption framework



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In a City, Village, or Township with Zoning

- Decide to prohibit or allow:
 - Adopt resolution stating position to prohibit (STOP HERE); or
 - Adopt police power ordinance to allow, then...
- Prepare and adopt zoning ordinance amendment regulating the location of facilities and establishing standards for approval

See Sample process flowchart...

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Townships Subject to County Zoning

- "Municipality" means a city, township, or village in MMFLA
- Only a city, village, or township can pass a police power ordinance to authorize facilities.
- A county with zoning may be asked by a municipality to amend zoning to allow facilities.

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Application of County Zoning

- Townships are subject to county zoning, if county zoning exists.
- Cities/villages are not subject to county zoning.
- Township zoning supersedes county zoning, if both exist.





In a Township with County Zoning

1. **Township decides to prohibit or allow:**
 - Adopts resolution stating position to prohibit (STOP HERE); or
 - Adopts police power ordinance to allow, then...
2. **Discusses with County which zoning districts to allow facilities and standards**
 - Handled as a special land use where one of the standards for approval is location in a township that has adopted an ordinance authorizing such facilities.



OR, In a Township with County Zoning

1. **Township decides to prohibit or allow:**
 - Adopts resolution stating position to prohibit (STOP HERE); or
 - Adopts police power ordinance to allow, but...
2. **County refuses to amend zoning to regulate the location of facilities**
 - Township can not have zoning regulations in a police power ordinance (*Forest Hill, LLC. v. Twp of Bengal, Mich App*)
 - Would not be able to regulate placement of facilities – they are simply allowed.



In a City or Village without Zoning

- Decide to prohibit or allow:
 - Adopt resolution clearing stating prohibition position (STOP HERE); or
 - Adopt police power ordinance to allow, but...
- Not likely to be able to regulate placement of facilities.
 - County zoning does not apply.



What the MMFLA Requires

- Provide the state with copies of:
 - Police power ordinance authorizing the facility
 - Zoning regulations that apply
 - Any ordinance violations by the applicant
- Municipality's failure to submit the information can't be used against applicant
- Applicant information is exempt under FOIA



Location and Nature of Facilities

- **Growers** are only allowed in areas zoned for industrial or agricultural uses
- Or unzoned areas that otherwise meet the municipality's police power ordinance on the subject



Nature of Licenses

- Sec. 409 makes a license a revocable privilege
- Requires approval of MMLB and municipality before a license is transferred, sold, or purchased
- A license is not a property right – Implications for nonconformities



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Nonconforming Uses, Structures

- Presumably, facilities must be allowed to continue if a regulation is changed; as long as it is operated in the same manner and to the same extent as it was when it became nonconforming.
- May not amortize (sunset) nonconformities under zoning
 - *De Mull v. City of Lowell*, 368 Mich. 242 (1962)



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Nonconforming Uses, Structures

- How about a facility that operates for some time after a regulation is changed, but then closes?
- Must a new facility of the same type be allowed to open in that same location?
- 'Yes' but would have to conform to new standards, otherwise not permitted

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Questions?

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SPARTYVILLE

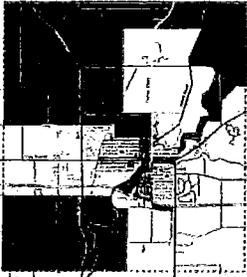
Exercise – Spartyville Goes 'Green'

Challenge

- What views matter?
- Which districts to allow?
- What are the standards?

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Spartyville Zoning Map



SPARTYVILLE

- Read the scenario and background information.
- As a small group, talk through questions 1-3.
- Time: 20 mins.

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D. Sample Ordinances

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Sample Police Power Ordinance

- Purpose – health, safety, welfare
- Definitions – primarily facility types
- Authorizes facility type(s) and numbers
- Authorizes fee
- Creates process – requires state license first then allows applicant to proceed to zoning approvals
- Provides renewal process

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Sample Zoning Ordinance Amendments

- Adds facility type definitions
- Identifies zoning districts for each type
- Adds special use standards generally and for each type
- Addresses nonconformities

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E. Implementation

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Facility Licenses

Medical Marijuana Licensing Board (MMLB):

- Exclusive authority to grant, deny, suspend, or revoke licenses
- May not limit the number or type of licenses granted



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Facility Licenses

Licensee eligibility criteria include:

- Criminal backgrounds prohibited
- Residency requirements until June 30, 2018
- Exclusions from holding elective office and specified government employment

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MMLB Oversees Facilities

- Investigating applicants and employees
- Inspecting overall safety, security, and integrity of operations
- Ensuring marijuana-infused products meet health and safety standards
- Conducting periodic audits
- Certifying revenue
- Receiving public complaints

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Enforcement

- A facility and all property in it are subject to examination at any time by state or local police
- Warrantless searches, without notice, authorized by MMLB through its investigators, agents, auditors, or the state police



Reuter/Jonathan Ernst

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Enforcement



MMLB may suspend, revoke, or restrict a license and require the removal of a licensee or a licensee's employee for a violation of the act, rules, the marijuana tracking act, or any local ordinance

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Local Enforcement

- Municipalities may enforce own local ordinances as usual
 - misdemeanors
 - civil infractions
- Municipalities cannot take any state license actions, i.e., suspend, revoke, or restrict a facility license

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State Excise Fund



New 3% tax on gross retail receipts of provisioning centers

PA 281 creates medical marijuana excise fund in state treasury for taxes, fees, fines, and charges

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State Excise Fund

- 25% to municipalities with facilities
- 30% to counties with facilities
- 5% to counties with facilities to support county sheriff and not to replace other funds
- 30% to the state's general fund*
- 5% to the state police
- 5% for local law enforcement training

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Michigan's medical marijuana market is projected to generate \$711.4 million in annual retail sales and 10,000 new jobs

Based on Senate Fiscal Analysis and "The Economic Impact of a Strong Regulatory Framework for Medical Marijuana in Michigan" by Dr. Gary Wolfram, Hillsdale College



Municipalities with facilities will share an estimated \$5.3 million in annual revenue

Medical Marijuana Excise Fund Earmark	Percentage	Amount
First Responder Presumed Coverage Fund (GF/GP prior to 10/1/2017)	30%	\$6,402,600
Counties	30%	6,402,600
Municipalities	25%	5,335,500
Sheriffs	5%	1,067,100
MCOLES	5%	1,067,100
State Police	5%	1,067,100
TOTAL	100%	\$21,342,000

Senate Fiscal Analysis



Questions?



F. Next Steps



So, what to do?

- Do not underestimate this as an *'unimportant'* topic in your community.
- As a group of local officials, you have to make **THE** right decision for **YOUR** community.
 - There is no correct answer that applies to all
 - Have to be prepared to live with the outcomes of the decision



So, what to do?

- **Start the conversation in your community!**
- **Do not do this in a vacuum!**
- **Failure to act decisively may have undesired results!**



MML



Engage the Public

- **It is important to hear from all perspectives on the issue:**
 - Medical
 - Law enforcement
 - Caregivers
 - Cardholders
 - Youth advocates
 - Downtown property owners
 - Prospective facility operators
 - Who else?



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Hear the Pros and Cons

- Engage diverse interests to hear and assemble the pros and cons of the issue in your community
 - Will need to determine what is fact vs. fiction
 - Not everyone will agree, but this is what public policy is all about
- Eventually, will need to make a decision

107

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Public Engagement Continuum

Smolins, Penny, Briggs & North Carolina Cooperative Extension Service, 2004

108

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Engage the Public

MSU Land Policy Institute, Brad Housman, 2015

109

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Facilitate the Conversation

- Will need to select a process and format to hear the issues and allow for dialogue while being able to engage in constructive conversation.

Rachel R. Smolinski

109

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How to proceed?

- Based on community and neighbor feedback, decide to prohibit or allow.
- Time is a critical dimension:**
 - 'No' now and 'Yes' later vs. 'Yes' now and 'No' later

See sample flowchart

105

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G. Questions Remain

106

Additional questions will be raised

- Can a community change its mind?
- If so, at what point?
- Is there a right of petition or referendum on the action of the community to allow or not allow the facilities?
- When would this occur?

Talk to your municipal attorney!

Rules Not Yet Written

LARA responsible for rulemaking necessary to implement, administer, and enforce the act, including operating regulations for each license category generally.



H. Additional Resources

Will recreational marijuana become legal?

- New laws look similar to those in states where recreational marijuana is legal
 - Will that be Michigan's future?
- If 10% of MI population partakes at levels similar to patients today, revenues could be much larger.
- Communities that allow now could have a foot in the door.



Still, start the conversation!

State licensing starts
in December 2017



Additional Resources

- **White Paper: A Local Government View of the Michigan Medical Marijuana Act** by Gerald A. Fisher. October 5, 2010.
 - <https://www.mml.org/pdf/fisher-med-marihuana-white-paper8-5-10.pdf>
- **Fact Sheet and Q&A - Medical Marijuana Facilities Licensing Act** by the Michigan Municipal League. Oct. 2016
 - http://www.mml.org/resources/publications/one_pagers/onepagers.htm

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Additional Resources

- **New Medical Marijuana Laws Q&A** by the *Michigan Townships Association*. Oct. 16, 2017
 - https://www.michigantownships.org/downloads/med_marijuana_qa.pdf
- **Clearing the haze on medical marijuana.** *Township Focus – Michigan Townships Association*. Feb. 2017

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What We Covered

- The Regulatory Context
- Introduction to the New Laws
- Application to Zoning
- Sample Ordinances
- Implementation
- Next Steps
- Questions Remain
- Additional Resources

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MSU Extension Government and Public Policy coverage

Colors and numbers represent Michigan's 10 counties

Black and grey lines represent MSU Extension coverage

March 11, 2014

MICHIGAN STATE UNIVERSITY Extension

Thank you

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New Medical Marijuana Laws Q&A

By Catherine Mullhaupt, MTA Staff Attorney

October 20, 2016

Note: *This guidance has been written for townships, but the statutes discussed apply to cities, villages and townships in the same way. A county cannot adopt an ordinance allowing any of the facilities authorized by these statutes.*

Q. Has marijuana been legalized?

A. No. Marijuana has not been legalized in Michigan. It is still an illegal drug under federal and state law.

The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421, et seq., allows qualified patients and registered caregivers identified with those patients to use marijuana for specified medical conditions. That law did not legalize marijuana, but it prohibits prosecuting or penalizing qualified patients and registered caregivers who use marijuana for those purposes as long as they comply with the MMMA.

Subsequent court opinions clarified that only those persons who were qualified patients and registered caregivers (and persons who met the requirements of Section 8 of the MMMA, even if not registered with the state) could exchange or use medical marijuana. A third party--a person providing or selling marijuana to a qualified patient who is not that person's registered caregiver--does not have the protection from prosecution under the MMMA. Any arrangement outside of the patient-caregiver relationship, including "dispensaries," does not comply with the MMMA and is illegal.

Q. Don't you know how to spell "marijuana"?

A. Yes. But the word was originally spelled with an "h," and that is how the word is spelled in federal law and the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act and Medical Marihuana Licensing Act. But everyone else today, including the courts, uses the more common spelling with the "j".

Q. What is legal today?

A. Only a patient-caregiver relationship conducted in compliance with the Michigan Medical Marihuana Act is legal today. Note that the MMMA was recently amended by PA 283 of 2016 to include certain marijuana-infused products, or "edibles," and to clarify what plants and parts of plants are allowed within the limits imposed by the Act.

Q. What is illegal today?

A. Anything that is not authorized by the Michigan Medical Marihuana Act is illegal today.

Q. So how come we see medical marijuana dispensaries all over?

A. Because the local jurisdiction has chosen to not enforce state or federal laws that make marijuana illegal outside of the patient-caregiver relationship protected by the MMMA. In most cases, the city, village or township has "decriminalized" certain uses of marijuana and/or chosen to not utilize enforcement resources for small amounts or certain levels of activity. But that is a forbearance, not legalization.

Q. Wait a minute—didn't a law just get passed that makes marijuana dispensaries legal?

A. No. Marijuana "dispensaries" or grow operations or any other activity involved with marijuana that does not comply with the Michigan Medical Marihuana Act are still unlawful.

Q. No, it did—the Medical Marihuana Facilities Licensing Act. The Governor signed it!

A. Yes. But the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101, et seq., does not take effect until December 20, 2016.

And the MMFLA includes an additional delay in implementation of 360 days to enable the Michigan Department of Licensing and Regulatory Affairs (LARA) to establish the licensing system required by the Act. ***A person cannot apply to the state for a license of any kind under the MMFLA until December 15, 2017.***

And no one can apply to the state for a license of any kind under the MMFLA UNLESS the township has already adopted an ordinance that authorizes that type of facility.

So even after December 15, 2017, any marijuana provisioning center or other activity involving marijuana that does not comply with the Michigan Medical Marihuana Act ***will still be illegal***, unless that township has adopted an ordinance that authorizes that type of facility under the Medical Marihuana Facilities Licensing Act.

(Note that the word "dispensary" has been commonly used to refer to a variety of medical marijuana activities, but the new laws do not refer to "dispensaries." Under the MMFLA, "provisioning centers" are what many people would describe as a "dispensary.")

Q. What if an applicant comes to our meeting now and demands that we adopt an ordinance or approve their license?

If a township is approached by an applicant stating that the board must adopt an ordinance, then that applicant has misunderstood the law.

A township cannot be required to adopt an ordinance to allow facilities authorized under the MMFLA now or at any time.

If a township is approached by an applicant demanding that the township consider their application or stating that the board must authorize their facility:

- Before December 15, 2017, no township can be required to consider an application. Even if a township adopts an ordinance to allow the facilities authorized by the MMFLA, the licensing system is not in place, and no applications will be considered by LARA until December 15, 2017.
- After December 15, 2017, if a township **has not** adopted an ordinance allowing any of the facilities authorized by the MMFLA, then the township is not required to consider any applications for MMFLA licenses, because no licenses will be approved by LARA.
- After December 15, 2017, if a township **has** adopted an ordinance allowing any of the facilities authorized by the MMFLA, **and** the application involves one of the type(s) of facilities that the township allows in its ordinance, **and** the cap on the number of that type of facility imposed by the township's ordinance has not been reached, then the township will be asked to provide information to LARA as part of the licensing approval process.

Q. What do we need to do if we do NOT want any of the facilities authorized under the new Medical Marijuana Facilities Licensing Act in our township (or city or village)?

A. Do nothing. Literally. Do. Nothing. Period.

You do not need to adopt an ordinance to prohibit the types of facilities authorized under the MMFLA. They are already prohibited by state and federal law, unless the township adopts an ordinance to allow them (“opt in”) under the MMFLA.

You would only adopt an ordinance dealing with the types of facilities authorized under the MMFLA if the township WANTS to allow one or more type of facilities authorized under the MMFLA.

A township cannot be required to adopt an ordinance allowing the facilities authorized by the MMFLA.

You do not have to consider any application for any facilities currently because no application will be considered by the state until December 15, 2017. And even after that date, if the township has not adopted an ordinance allowing that type of facility, that application will not be considered by the state.

Note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What do we need to do if we DO want any of the facilities authorized under the new Medical Marijuana Facilities Licensing Act in our township (or city or village)?

A. Any time before December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township could adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marijuana Facilities Licensing Act. ***Note that adopting such an ordinance before December 15, 2017 does NOT make a facility lawful!***

December 15, 2017 is the earliest an applicant may submit an application to the Medical Marijuana Licensing Board (MMLB) for consideration.

Any time after December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township would adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marijuana Facilities Licensing Act.

The ordinance should specify which type(s) of facilities—and how many of each type—the township is choosing to allow. If a township “opts in” with an ordinance that does not specify a cap on the type(s) or number of each, applications for any of the types and any number of a type within the township will be considered by LARA.

But a license from the state is still required before a specific facility is authorized to legally operate under the MMFLA. The township board’s adoption of the ordinance allowing medical marijuana facilities does not automatically make all facilities lawful.

Also note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What types of facilities may be authorized under the new Medical Marijuana Facilities Licensing Act if a township allows them by ordinance?

A. The following types of medical marijuana facilities are authorized by the MMFLA. One or more types may be allowed by a township ordinance:

Class A, B, or C Grower—“A licensee that is a commercial entity located in this State that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.”

Class A: 500 plants -- Class B: 1,000 plants -- Class C: 1,500 plants

Processor—“A licensee that is a commercial entity located in this State that purchases marijuana from a grower and that extracts resin from the marijuana or creates a marijuana infused product for sale and transfer in packaged form to a provisioning center.”

Provisioning Center—“A licensee that is a commercial entity located in this State that purchases marijuana from a grower or processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or through their registered primary caregivers. The term includes any commercial property where marijuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the marijuana registration process of the Department of Licensing and Regulation in accordance with the Michigan Medical Marijuana Act will not be a provisioning center for purposes of the Licensing Act.”

Secure Transporter—“A licensee that is a commercial entity located in this State that stores marijuana and transports it between marijuana facilities for a fee.”

Safety Compliance Facility—“A licensee that is a commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, returns the test results, and may return the marijuana to the facility.”

Q. Why would a township consider allowing one or more of the types of facilities authorized under the new Medical Marijuana Facilities Licensing Act?

A. Some communities accept medical marijuana use for compassionate reasons, and believe that the Medical Marijuana Facilities Licensing Act will better facilitate the spirit and the actual practice of the patient-caregiver relationship authorized by the statewide initiative that created the Medical Marijuana Act in 2008.

Other communities may be responding to a real demand or broad support locally for providing medical marijuana facilities and business opportunities.

And it may be a revenue source:

- **Annual administrative fee:** Once a township adopts an ordinance allowing one or more of the types of facilities authorized by the Medical Marijuana Facilities Licensing Act, the township may in that ordinance require “an annual, nonrefundable fee of not more than \$5,000.00 on a licensee to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the municipality.” (“Nonrefundable” as in not returned if the application is not approved by the state or if a license is not renewed.)
- **Property tax revenues:** These facilities are businesses and may actually be quite profitable. And in some communities medical marijuana facilities will utilize commercial properties that are currently vacant or even off the tax roll due to foreclosure.

- **State shared revenues, as appropriated:** A state tax will be imposed on each provisioning center at the rate of 3% of the provisioning center's gross retail receipts, which will go to the state Medical Marijuana Excise Fund. The money in the fund will be allocated, *upon appropriation*, to the state, counties and municipalities in which a marijuana facility is located, with "25% to municipalities in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the municipality."

Q. How will the state manage this licensing system and track compliance?

A. The MMFLA requires licensees to "adopt and use a third-party inventory control and tracking system that is capable of interfacing with the statewide monitoring system to allow the licensee to enter or access information in the statewide monitoring system as required under this act and rules." Yes, there already are such third-party software systems commercially available.

The Marijuana Tracking Act, Public 282 of 2016, MCL 333.27901, et seq., enacted at the same time as the MMFLA, requires LARA to establish a confidential statewide internet-based monitoring system for integrated tracking, inventory, and verification. It will be a system "established, implemented, and maintained directly or indirectly by the department [LARA] that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:

- (i) Verifying registry identification cards.
- (ii) Tracking marijuana transfer and transportation by licensees, including transferee, date, quantity, and price.
- (iii) Verifying in a commercially reasonable time that a transfer will not exceed the limit that the registered qualifying patient or registered primary caregiver is authorized to receive under section 4 of the Michigan medical marijuana act, 2008 IL 1, MCL 333.26424."

Q. The information on who is a qualified patient or a registered caregiver is currently confidential and exempt from public disclosure under the MMMA. How will the license process be treated—is that information going to be confidential?

A. The MMFLA requires that:

"Except as otherwise provided in this act, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board [MMFL Board] are subject to the freedom of information act, ..., except for the following:

- (i) Unless presented during a public hearing or requested by the licensee or applicant who is the sole subject of the data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the board related to background investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants.
- (ii) All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board that have been received from another jurisdiction or local, state, or federal agency under a promise of confidentiality or if the release of the information is otherwise barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement.
- (iii) All information in the statewide monitoring system."

So the Medical Marihuana Facility Licensing Board's records are subject to the FOIA and public disclosure, with some specific exceptions.

Here are the records that will be **exempt** from disclosure:

- The data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the board *related to background investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants* is **exempt from disclosure, UNLESS:**
 1. That data, information, record, etc. was presented during a public hearing (of the MMFLB), in which case it is NOT exempt from disclosure.
OR
 2. The licensee or applicant who is the sole subject of that data, information, record, etc. requests it, in which case it may be released to that licensee or applicant.
- All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the MMFLB that have been received from another jurisdiction or local, state, or federal agency (including a township) is **exempt from disclosure BUT ONLY IF:**
 1. The other jurisdiction or local, state, or federal agency (including a township) supplied it to the MMFLB *under a promise of confidentiality.*
OR
 2. The release of the information is otherwise *barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement.*
- All information in the statewide monitoring system is **exempt from disclosure.**

The Marihuana Tracking Act states that “the information in the system is confidential and is exempt from disclosure under the freedom of information act. Information in the system may be disclosed for purposes of enforcing this act; the Michigan medical marihuana act; and the medical marihuana facilities licensing act.”

For more information on the three Michigan laws governing medical marijuana use, see the statutes online (click on the linked titles of the Acts in this fact sheet) or review the Senate Fiscal Analysis of September 23, 2016, which outlines all the provisions of the three bills as they were enacted.

This fact sheet is not intended as a legal opinion, and a township should consult with its attorney before taking any steps to adopt an ordinance under these statutes, and for specific legal guidance on how the Acts interact with the individual township's other ordinances, including a zoning ordinance.



Land Use Series: Sample Ordinances Regulating Medical Marijuana Facilities

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DISCLAIMER:

As with all materials made available by MSU Extension, this document is as an example prepared FOR EDUCATIONAL PURPOSES ONLY and is not intended to provide legal advice. You should consult an attorney experienced in municipal law before adopting any local ordinance. This sample ordinance, or any portion of it, must be adapted to local circumstances and may need to be updated as laws change. Use of these materials is at the sole risk of the user.

INTRODUCTION:

This bulletin provides a sample police power ordinance for authorizing one or more types of medical marijuana facilities in a municipality under the Medical Marijuana Facilities Licensing Act, MCL 333.27101, et seq. ("MMFLA") and the sample zoning ordinance amendments that should be adopted with it to regulate the location of the facilities and establish standards for approval. The zoning amendments must be adopted pursuant to the Michigan Zoning Enabling Act. A step-by-step checklist of procedures to amend a zoning ordinance is available from MSU Extension's Land Use Series at lu.msue.msu.edu. See "Checklist # 4: For Adoption of a Zoning Ordinance Amendment (including some PUDs) in Michigan."

- A. To provide for medical marijuana facilities in a city, village, or township with its own existing zoning ordinance:
 - 1. Adopt a police power ordinance to authorize one or more facility types, and
 - 2. Adopt a zoning ordinance amendment regulating the location of the facilities and establishing standards for approval.
- B. To provide for medical marijuana facilities in a township relying on county zoning:
 - 1. Adopt a police power ordinance to authorize one or more facility types. (Under the MMFLA only a city, village, or township can adopt a police power ordinance to authorize facilities.)
 - 2. Work with the county planning commission to place provisions in the county's zoning ordinance regarding in which zoning districts to allow each facility type and special land use standards, including one for approval being location in a township that has adopted an ordinance authorizing such facility type.
- C. A city or village without zoning may adopt a police power ordinance to provide for one or more medical marijuana facility types, but should seek legal advice from an experienced municipal attorney regarding whether a police power ordinance may be used to regulate placement or other aspects of facilities.
- D. A township without township or county zoning (or county zoning without amendments to regulate the location of facilities) may adopt a police power ordinance to provide for one or more medical marijuana facility types but probably cannot regulate where they are located because a township cannot exercise zoning power under the guise of a police power ordinance (*Forest Hill Energy-Fowler Farms, LLC. v. Twp of Bengal*).



Notes

There are many ways other than those outlined in this sample for a police power ordinance to address the issues regarding medical marijuana facilities. It is intended to be adopted with zoning ordinance amendments to regulate the location of the facilities and establish standards for approval. (See sample following.) **Please consult an attorney experienced in municipal law before adopting any local ordinance.**

Sample Police Power Ordinance

AN ORDINANCE TO AUTHORIZE AND REGULATE THE ESTABLISHMENT OF MEDICAL MARIJUANA FACILITIES.

Section 1001. Purpose

- A. It is the intent of this ordinance to authorize the establishment of certain types of medical marijuana facilities in the [*municipality*] and provide for the adoption of reasonable restrictions to protect the public health, safety, and general welfare of the community at large; retain the character of neighborhoods; and mitigate potential impacts on surrounding properties and persons. It is also the intent of this ordinance to help defray administrative and enforcement costs associated with the operation of a marijuana facility in the [*municipality*] through imposition of an annual, nonrefundable fee of not more than \$5,000.00 on each medical marijuana facility licensee. Authority for the enactment of these provisions is set forth in the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.
- B. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty, or sanction for the cultivation, manufacture, possession, use, sale, or distribution of marijuana, in any form, that is not in compliance with the Michigan Medical Marijuana Act, Initiated Law 1 of 2008, MCL 333.26421 et seq.; the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.; the Marijuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.
- C. As of the effective date of this ordinance, marijuana remains classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., which makes it unlawful to manufacture, distribute, or dispense marijuana, or possess marijuana with intent to manufacture, distribute, or dispense marijuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under federal laws.

Section 1002. Definitions

For the purposes of this ordinance:

- A. Any term defined by the Michigan Medical Marijuana Act, MCL 333.26421 et seq., shall have the definition given in the Michigan Medical Marijuana Act.
- B. Any term defined by the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq., shall have the definition given in the Medical Marijuana Facilities Licensing Act.



Notes

- C. Any term defined by the Marihuana Tracking Act, MCL 333.27901 et seq., shall have the definition given in the Marihuana Tracking Act.
- D. "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- E. "Licensee" means a person holding a state operating license issued under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.
- F. "Marijuana" or "marihuana" means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.
- G. "Marijuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq., including a marijuana grower, marijuana processor, marijuana provisioning center, marijuana secure transporter, or marijuana safety compliance facility. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.
- H. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- I. "Processor" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- J. "Provisioning center" means a licensee that is a commercial entity located in Michigan that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.



Notes

- K. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- L. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

Section 1003. Authorization of Facilities and Fee.

A municipality may choose to authorize one or more facility types without authorizing all facility types.

- A. The maximum number of each type of marijuana facility allowed in the [*municipality*] shall be as follows.

<u>Facility</u>	<u>Number</u>
Grower	[#]
Processor	[#]
Secure transporter	[#]
Provisioning center	[#]
Safety compliance facility	[#]

- B. At least every [#] years after adoption of this ordinance, [*council/board*] shall review the maximum number of each type of marijuana facility allowed and determine whether this maximum number should be changed. The review and its findings shall be recorded in the minutes of the relevant meeting of the [*council/board*].
- C. A nonrefundable fee shall be paid by each marijuana facility licensed under this ordinance in an annual amount of not more than \$5,000.00 as set by resolution of the [*municipality*] [*council/board*].

Section 1004. Requirements and Procedure for Issuing License

A municipality may want to specify certain items of the information required on the application.

- A. No person shall operate a marijuana facility in [*municipality*] without a valid marijuana facility license issued by the [*municipality*] pursuant to the provisions of this ordinance.
- B. Every applicant for a license to operate a marijuana facility shall file an application in the [*municipal official's*] office upon a form provided by the [*municipality*]. [The application shall contain the following information:]
- C. Every applicant for a license to operate a marijuana facility shall submit with the application a photocopy of the applicant's valid and current license issued by the State of Michigan in accordance with the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.



Notes

The police power and zoning ordinances could also be drafted to require the zoning approvals before any municipal licensing process.

A municipality may specify other license conditions and provide for inspections to ensure compliance.

- D. Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the [*municipal official*] shall accept the application and assign it a sequential application number by facility type based on the date and time of acceptance. The [*municipal official*] shall act to approve or deny an application not later than fourteen (14) days from the date the application was accepted. If approved, the [*municipal official*] shall issue the applicant a provisional license.
- E. A provisional license means only that the applicant has submitted a valid application for a marijuana facility license, and the applicant shall not locate or operate a marijuana facility without obtaining all other permits and approvals required by all other applicable ordinances and regulations of the [*municipality*]. A provisional license will lapse and be void if such permits and approvals are not diligently pursued to completion.
- F. Within fourteen (14) days from the applicant submitting proof of obtaining all other required permits and approvals and payment of the license fee, the [*municipal official*] shall approve or deny the marijuana facility license. The [*municipal official*] shall issue marijuana facility licenses in order of the sequential application number previously assigned.
- G. Maintaining a valid marijuana facility license issued by the state is a condition for the issuance and maintenance of a marijuana facility license under this ordinance and continued operation of any marijuana facility.
- H. A marijuana facility license issued under this ordinance is not transferable.

Section 1005. License Renewal

- A. A marijuana facility license shall be valid for one year from the date of issuance, unless revoked as provided by law.
- B. A valid marijuana facility license may be renewed on an annual basis by submitting a renewal application upon a form provided by the [*municipality*] and payment of the annual license fee. Application to renew a marijuana facility license shall be filed at least thirty (30) days prior to the date of its expiration.

Section 1006. Applicability

The provisions of this ordinance shall be applicable to all persons and facilities described herein, whether the operations or activities associated with a marijuana facility were established without authorization before the effective date of this ordinance.



Notes

Section 1007. Penalties and Enforcement.

- A. Any person who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction and subject to the payment of a civil fine of not more than [\$.##], plus costs. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.
- B. A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available at law, the [*municipality*] may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.
- C. This Ordinance shall be enforced and administered by the [*municipal official*], or such other [*city/village/township*] official as may be designated from time to time by resolution of the [*council/board*].

Section 1008. Severability.

In the event that any one or more sections, provisions, phrases or words of this Ordinance shall be found to be invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases or words of this Ordinance.

Section 1009. Effective Date

This Ordinance shall take effect [*insert provision applicable to municipality*] in accordance with law.

**See also the following Sample
Zoning Ordinance Amendments**



Notes

There are many ways other than those outlined in these sample zoning ordinance amendments to address zoning issues regarding medical marijuana facilities. **Please consult an attorney experienced in municipal law before adopting any local ordinance.**

For additional information on the distinction between "agriculture" and "agriculture-like," see MSU Extension's Land Use Series: "Sample zoning for agriculture-like and urban agriculture" available at lu.msue.msu.edu.

Sample Zoning Ordinance Amendments

These sample zoning ordinance amendments were written with the following assumptions:

- **The municipality has adopted a separate police power ordinance (see sample above) authorizing one or more types of medical marijuana facilities.**
- The municipality already has a site plan review process in its zoning ordinance.
- The municipality's zoning ordinance already provides a definition for "person" that includes corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- The section numbering system follows the standard system of codification presented in MSU Extension's Land Use Series: "Organization and Codification of a Zoning Ordinance," which is available at lu.msue.msu.edu.

Definitions

Add the following definitions to Section 503 (the section of the zoning ordinance for definitions of words).

"Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.

"Licensee" means a person holding a state operating license issued under the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.

"Marijuana" or **"marihuana"** means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.

"Marijuana facility" means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq., including a marijuana grower, marijuana processor, marijuana provisioning center, marijuana secure transporter, or marijuana safety compliance facility. The term does not include or apply to a "primary caregiver" or "caregiver" as that term is defined in the Michigan Medical Marihuana Act, MCL 333.26421 et seq.

"Outdoor production" means growing marijuana in an expanse of open or cleared ground or in a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting, including but not limited to electrical lighting sources.

"Processor" means a licensee that is a commercial entity located in this state that purchases marijuana from a grower and that extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a provisioning center.

"Provisioning center" means a licensee that is a commercial entity located in this state that purchases marijuana from a grower or processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or



Notes

through the patients' registered primary caregivers. Provisioning center includes any commercial property where marijuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marijuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.

"Safety compliance facility" means a licensee that is a commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marijuana to the marijuana facility.

"Secure transporter" means a licensee that is a commercial entity located in this state that stores marijuana and transports marijuana between marijuana facilities for a fee.

The municipality will also want to require a site plan review for these facilities and should amend that process in their zoning ordinance as necessary to address the standards specific to these facilities.

Zoning Districts

Add, where appropriate, to each zoning district's list of possible special land uses the following, where wanted:

- A. A marijuana grower as authorized by [the municipality's police power authorizing ordinance] in the [insert zone] District(s);
- B. A marijuana processor as authorized by [the municipality's police power authorizing ordinance] in the [insert zone] District(s);
- C. A marijuana provisioning center as authorized by [the municipality's police power authorizing ordinance] in the [insert zone] District(s);
- D. A marijuana secure transporter as authorized by [the municipality's police power authorizing ordinance] in the [insert zone] District(s); and
- E. A marijuana safety compliance facility as authorized by [the municipality's police power authorizing ordinance] in the [insert zone] District(s).

The municipality may require in its special use or site plan procedure any information necessary to ensure full compliance with the provisions of state and local laws. Failure to provide required information may be the basis for disapproval of a special use permit and any related development permits and approvals.

Special Use Standards

Add a section to Article 16 (the part of the zoning ordinance for specific special use permit standards).

16XX. Marijuana grower, marijuana processor, marijuana provisioning center, Marijuana secure transporter, and Marijuana safety compliance facility:



Notes

The municipality may want to require the state license prior to a zoning permit application, or prior to the site plan application, or prior to site plan approval, or even after approval of the [special use] zoning permit issued conditioned on site plan approval.

Building, electrical, mechanical, and plumbing codes must be enforced by the local government jurisdiction.

The municipality will want to reference its existing sign requirements in the zoning ordinance and/or other sign ordinance.

Signage may also become the subject of state regulations under its rulemaking authority for advertising.

- A. A marijuana grower, marijuana processor, marijuana provisioning center, marijuana secure transporter, and marijuana safety compliance facility, in accordance with the provisions of state law, may be permitted through the issuance of a special use permit pursuant to Article 86 [*the article containing the procedural process for special use permits*] in the specified zone(s), provided that:
1. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the [*municipality*]. In the event that a court with jurisdiction declares some or all of this article invalid, then the [*municipality*] may suspend the acceptance of applications for special use permits pending the resolution of the legal issue in question.
 2. At the time of application for a special use permit the marijuana facility must be licensed by the state of Michigan and then must be at all times in compliance with the laws of the state of Michigan including but not limited to the Michigan Medical Marijuana Act, MCL 333.26421 et seq.; the Medical Marijuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marijuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.
 3. At the time of application for a special use permit the marijuana facility must be licensed by [*municipality*], [or have the [*municipality*] license concurrently in process with the special use permit and site plan approval], and then must be at all times in compliance with [*the municipality's police power authorizing ordinance*].
 4. The use or facility must be at all times in compliance with all other applicable laws and ordinances of the [*municipality*].
 5. The [*municipality*] may suspend or revoke a special use permit based on a finding that the provisions of the special use standards in this section, all other applicable provisions of this zoning ordinance, [*the municipality's police power authorizing ordinance*], or the terms of the special use permit and approved site plan are not met.
 6. A marijuana facility, or activities associated with the licensed growing, processing, testing, transporting, or sales of marijuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.
 7. Signage requirements for marijuana facilities, unless otherwise specified, are as provided in the [*the article or ordinance containing the sign regulations*].
- B. Marijuana growers and marijuana processors shall be subject to the following standards:
1. Minimum Lot Size. A minimum lot size standard shall apply as follows:



Notes

Fencing and screening is normally a local concern, but special requirements for marijuana producers who grow plants outside may also become the subject of state regulations under its rulemaking authority.

To prevent inconsistencies, this standard may instead reference the municipality's existing outdoor lighting requirements and landscape standards that may also impact lighting.

- a. In the *[list the specific rural and agricultural district(s)]*, the subject property shall be a minimum of [#] acres, except that if the majority of abutting properties are equal to or greater than *[lesser #]* acres, the subject property shall be a minimum of *[lesser #]* acres. Abutting properties include properties that are contiguous to the subject property, as well as properties directly across any access drive, or private, public, or road.
 - b. In the *[list the specific industrial district(s)]*, the subject property shall be a minimum of [#] acres, except that if outdoor production is proposed, the subject property shall be a minimum of *[greater #]* acres.
2. **Minimum Yard Depth/Distance from Lot Lines.** The minimum front, rear, and side yard setbacks for any structure used for marijuana production shall be 50 feet. The minimum front, rear, and side yard setbacks for outdoor production shall be a minimum of 100 feet from all lot lines. The minimum water front setback for any structure or outdoor production shall be a minimum of 100 feet from the ordinary high water mark.
3. **Indoor Production and Processing.** In the *[list the specific industrial district(s)]*, marijuana production shall be located entirely within one or more completely enclosed buildings. In the *[list the specific industrial district(s)]*, marijuana processing shall be located entirely within a fully enclosed, secure, indoor facility or greenhouse with rigid walls, a roof, and doors.
4. **Maximum Building Floor Space.** The following standards apply in the *[list the specific industrial district(s)]*:
 - a. A maximum of [#] square feet of building floor space may be used for all activities associated with marijuana production on the subject property.
 - b. If only a portion of a building is authorized for use in marijuana production, a partition wall at least seven feet in height, or a height as required by the applicable building codes, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall must include a door, capable of being closed and locked, for ingress and egress between the marijuana production space and the remainder of the building.
5. **Lighting.** Lighting shall be regulated as follows:
 - a. Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 - b. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.



Notes

The municipality instead may want to reference its existing noise standards in the zoning ordinance.

Local governments may also enforce any noise and public nuisance ordinance as to odors, fumes, noise, dust, vibration, and the like.

The municipality may want to reference its existing provisions for escrow fees related to the costs of outside experts.

6. Odor. As used in this subsection, building means the building, or portion thereof, used for marijuana production or marijuana processing.
 - a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - b. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - c. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - d. Negative air pressure shall be maintained inside the building.
 - e. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 - f. An alternative odor control system is permitted if the special use permit applicant submits and the municipality accepts a report by a mechanical engineer licensed in the state of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.
 7. Security Cameras. If used, security cameras shall be directed to record only the subject property and may not be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the state of Michigan.
 8. Residency. In the [*list specific rural or agricultural district(s)*], an owner of the subject property, or the licensee associated with the subject property shall reside in a dwelling unit on the subject property unless there is a 24-hour, seven-days-a-week staffed security presence on the property with a direct phone number supplied to local law enforcement,
- C. Provisioning centers shall be subject to the following standards:
1. Hours. A provisioning center may only sell to consumers or allow consumers to be present in the building space occupied by the provisioning center between the hours of 9:00 a.m. and 9:00 p.m.



Notes

The focus here is on buffers from uses associated with children. Buffers from other uses are typically smaller. Some communities provide distances from adult entertainment uses, liquor stores, or other marijuana facilities. Municipalities should determine whether enough suitable parcels remain available after eliminating those due to buffers.

The same or different buffers can also be established for other facility types.

A buffer could instead be measured from the closest point of the building space occupied by the marijuana facility.

The municipality will want to edit the list of terms, such as school, to use those already defined in the zoning ordinance.

2. Indoor Activities. All activities of a provisioning center, including all transfers of marijuana, shall be conducted within the structure and out of public view. A provisioning center shall not have a walk-up window or drive-thru window service.
3. Other Activities. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the provisioning center.
4. Nonconforming Uses. A provisioning center may not locate in a building in which a nonconforming retail use has been established in any district.
5. Physical Appearance. The exterior appearance of the structure shall remain compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration or substantial diminishment or impairment of property values within the immediate area.
6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the [municipality]. The distance shall be measured as the shortest straight line distance between the property line of the location of the following uses to the property line of the parcel on which provisioning center premises is located, whichever is less .
 - a. A provisioning center may not be located within [#] feet of the real property comprising or used by a public or private elementary, vocational, or secondary school; a public or private college, junior college, or university; a licensed child care center or preschool; a public playground, public swimming pool, or public or private youth activity facility; a public park, public outdoor recreation area, or public recreation facility; or a public library .
 - b. A provisioning center may not be located within [#] feet of a religious institution or a residentially zoned property.
7. Odor. As used in this subsection, building means the building, or portion thereof, used for a provisioning center.
 - a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - b. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter (s) shall be rated for the applicable CFM.



Notes

The municipality may want to reference its existing provisions for es-crow fees related to the costs of outside experts.

- c. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
- d. Negative air pressure shall be maintained inside the building.
- e. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
- f. An alternative odor control system is permitted if the special use applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted

D. Marijuana Safety Compliance Facility shall be subject to the following standards:

The municipality will want to use the term for medical laboratory type uses already defined in the zoning ordinance.

- 1. A marijuana safety compliance facility shall be subject to the special regulations and standards applicable to [*medical laboratories and medical testing facilities*] in the ordinance.
- 2. all activities of a marijuana safety compliance facility, including all transfers of marijuana, shall be conducted within the structure and out of public view.

E. Marijuana Secure transporter shall be subject to the following standards:

The municipality will want to use the term for transportation and warehousing type uses already defined in the zoning ordinance.

- 1. A marijuana secure transporter shall be subject to the special regulations and standards applicable to [*transportation and warehousing*] uses in the [ordinance] and the following standards.
- 2. Any buildings or structures used for the containment of stored materials shall be located no closer than [#] feet from any property line.

Nonconformities

Add a section to Article 80 (the part of the zoning ordinance about nonconforming uses).

- A. No marijuana facility operating or purporting to operate prior to December 15, 2017, shall be deemed to have been a legally existing use nor shall the operation of such marijuana facility be deemed a legal nonconforming use under this [ordinance].
- B. A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this [ordinance] or any amendment thereto.
- C. Discontinuation of a state medical marijuana facility license shall constitute prima facie evidence that a nonconformity has been discontinued.