

# *OWOSSO*

## *Planning Commission*



Regular Meeting  
7:00pm, Monday, January 26, 2015  
Owosso City Council Chambers

**AGENDA**  
**Owosso Planning Commission**  
Monday, January 26, 2015 at 7:00 p.m.  
Council Chambers – Owosso City Hall  
Owosso, MI 48867

CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA:        January 26, 2015

APPROVAL OF MINUTES:      December 8, 2014

COMMUNICATIONS:

1.     Staff memorandum.
2.     PC minutes from December 8, 2014.
3.     Commissioner Conflict of Interest
4.     Smoking lounge ordinances examples
5.     Michigan Smoke Free Law FAQ
6.     House Bill 4271 (stalled in senate)
7.     Detroit Free Press article

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

None.

SITE PLAN REVIEW:

None.

ITEMS OF DISCUSSION:

1.     Discuss Commissioner Conflict of Interest.

BUSINESS ITEMS:

1.     Medical Marihuana Dispensary language for Owosso Code of Ordinance.
2.     Smoking (Hookah) Lounge language for Owosso Code of Ordinance.

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT:        Next meeting will be Monday, February 23, 2015.

**Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Monday, January 26, 2015**

[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](http://www.ci.owosso.mi.us)

**Affirmative Resolutions**  
**Owosso Planning Commission**  
Monday, January 26, 2015 at 7:00 p.m.  
Council Chambers – Owosso City Hall  
Owosso, MI 48867

**Resolution 150126-01**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby approves the agenda of January 26, 2015 as presented.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Approved: \_\_\_\_ Denied: \_\_\_\_

**Resolution 150126-02**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby approves the minutes of December 8, 2014 as presented.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Approved: \_\_\_\_ Denied: \_\_\_\_

**Resolution 150126-03**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby adjourns the January 26, 2015 meeting, effective at \_\_\_\_\_pm.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Approved: \_\_\_\_ Denied: \_\_\_\_



## MEMORANDUM

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

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DATE: January 19, 2015  
TO: Chairman Wascher and the Owosso Planning Commission  
FROM: Susan Montenegro,  
RE: Planning Commission Meeting: January 26, 2105

**The planning commission shall convene at 7:00pm on Monday, January 26, 2015 in the city council chambers of city hall.**

Tonight's meeting is important as we will be discussing smoking lounge ordinance language and medical marihuana dispensary ordinance language. City council granted a 90 day moratorium on both of these items, however; that means we need to come up with the respective ordinances for both to present to council for their consideration and adoption. I have included some sample ordinances of both for your review as well as additional information on the topics.

Additionally, I have asked city attorney Bill Brown to be present at the beginning of the meeting to discuss commissioner conflicts of interest. Since this is a discussion item I would like to change the agenda around a little and put items of discussion before items of business.

Please plan to attend this meeting. I will be gone Tuesday through Thursday of this week to a zoning administrator course. I will be available by email or cell phone as listed below.

Please feel free to contact me at 989.890.1394 or at [susan.montenegro@ci.owosso.mi.us](mailto:susan.montenegro@ci.owosso.mi.us) if you have questions. Please **RSVP for the meeting**. I look forward to seeing you all on the 26th!

**MINUTES**  
**REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION**  
**Council Chambers, City Hall**  
**December 8, 2014 – 7:00 pm**

**CALL TO ORDER:** Meeting was called to order at 7:00 p.m. by Chairman William Wascher.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was recited by all in attendance.

**ROLL CALL:** Roll Call was taken by Recording Secretary Marty Stinson.

**MEMBERS PRESENT:** Chairman William Wascher, Vice-chairman Francis Livingston; Secretary Tom Kurtz, Commissioners David Bandkau, Brent Smith, Thomas Taylor, Craig Weaver, and Randy Woodworth.

**MEMBERS ABSENT:** Commissioner Mike O’Leary.

**OTHERS PRESENT:** Susan Montenegro, Assistant City Manager and Director of Community Development; Mr. Ryan Henry of Henry Kincaid Group; Paul Weisberger and Jeff Nemeth of Bright Leaf.

**AGENDA APPROVAL:**  
**MOTION BY COMMISSIONER BANDKAU, SUPPORTED BY COMMISSIONER LIVINGSTON, TO APPROVE THE AGENDA FOR DECEMBER 8, 2014.**  
**YEAS ALL. MOTION CARRIED.**

**MINUTES APPROVAL:**  
**MOTION BY COMMISSIONER WOODWORTH, SUPPORTED BY COMMISSIONER WEAVER, TO APPROVE THE MINIUTES FOR THE MEETING FOR OCTOBER 27, 2014.**  
**YEAS ALL. MOTION CARRIED.**

**SYNOPSIS APPROVAL:**  
**MOTION BY COMMISSIONER KURTZ, SUPPORTED BY COMMISSIONER BANDKAU, TO APPROVE THE SYNOPSIS FOR THE MEETING FOR NOVEMBER 24, 2014.**  
**YEAS ALL. MOTION CARRIED.**

**COMMUNICATIONS:**

1. Staff memorandum.
2. PC minutes from October 27, 2014.and November 24, 2014
3. 100-300 block of Corunna Avenue
4. M-71 FLU Map
5. Mueller Project site plan and staff review
6. Special use Permit for Mueller Project.
7. Bright Leaf – Medical Marihuana Dispensary information

**COMMISSIONER / PUBLIC COMMENTS:**

Commissioner Bandkau commented that Treasurer’s Restaurant which requested the application to split the property at 109 N. Washington has asked that it be tabled indefinitely as there are many unresolved issues.

**PUBLIC HEARING:** None

**SITE PLAN REVIEW: & SPECIAL USE PERMIT:**

1. Mueller Project

Ms. Montenegro, Assistant City Manager and Director of Community Development, stated at the last zoning class that she took, it was recommended that anyone with a conflict should step out of the meeting because even body language or facial expression can influence. Mr. Woodworth objected to leaving the room.

Commissioner Kurtz stated he felt a building owner should be allowed to stay in the meeting.

**MOTION BY COMMISSIONER KURTZ, SUPPORTED BY COMMISSIONER WEAVER, THAT MR. WOODWORTH BE ALLOWED TO SPEAK ON HIS OWN BEHALF AS BUILDING OWNER BECAUSE IT IS SUCH A BIG PROJECT, BUT HE CANNOT PARTICIPATE AT THE COMMISSIONER LEVEL DISCUSSION**

**COMMISSIONER BANDKAU QUESTIONED THE LEGALITY OF THIS SITUATION.**

**YEAS ALL. MOTION CARRIED.**

Mr. Woodworth moved to the back of the room.

Mr. Ryan Henry introduced himself as a member of the Henry Kincaid group of 934 Clark Street, Lansing. They are ready to move forward with the final financing of this project. The property is vacated except the Cook Family Foundation which will be moving into Armory when that is ready. The brewery is now branded into Mueller. It was called Matthews Building for a long time.

It has five buildings. First is the waterfront; next is called the annex. This will be redeveloped into the brewery. The waterfront will be the restaurant and brewery/serving. The other 3 buildings are being used for commercial mixed use on main floor. The middle building and the two to four story building will have 17 apartments and there will be a major overhaul redevelopment. Part 1 and part 2 will be funded with national historic money and with MSHDA. The Brownfield Plan will also help with funding. This is a \$6,000,000 project.

There will be outdoor seating for gastro/brew pub. There will be different entrances. On the river side there is a proposed deck. To highlight the river, look at dam and castle, it extends over sidewalk. There is a loading area on north side of brewery. This is also trash area. This serves the whole structure – it will be covered and enclosed. The alley will have trucks and be walkable. – this is will be service vehicles only. The north is a mixed use bldg. – four garage doors; four parking spaces and will have bike racks inside for residents.

There is a lot of brick on the buildings. Northern façade will have Hardie panel. Some will have plain brick; some will have painted brick; glazed brick; some metal siding will be removed and Hardie paneling will be added. The canopy on the two story building will be removed.

Commissioner Kurtz asked him to address city zoning for parking which is one parking spot per unit. Mr. Henry said he would request leased parking spaces from the city. Ms Montenegro stated that parking spaces are waived in the downtown area for restaurants / bars.

Commissioner Taylor asked Mr. Henry to describe the dumpster area, but he didn't see it on the plans. Mr. Henry replied to look at first level furniture plan, where it says waste next to cooler/freezer. He anticipates a daily pickup.

Chairman Kurtz commented on the views on west side over the river. The deck that comes out over the city sidewalk; out and over the water. The clearance is 7ft, 10 inches. Mr. Henry noted that the legal description of the property goes out into the river and city has an easement for the sidewalk. It is polluted and contamination in the building and it does qualify for brownfield.

Chairman Wascher asked if there is going to be an easement for the pathway by the river. Henry said he's not the owner.

Ms. Montenegro commented that currently there are two light posts along the river. Has the lighting been addressed under the deck? Henry said that is a good question. I think we will need to light that.

Commissioner Bandkau noted that the lot directly to the north has been changed to a 72 hour parking lot so we'll have to look into the leased parking. Commissioner Kurtz asked if it had handicap parking. Commissioner Bandkau wasn't sure.

Ms. Montenegro said the city would like to see plans for posts going to the river and see plans with DEQ. City engineer also wanted to see plans prior to plan review time.

Commissioner Taylor commented that there are special considerations because the water and drainage and staff comments. Ryan said there would be all new utilities; electrical; and fire suppression; handicap accessibility. There will be two elevators in the full structure. 51% of rental units are rent controlled & 49% are market rated. We want to start the project in the spring.

**MOTION BY COMMISSIONER BANDKAU, SUPPORTED BY COMMISSIONER KURTZ, THAT THE OWOSSO PLANNING COMMISSION HEREBY APPROVES THE APPLICATION FOR THE SITE PLAN REVIEW OF THE MUELLER PROJECT, 300 W. MAIN STREET, PARCEL # 050-470-024-001-00 AS APPLIED AND ATTACHED HERETO IN PLANS DATED OCTOBER 14, 2014 WITH THE FOLLOWING CONTINGENCIES:  
STAFF REPORT COMMENTS; LIGHTING UNDER THE DECK; AND OFF STREET PARKING.**

**Comments before voting: lighting at the back of the building and the front of the building – not to shine into the traffic on Main Street; and easement of deck.  
Timeframe per Mr. Henry of 12 – 14 months once work is begun.  
MEDC and MSHDA have already been done. He is now working on financing and the DEQ with the river per Mr. Henry. If it all at starts the same time, Mr. Henry said if there is a choice, they will try to finish the brewery first.**

**ROLL CALL VOTE:**

**YEAS: BANDKAU; KURTZ, LIVINGSTON, SMITH, TAYLOR, WASCHER, WEAVER**

**ABSENT: O'LEARY**

**ABSTAIN: WOODWORTH (PROPERTY OWNER)**

**NAYS: NONE**

**Special Use Permit – Mueller Building**

Per Ms. Montenegro, a Special Use Permit is not applicable and not required and the fee will be refunded.

Ms. Montenegro suggested that the agenda be changed to accommodate members in the audience from Wild Bill's Tobacco.

**MOTION BY COMMISSIONER BANDKAU, SUPPORTED BY COMMISSIONER TAYLOR TO CHANGE THE AGENDA AND MOVE ITEM OF DISCUSSION # 1 AHEAD OF BUSINESS ITEM #1.  
YEAS ALL. MOTION CARRIED.**

**ITEM OF DISCUSSION:**

1. Wild Bill's Tobacco – Jeff Nemeth – Medical Marihuana Dispensary

Paul Weisberger introduced himself and began a presentation about House Bill 4271 which will authorize dispensaries for medical marihuana and also allow dispensing it in food items. Wild Bill's Tobacco wants to be with the part of business that is reputable. This bill would allow up to 2.5 ounces dispensed every ten days to a patient.

Jeff Nemeth (also in the audience) is a representative of a laboratory that would test the product for mold, pesticides, and possibly test for heavy metals someday.

The law is passed by the house. What kind of crime is associated with dispensaries? None. Has some sample ordinances. Looking at B-2 zoning. We know it a controversial issue, but we're looking forward to being a part of your community.

Commissioner Bandkau asked about a smoking on the premises. Mr. Weisberger said they are not going to set up a lounge.

Commissioner Bandkau: asked is there any requirement for a smoke-free exemption? Mr. Weisberger replied there is a five to one caregiver ratio. A lot of people grow it in their basements. This brings it out of the houses – “above ground”. Let's put them in industrial districts. When they grow medical marihuana for each patient, there is excess. Let's put is in light industrial and bring people in to regulated areas like going to a pharmacy legitimately. To a dispensary instead of all the makeshift areas.

**BUSINESS ITEMS:**

1. Discuss future land use and potential rezoning in the 100 -300 blocks of Corunna Avenue.

Ms. Sue Montenegro reviewed current zoning on a map and presented suggested zonings. The planning Commission discussed various zoning changes for the following properties:

<b><u>Parcel Address</u></b>	<b><u>Current Zoning</u></b>	<b><u>Proposed Zoning</u></b>
330 Division	I-2	I-1
514 Division	I-2	I-1
515 S. Saginaw	I-2	I-1
509 S. Saginaw	I-2	I-1
514 Saginaw	I-2	B-4
510 S. Saginaw	I-2	B-4
515 S. Park	I-2	B-4
517 S. Park	I-2	B-4
S Park St	I-2	B-4
E. Howard	I-2	I-1
S. Washington	I-2	I-1

2. Consider dates for a public workshop to discuss potential zoning changes.



It was decided to have the public workshop to discussion potential zoning changes at the February Planning Commission meeting.

**COMMISSIONER / PUBLIC COMMENTS:**

Discussion that they are already selling marihuana paraphernalia in tobacco store. Discussion about marihuana being permitted in B-2 district

Commissioner Bandkau read Section 38-217 – (2) medical marihuana ordinance. Ms. Montenegro recommends that the city attorney reviews whatever the Planning Commission recommends. We can draft a document, and have Mr. Brown review before going to council.

**ADJOURNMENT:**

**MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER SMITH TO  
ADJOURN AT 8:44 P.M. UNTIL NEXT MEETING ON JANUARY 26, 2015.  
YEAS ALL. MOTION CARRIED.**

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Tom Kurtz, Secretary

mms



301 WEST MAIN STREET • OWOSSO, MICHIGAN 48867-2958

December 16, 2014

Ms. Susan Montenegro  
City of Owosso  
301 West Main Street  
Owosso, Michigan 48867

RE: Planning Commission/Conflict of Interest

Dear Susan:

Enclosed you will find the Memorandum with an Opinion regarding Planning Commissioners and a conflict of interest. I assume you will include it in the next meeting packet. As discussed, I plan on attending the next Planning Commission meeting which is scheduled for January 26, 2014, at 7:00 p.m.

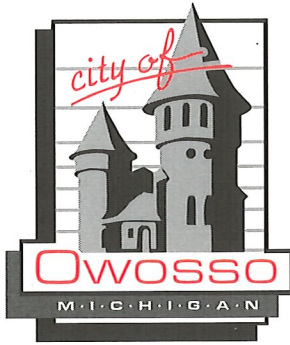
If you have any questions, please feel free to contact me.

Yours very truly,

CITY OF OWOSSO

William C. Brown  
City Attorney  
(989) 729-0071

WCB/jmr  
Enclosure



301 WEST MAIN STREET • OWOSSO, MICHIGAN 48867-2958

## MEMORANDUM

**TO:** Susan Montenagro  
**FROM:** William C. Brown, City Attorney  
**DATE:** December 10, 2014  
**RE:** Planning Commission/Conflict of Interest

You asked whether a Planning Commissioner may stay in the room when a matter in which he or she has an interest is before the Commission? The answer is that it is not advisable.

Act 196 of 1973, MCLA 15.341 et seq. governs the issue. It provides at MCL 15-342(7) as follows:

Except as provided in section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest. (Emphasis added)

MCL 15.341 contains the definition of a public officer:

“Public officer” means a person appointed by the governor or another executive department official. For the purpose of section 2b, public officer shall include an elected or appointed official of this state or a political subdivision of this state.

Thus a Planning Commissioner as an appointed official of the City of Owosso, a political division fo the state, is bound by the Act.

Memorandum to Susan Montenegro  
Page Two  
December 10, 2014

As noted above, MCL 15.342(7) states that the conflicted elected official shall not participate in the issue before the Planning Commission. For this reason it is regularly advised that the conflicted individual should not be in the room when the issue is before the Planning Commission. Often procedural rules of governmental entities provide that the conflicted individual must leave the room.

It is my view that the best practice is to require the conflicted individual leave the room when his or her issue is before the Planning Commission so there is no doubt that he or she did not participate in the matter. However, there is no statute or case law that requires removal from the room.

Assuming there is a violation of the Act, the next question is what effect does the violation have on the action taken.

If the matter were presented to a Court, the result may be that the action taken would be found to be void. Although it is my view that for a Court to find an action void, there would have to be a showing of something more than a mere presence in the room. I think a Court would require evidence that some sort of influence was exerted by the conflicted commissioner before it would adjudge an action void.

Please contact me if there are any questions or concerns.

WCB/jmr

**CHARTER TOWNSHIP OF SHELBY  
SMOKING LOUNGE ORDINANCE  
ORDINANCE NO. 269**

An Ordinance to amend Chapter 14 of the Charter Township of Shelby Code of Ordinances, as amended, entitled Businesses, to add, Article VII, Smoking Lounges, to license and regulate smoking establishments for the public health, safety and welfare of the township and persons and businesses located within its jurisdictional boundaries

**DIVISION 1. GENERALLY**

**Section 14-\_\_\_\_. Findings and Purpose**

The Township Board finds that, based on the characteristics of this use and past experience with these uses, a need has emerged to develop regulations to protect public health, safety and welfare applicable to smoking lounges and facilities commonly described as Tobacco Retail Specialty Shops, Cigar Bars, 0% Nicotine Establishments, Hookah Lounges and Bars and other Smoking Facilities by any other name (“Establishments”), that may desire to operate within the Township.

The number of Smoking Lounges operating in Shelby Township has increased substantially in recent years. This has resulted in a significant increase in Police Department responses to Smoking Lounges. Common problems associated with these businesses include disturbing the peace, fighting, crowds loitering in the parking lots outside of smoking lounges, unlawful possession of alcohol by minors, noise and complaints from adjoining residential neighborhoods and businesses. The standards contained in this ordinance are intended to moderate or eliminate these problems.

**Section 14-\_\_\_\_. Definitions**

The following words, terms and phrases, when used in this article, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Cigar* shall mean any roll of tobacco weighting three (3) or more pounds per 1,000 which roll has a wrapper or cover consisting of tobacco.

*Cigar bar* shall mean an establishment or area within an establishment that is open to the public and is designated for the smoking of cigars that has a State issued exemption certificate.

*Disqualifying criminal act* shall mean any of the following misdemeanor or felony offenses under any of the following statutes, as amended, for which less than seven (7) years elapsed since the date of the conviction or the date of release from confinement for the conviction, whichever is the later date:

Michigan Penal Code, Chapter X, Arson and Burning;

Michigan Penal Code, Chapter XI, Assaults, except MCL 750.81(1) and (2);  
Michigan Penal Code, Chapter XVII, Bribery and Corruption;  
Michigan Penal Code, Chapter XXII, Compounding Offenses;  
Michigan Penal Code, Chapter XXVA, Criminal Enterprises;  
Michigan Penal Code, Chapter XXVIII, Disorderly Persons;  
Michigan Penal Code, Chapter XXXI, Embezzlement;  
Michigan Penal Code, Chapter XXXIII, Explosives, Bombs and Harmful Devices  
Michigan Penal Code, Chapter XXXIV, Extortion;  
Michigan Penal Code, Chapter XLIII, Frauds and Cheats;  
Michigan Penal Code, Chapter XLIV, Gambling;  
Michigan Penal Code, Chapter XLV, Homicide;  
Michigan Penal Code, Chapter XLVIII, Indecency and Immorality;  
Michigan Penal Code, Chapter LVIII, Mayhem;  
Michigan Penal Code, Chapter LXVII, Prostitution;  
Michigan Penal Code, Chapter LXVIIA, Human Trafficking;  
Michigan Penal Code, Chapter LXXVI, Sexual Conduct;  
Michigan Penal Code, Chapter LXXVIII, Robbery,  
Michigan Penal Code, Chapter LXXXIII-A, Michigan Anti-Terrorism Act;  
Michigan Compiled Laws, 333, Part 74, Controlled Substances – Offense and Penalties;  
Michigan Compiled Laws Section 205.27, Taxation-Prohibited Acts, including tax evasion;

Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

Any offense enumerated in the Township Code of Ordinances which substantially corresponds to one of the foregoing state offenses; or

Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

*Influential interest* shall mean any of the following:

Actual power to operate or control the operation, management, or policies of a current to prospective business; including the manager of the prospective business, or

Ownership of a financial interest in the business, or ownership of an interest that is ten percent (10%) or more of the total interest of a current or prospective business, including such business entities as a firm, partnership, limited partnership, association, limited liability company, or corporation, or

Holding an office, such as, e.g., president, vice president, secretary, treasurer, managing member, managing director, etc., in a legal entity which operates a current or prospective business.

*Loitering* shall mean any act of standing or idling about, whether done by an individual or group of individuals, which hinders or impedes, or tends to hinder or impede, the passage of vehicles or pedestrians, or which is done for the purpose of doing any of the acts prohibited by any provision of this Code or state statute.

*Minor* shall mean any person under eighteen (18) years of age.

*Non-tobacco smoking product or substances* shall include any product or substance that can be consumed by smoking such as, but is limited to: e-cigarettes, bidis, kreteks, clove cigarettes, herbal cigarettes, electronic and herbal hookah, steam stones, smoking gels or other smoked product.

*Premises* shall mean the location for which a smoking lounge establishment operates under a State issued exemption certificate and includes the land, and all improvements located thereon, including the primary building and all accessory and out-buildings, and is not limited to the smoking area.

*Sale* shall mean, the exchange, barter, traffic, furnishing, or giving away of tobacco products and non-tobacco smoking products and substances which is regulated by the State of Michigan and pursuant to this article.

*Smoking lounge* shall mean an establishment, which has a State issued smoking ban exemption certificate, and that allows smoking of tobacco products or non-tobacco products or substances on the premises. The term “smoking lounge” includes, but is not limited to, facilities commonly describes as tobacco retail, specialty stores, cigar bars and lounges, hookah cafes and lounges, tobacco bars and lounges, tobacco clubs or 0% nicotine establishments.

*State* shall mean the State of Michigan.

*State issued exemption certificate* shall mean a valid exemption certificate issued by the State of Michigan for the premises, from the Public Act 188 of 2009 smoking in public ban which allows indoor smoking on the premises in compliance with the Act.

*Tobacco product* shall mean a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, non-cigarette smoking tobacco or smokeless tobacco as defined by the Tobacco Products Act, MCL 205.422.

*Tobacco specialty retail store* shall mean an establishment that has a State issued exemption certificate and for which the primary purpose is the retail sale of tobacco products, non-tobacco smoking products and substances, and smoking paraphernalia.

## **DIVISION 2. LICENSE REQUIREMENTS**

### **Section 14-\_\_\_\_. Business license required.**

A person shall not operate a smoking lounge in the Township without first obtaining a smoking lounge business license issued pursuant to the provisions of this article.

### **Section 14-\_\_\_\_. Application Requirements.**

Any person required by this article to have a smoking lounge license shall file an annual written application with the Township Clerk, on a form furnished by the clerk, which application shall include all of the following:

1. The full name, complete address, and telephone number of the applicant and whether the applicant is an individual, partnership, corporation, or other form of business entity, and if a corporation, the state of incorporation.
2. The current business address or another mailing address of the applicant.
3. Written proof of identity of the applicant, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
4. The business name, location, zoning classification, legal description, parcel identification number, mailing address and phone number.
5. A copy of the State issued exemption certificate for the premises; or if a transfer has been applied for, a copy of the application filed with the State.
6. A statement of whether any applicant has been convicted of or has plead guilty or nolo contendere to a disqualifying criminal act as defined in this article, and if so, specify each criminal act involved, including the date, place and jurisdiction of each , as well as, the dates of conviction and release from confinement where appropriate.
7. The name of the business address of the designated local agent who is responsible to supervise the premises and activities and who is authorized to receive service of process.
8. A tender of the correct smoking license application fee as established by resolution adopted by the township board.
9. The name of the person(s) designated as manager of the premises as required by this article and any aliases, home address, telephone number, date of birth and driver's license number.



## **Section 14-\_\_\_\_. Issuance of License (procedures and standards)**

*Pre-existing businesses.* All smoking lounges operating pursuant to a valid certificate of occupancy on the effective date of this ordinance are hereby granted a de facto temporary license to continue operating for a period of one hundred and eighty (180) days following the effective date. During this period all smoking lounge businesses shall apply for a license pursuant to this article; and by the expiration date of one hundred and eighty (180) days shall conform to all requirements for issuance of a license.

*Application review.* Upon receipt of an application for any license under this article, the clerk shall forward a copy of such application to the Police Department, Building Department, Zoning Department and Fire Department for their review, investigation and recommendation.

Each department shall review the application for compliance with the requirements of all applicable ordinances and codes.

The Township Clerk shall issue a license to the applicant or issue to the applicant a written notice to deny the application. The Township Clerk shall issue a license unless:

1. *Information.* The applicant has failed to provide information as required by this ordinance for the issuance of a license, or has falsely answered a question or a request for information on the application form.
2. *Applicable Laws.* The establishment, as proposed by the applicant, would not comply with all applicable laws, rules and regulations of federal, state or local agencies.
3. *Fee.* The license application fee required by this article has not been paid.
4. *State exemption certificate.* The applicant does not have a valid State issued exemption certificate, the State has denied the application for a transfer, or the exemption has been revoked;
5. *Code compliance.* The subject premise lack a current certificate of occupancy, certificate of zoning compliance or does not comply with applicable building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes;
6. *Unpaid fees.* The Township Treasurer or Building Department has indicated that there are unpaid fees or uncured violations under its purview related to the subject premises;
7. *Disqualifying criminal act.* An applicant has been convicted of, or pled guilty, or nolo contendere, or no contest or entered an Alford plea, to a disqualifying criminal act as defined in this article;
8. *Additional licensing.* The business is not licensed to do business in Michigan or has not obtained a sales tax license;

*Reservation of authority.* Notwithstanding anything to the contrary in this article, no applicant has a right to the issuance of a license; and the Township hereby reserves the right to determine who, if anyone, shall be entitled to the issuance of such license, based on the objective criteria listed in this ordinance which relate to concerns for public health, safety, and welfare as identified herein.

*License contents; posting; possession.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the business. The business license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time.

#### **Section 14-\_\_\_\_. Fees.**

Any person required to obtain a license pursuant to this article shall pay a nonrefundable application fee at the time of the application or renewal of the application in the amount established by resolution of the Township Board. Such fees shall be payable to the township treasurer and shall be in addition to any other license, permit or fee required under this article or any other provision of this code.

#### **Section 14-\_\_\_\_. Inspection and Right of Entry.**

Filing an application for a smoking lounge shall constitute consent of the applicant and licensee and his/her or its agents, managers and/or employees to permit the Township's Police Department, Building Department, Planning Department, Fire Department or any other department or agent of the Township to conduct routine inspections of any licensed smoker's lounge during township business hours and during anytime that employees or managers are on the premise. The Township Police Department and Fire Department shall be allowed unannounced access to the smoking lounge premises to inspect for violations of this article.

#### **Section 14-\_\_\_\_. Transfer of license.**

A licensee shall not transfer the license to another, nor shall a licensee operate a smoking lounge under the authority of a license at any place other than the address designated in the smoking lounge license application. Any transfer shall be grounds for suspension and revocation. A proposed transfer shall require a new application be filed and shall be subject to the same procedures, standards and fees required for a new license. Each location operated by a licensee requires a separate license.

Approval of the transfer of a State issued exemption certificate by the State of Michigan shall not abrogate the requirement to apply for and obtain a smoking lounge license as required by this article.

**Section 14-\_\_\_\_. Annual license, expiration.**

Each license shall expire annually on the (date) unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of the fee as required by this article.

**Section 14-\_\_\_\_. Manager, Change of Manager.**

At least one registered manager who has been identified on the application for a smoker's lounge license shall be on the premises at all times that the business is open. It shall be unlawful for any person not identified on the smoker's lounge license application to work as a manager of a smoking lounge business unless the proposed manager is listed on the smoker's lounge license application along with the individual's legal name and any aliases, home address, telephone numbers, date of birth, and driver's license number. All managers shall be over the age of twenty-one (21) years old. The licensee shall be responsible for notifying the Township of any change in management.

**DIVISION 3. DENIAL, SUSPENSION, REVOCATION, HEARING**

**Section 14-\_\_\_\_. Denial.**

In the event the Township Clerk issues a written notice to deny for failure to comply with the requirements of section \_\_\_\_\_, the provisions of section \_\_\_\_\_ providing for an appeal hearing shall apply.

**Section 14-\_\_\_\_. Suspension.**

The Township Clerk shall suspend the license for a period of thirty (30) days if the licensee has violated this article or has allowed an employee to violate this article. Upon receiving notice of a violation, the Clerk shall issue a written notice to suspend, which shall include the grounds for the suspension, the effective date of the suspension, and that the licensee may within twenty (20) days, request in writing, an appeal hearing before the Township Board pursuant to the provisions of section \_\_\_\_\_. The suspension shall take effect twenty-one (21) days after the date of the notice of suspension.

**Section 14-\_\_\_\_. Revocation; non-renewal.**

*Violation after previous suspension.* The Township Clerk shall issue a written notice of revocation if the licensee knowingly violates this article or has knowingly allowed an employee to violate this article and the licensee's license has been suspended within the previous twelve (12) month period.

*Grounds for revocation/non-renewal.* The Township Clerk shall issue a written notice to revoke or non-renewal of the license if:

1. The licensee would not meet the standards set forth in section \_\_\_\_ if the licensee were an applicant for a new license.
2. The licensee has allowed two (2) or more violations of the regulations of this article in the preceding twelve (12) month period.
3. The licensee has allowed a nuisance, as defined under the Revised Judicature Act, MCL 600.3801, to be maintained upon the premises.
4. The subject premises have existing violations of building, zoning, plumbing, mechanical, electrical, health or fire codes.
5. The operation of the licensed establishment has resulted in a pattern of patron conduct in the neighborhood of the establishment that substantially disturbs the peace, order, and tranquility of the neighborhood.
6. The licensee has failed to maintain the ground and exterior of the licensee's establishment by allowing litter, debris, and/or refuse to unreasonably remain on the property or adjoining property.
7. The licensee operated the business during a period of time when the license was suspended.
8. The licensee has engaged in illegal activity or allowed any illegal activity to occur in or on the licensed premises.

*Effect of appeal of conviction.* The fact that any relevant conviction is being appealed shall have no effect on the revocation/non-renewal of the license, provided that, if any conviction which serves as a basis of a license revocation/non-renewal is overturned or reversed on appeal, that conviction shall be treated as null and of no effect and the license shall be reinstated.

*Effective date.* The revocation/nonrenewal shall not take effect for twenty-one (21) days from the date of the notice revocation/non-renewal.

*Notice of Suspension.* The Township shall post a notice of suspension or revocation in a publically visible location on the front door or window of the business for any smoking lounge whose license has been suspended or revoked.

*Appeal.* The written notice to revoke/non-renewal, shall include the grounds for the revocation/non-renewal, the effective date of the revocation/non-renewal, and that the licensee may request in writing, within twenty (20) days of the date of the notice of suspension, or revocation/non-renewal, an appeal hearing before the Township Board pursuant to the provisions of section \_\_\_\_\_. If not appealed, the suspension shall take effect twenty-one (21) days after the date of the notice of suspension.

**Section 14-\_\_\_\_. Appeal Hearing.**

*Notice of hearing.* Upon receipt of a request for appeal, the Township Board shall provide the licensee with notice and opportunity to be heard. The Township Board shall serve notice upon the licensee by certified mail, not less than twenty (20) days prior to the hearing date. The notice shall state:

1. The date, time and place of the hearing.
2. A statement that the licensee may present evidence and testimony, and may be represented by an attorney.

*Hearing and decision.* The hearing shall be conducted by the Township Board and shall be open to the public. The Township Board shall submit to the licensee a written statement of its findings, decision, specific grounds for its decision, and a statement that the decision may be appealed to a court of competent jurisdiction.

**DIVISION 4. REGULATIONS**

**Section 14-\_\_\_\_. Hours of Operation.**

Businesses operating a licensed smoking lounge shall be closed between the hours of 2:00 a.m. and 8:00 a.m. on any day. No one shall be allowed on the premises except employees after 2:00 a.m. Only a minimum of three (3) employees shall remain on the premises after 2:30 a. m. and shall carry proof of employment, such as an identification badge. The manager and/or employees shall provide proof of employment when requested to do so by a member of the Police Department at any time.

**Section 14-\_\_\_\_. Storage lockers prohibited.**

Storage lockers shall be prohibited on the premises of a smoking lounge, except that on-site humidors may be permitted in the smoking area of a cigar bar.

**Section 14-\_\_\_\_. Outdoor activities prohibited.**

There shall not be any outdoor activities, outdoor public admission events, or outdoor seating. (Outdoor seating may be permitted provided it is in compliance with township zoning as an acceptable use; provided such use does not violate any other section of this ordinance and any applicable State law.) The business activities shall be conducted wholly indoors. In no event shall designated on-site parking areas be used for any other purpose than parking of passenger vehicles.

**Section 14 - \_\_\_\_ . Spacing requirements**

A smoking lounge may not be located within one thousand (1,000) feet from any school, church, park or another smoking lounge.

**Section 14- \_\_\_\_ . Loitering, exterior lighting, and monitoring requirements.**

It shall be the duty of the licensee or the designated local agent to:

1. *Signs and Loitering.* Post conspicuous signs stating that no loitering is permitted on the premise; no minors are permitted on the premises; and patrons must leave the parking area immediately upon close of the business. The licensee shall ensure that loitering is not permitted by its patrons during hours of operation and immediately upon close of the business.
2. *Monitor.* Designate one (1) or more employees to monitor, while the premises are open for business and activities of persons on the premises by visually inspecting the interior and exterior of the premises at least once very ninety (90) minutes or inspecting the premises by use of video cameras and monitoring.
3. *Exterior.* Ensure lighting of the exterior premises is provided, including all parking areas, for visual inspection and security. All exterior lighting shall comply with all provisions of the Charter Township of Shelby Zoning Ordinance.
4. *Parking area.* The licensee shall ensure that patrons are not parking in adjacent or neighboring parking lots or in residential areas that are not part of the parking area approved on the site plan for the licensed premises.
5. *Noise.* The licensee shall ensure that noise shall be controlled so as not to become a nuisance to adjacent uses as set forth in the Township Zoning Ordinance.

**Section 14- \_\_\_\_ . Security guards.**

Uniformed security guards shall be provided, as deemed necessary by the Chief of Police or his designee should the business cause an unusually high amount of calls for service to the Police Department.

**Section 14- \_\_\_\_ . Maximum occupancy.**

The maximum occupancy level established by the Fire Department for a smoking establishment shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time.

**Section 14-\_\_\_\_. Prohibited activities.**

It is unlawful for a licensee or local agent to knowingly violate the following regulations or to knowingly allow an employee, patron or any other person to violate the following regulations. The licensee or local manager shall remove anyone violating the following regulations:

1. *Minors prohibited.* No one shall be allowed on the premises of a smoking lounge business unless the individual is eighteen (18) years of age or older. The licensee and local agent shall ensure that identifications of individuals on the premises have been checked to determine that every individual is eighteen (18) years of age or older before entry into the premises. The exit doors shall be monitored to ensure that no one is attempting to gain secret entry into the business. A sign shall be posted near the entrance stating: "No one under the age of eighteen (18) is allowed.
2. *Alcoholic liquor.* No person shall sell, offer for sale, trade, provide, allow, possess, consume or attempt to consume any alcoholic liquor on the premises unless the licensee has obtained the appropriate license from the Liquor Control Commission pursuant to MCL 436.1101 et seq., as amended.
3. *Nudity prohibited.* No one shall be allowed on the premises of a smoking lounge business to appear nude or in a state of nudity as defined in section 4-461 of the Code of Ordinances.
4. *Controlled substances prohibited.* It shall be unlawful to permit sales, offer for sale, trade, provide, allow, possession, consumption or attempt to consume any controlled substance on the premises in violation of Article 7 of the Public Health Code, MCL 333.1101 et seq.

**DIVISION 6. PENALTIES AND ENFORCEMENT**

**Section 14 \_\_\_\_ . Penalties and enforcement.**

*Misdemeanor.* A person, firm or corporation who violates or fails to comply with any of the provisions of this article shall be guilty of a misdemeanor, punishable by a maximum of five hundred (\$500.00) dollars and/or a maximum penalty of (90) days imprisonment. Each day a violation is committed or permitted to continue, it shall constitute a separate offense and shall be treated as a separate offense.

*Civil proceedings.* The township attorney or designee is hereby authorized to institute civil proceedings necessary for the enforcement of this article to restrain or correct ordinance violations and for the recovery of costs and expenses incurred by the Township, as authorized by law. Such proceedings, including injunctive relief, shall be brought in the name of the township; however, the institution of civil proceedings shall not preclude enforcement of misdemeanor, administrative, or any other proceeding authorized by ordinance, state or federal law.

**Section 2. Repealer**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Section 3. Severability.**

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

**Section 5. Effective Date.**

The provisions of this Ordinance shall become effective upon 30 days following publication after adoption.

**CERTIFICATION**

STATE OF MICHIGAN)

) ss.

COUNTY OF MACOMB)

I, the undersigned, the duly qualified Clerk of the Charter Township of Shelby, Macomb County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. 269 adopted by the Charter Township of Shelby Board of Trustees on the 18<sup>th</sup> day of November, 2014, the original of which is in my office.

\_\_\_\_\_  
Stanley Grot, Township Clerk

INTRODUCTION:	October 21, 2014
FIRST PUBLICATION:	November 5, 2014
ADOPTION:	November 18, 2014
SECOND PUBLICATION:	December 3, 2014
EFFECTIVE DATE:	January 2, 2015



## **CITY OF AUBURN HILLS**

### **ORDINANCE NO. 13-857**

#### **SMOKING LOUNGES ORDINANCE**

An Ordinance to amend Chapter 10 of the Auburn Hills Code of Ordinances, as amended, entitled Amusements and Entertainments, to add Article III, Smoking Lounges, to license and regulate smoking establishments for the public health, safety and welfare of the City and persons within its jurisdictional boundaries.

#### **THE CITY OF AUBURN HILLS ORDAINS:**

##### **Section 1**

Chapter 10 of the City of Auburn Hills Code of Ordinances, as amended, is hereby amended by adding Article III, entitled Smoking Lounges, containing sections 10-50 through 10-153, to read as follows:

#### **ARTICLE VI. SMOKING LOUNGES**

##### **DIVISION 1. GENERALLY**

###### **Sec.10-101. Purpose.**

Since the State of Michigan enacted Public Act 188 of 2009 to prohibit smoking in public places smoking lounges have become increasingly popular. Cigar Bars and Tobacco Specialty Retail Stores that qualify and were in existence on May 1, 2010, are exempt from the smoking in public prohibition. The State issues exemption certificates that may be transferred resulting in an increase in the number of establishments in the City.

Potential adverse impacts associated with these establishments have been identified such as large numbers of patrons during the evening and night time, crowds overflowing into parking areas and impeding on nearby businesses, leaving behind trash, broken alcohol bottles and debris, incidents requiring police response, fights, alcohol possession on unlicensed premises, traffic, noise, and complaints from neighboring businesses and residents. The purpose of this article is to regulate smoking lounges for the public health, safety, and welfare of the City and persons within its jurisdictional boundaries; to prevent access to tobacco and non-tobacco smoking products by minors at these establishments, and to prevent the spread of smoke fumes to adjacent properties, and persons passing by these establishments.

This article is designed to establish reasonable and uniform regulations to prevent potential adverse impacts relating to these establishments. The regulations adopted are designed to provide objective and orderly procedures for the administration of this article.

**Sec. 10-102. Definitions.**

For purposes of this article, the words, terms, and phrases shall be defined as follows:

*Cigar* shall mean any roll of tobacco weighing three (3) or more pounds per 1,000, which roll has a wrapper or cover consisting of tobacco.

*Cigar bar* shall mean an establishment or area within an establishment that is open to the public and is designated for the smoking of cigars that has a State issued exemption certificate.

*Disqualifying criminal act* shall mean any of the following:

- (1) Any of the following misdemeanor or felony offenses under any of the following statutes, as amended, for which less than seven (7) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
  - i Michigan Penal Code, Chapter X, Arson and Burning;
  - ii Michigan Penal Code, Chapter XI, Assaults, except MCL 750.81(1) and (2);
  - iii Michigan Penal Code, Chapter XVII, Bribery and Corruption;
  - iv Michigan Penal Code, Chapter XXII, Compounding Offenses;
  - v Michigan Penal Code, Chapter XXVA, Criminal Enterprises;
  - vi Michigan Penal Code, Chapter XXVIII, Disorderly Persons;
  - vii Michigan Penal Code, Chapter XXXI, Embezzlement;
  - viii Michigan Penal Code, Chapter XXXIII, Explosives, Bombs, Harmful Devices;
  - ix Michigan Penal Code, Chapter XXXIV, Extortion;
  - x Michigan Penal Code, Chapter XLIII, Frauds and Cheats;
  - xi Michigan Penal Code, Chapter XLIV, Gambling;
  - xii Michigan Penal Code, Chapter XLV, Homicide;
  - xiii Michigan Penal Code, Chapter XLVIII, Indecency and Immorality;
  - xiv Michigan Penal Code, Chapter LVIII, Mayhem
  - xv Michigan Penal Code, Chapter LXVII, Prostitution;
  - xvi Michigan Penal Code, Chapter LXVIIA, Human Trafficking;
  - xvii Michigan Penal Code, Chapter LXXVI, Sexual Conduct;
  - xviii Michigan Penal Code, Chapter LXXVIII, Robbery;
  - xix Michigan Penal Code, Chapter LXXXIII-A, Michigan Anti-Terrorism Act;
  - xx Michigan Compiled Laws, 333, Part 74, Controlled Substances –  
Offense and Penalties;
  - xxi Michigan Compiled Laws Section 205.27, Taxation-Prohibited Acts,  
including tax evasion;
- (2) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;  
or
- (3) Any offense enumerated in the City Code of Ordinances which substantially corresponds to one of the foregoing state offenses; or

- (4) Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

*Influential interest* shall mean any of the following:

- (1) actual power to operate or control the operation, management, or policies of a current or prospective business; including the manager of the prospective business, or
- (2) ownership of a financial interest in the business, or ownership of an interest that is ten percent (10%) or more of the total interest of a current or prospective business, including such business entities as a firm, partnership, limited partnership, association, limited liability company, or corporation; or
- (3) holding an office, such as, e.g., president, vice president, secretary, treasurer, managing member, managing director, etc., in a legal entity which operates a current or prospective business.

*Minor* shall mean any person under eighteen (18) years of age.

*Non-tobacco smoking products or substances* shall include any product or substance that can be consumed by smoking such as, but is not limited to: e-cigarettes, bidis, kreteks, clover cigarettes, herbal cigarettes, electronic and herbal hookah, steam stones, smoking gels or other smoked product.

*Premises* shall mean the location for which a smoking lounge establishment operates under a State issued exemption certificate and includes the land, and all improvements located thereon, including the primary building and all accessory and out-buildings, and is not limited to the smoking area.

*Sale* shall mean, the exchange, barter, traffic, furnishing, or giving away of tobacco products and non-tobacco smoking products and substances which is regulated by the State of Michigan and pursuant to this article.

*Smoking lounge* shall mean an establishment, which has a State issued smoking ban exemption certificate, and that allows smoking of tobacco products or non-tobacco products or substances on the premises. The term “smoking lounge” includes, but is not limited to, facilities commonly described as tobacco retail specialty stores, cigar bars and lounges, hookah cafés and lounges, tobacco bars and lounges, tobacco clubs or 0% nicotine establishments.

*State* shall mean the State of Michigan.

*State issued exemption certificate* shall mean a valid exemption certificate issued by the State of Michigan for the premises, from the Public Act 188 of 2009 smoking in public ban which allows indoor smoking on the premises in compliance with the Act.

*Tobacco product* shall mean a product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes, non-cigarette smoking

tobacco or smokeless tobacco as defined by the Tobacco Products Tax Act, MCL 205.422.

*Tobacco specialty retail store* shall mean an establishment that has a State issued exemption certificate and for which the primary purpose is the retail sale of tobacco products, non-tobacco smoking products and substances, and smoking paraphernalia.

**Sec.10-102 to 10-107. Reserved.**

## **DIVISION 2. LICENSE**

**Sec. 10-108. Business license required.**

A person shall not operate a smoking lounge in the City without first obtaining a smoking lounge business license issued pursuant to the provisions of this article.

**Sec. 10-109. Application.**

(a) *Information required.* An applicant for a smoking lounge license shall annually file in person at the office of the City Clerk, a completed application made on a form provided by the Clerk. The application shall be signed as required herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in paragraphs (1) through (8) below, accompanied by the required fee.

- (1) The applicant's full true name and any other names used by the applicant in the preceding seven (7) years. If the applicant is a partnership, corporation, limited liability company, or other legal entity, then all persons with an influential interest in the entity shall be deemed an applicant and shall provide the information required by this article. Each applicant must be qualified under section 10-110, and each applicant shall be considered a licensee if a license is granted.
- (2) Current business address or another mailing address of the applicant.
- (3) Written proof of identity, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) The business name, location, zoning classification, legal description, parcel identification number, mailing address and phone number.
- (5) A copy of the State issued exemption certificate for the premises; or if a transfer has been applied for, a copy of the application filed with the State.
- (6) The name and business address of the designated local agent who is responsible to supervise the premises and activities and who is authorized to receive service of process.

- (7) A statement of whether any applicant has been convicted of or has pled guilty or nolo contendere to a disqualifying criminal act as defined in this article, and if so, specify each criminal act involved, including the date, place, and jurisdiction of each, as well as, the dates of conviction and release from confinement, where applicable.
- (8) A statement as to whether any business in which an applicant has had an influential interest, has, in the previous seven (7) years, and at the time during which the applicant had the influential interest:
- i. Been declared by a court of law to be a nuisance, as defined under the Revised Judicature Act, MCL 600.3801; or
  - ii. Been subject to a court order of closure or padlocking.
- (9) Statement of nature of proposed operation

The information provided pursuant to paragraphs (1) through (9) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (b) *Signature required.* If a person who wishes to operate the business is an individual, the person shall sign the application. If a person who wishes to operate a business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant.
- (c) *Disclosure.* The information provided by an applicant in connection with an application for a license under this article shall be maintained by the City Clerk's Office and all personal information shall be deemed confidential and may be disclosed only as required by law or by court order.

#### **Sec. 10-110. Issuance of license.**

- (a) *Pre-existing businesses.* All smoking lounges operating pursuant to a valid certificate of occupancy on the effective date of this ordinance are hereby granted a de facto temporary license to continue operating for a period of one hundred and eighty (180) days following the effective date. During this period all smoking lounge businesses shall apply for a license pursuant to this article; and by the expiration date of the one hundred and eighty (180) days shall conform to all requirements for issuance of a license.
- (b) *Application review.* Upon the filing of a completed application for a smoking lounge business license, the City Clerk shall forward a copy to the following departments: Department of Emergency Services Administration, Community Development, Treasurer's Office, Department of Public Works and any other Department, to review the application for compliance with the requirements of all applicable ordinances and codes.
- (c) The City Clerk shall issue a license to the applicant, or issue to the applicant a written notice to deny the application. The City Clerk shall issue a license unless:
- (1) *Information.* An applicant has failed to provide information as required by

section 10-109 for issuance of a license, or has falsely answered a question or a request for information on the application form;

- (2) *Fee.* The license application fee required by this article has not been paid;
- (3) *State exemption certificate.* The applicant does not have a valid State issued exemption certificate, the State has denied the application for a transfer, or the exemption has been revoked;
- (4) *Code compliance.* The subject premises lacks a current certificate of occupancy or does not comply with applicable building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes. Upon filing an application for a building permit, plan review, or certificate of occupancy, the applicant shall also file a copy with the City Clerk;
- (5) *Ventilation and parking.* The Community Development Department has indicated that the premises lack the ventilation or parking required for the proposed use;
- (6) *Unpaid fees.* The Community Development Department, the Treasurer's Office, the Department of Public Works, or the Department of Emergency Services has indicated that there are unpaid fees or uncured violations under its purview related to the subject premises;
- (7) *Taxes.* The City Treasurer's Office has denied a real estate tax clearance pertaining to the subject premises;
- (8) *Ownership/lease.* The business does not own the premises for which a license is sought or does not have a lease for the full period for which the license is sought;
- (9) *Previous revocation/non-renewal.* An applicant has had a smoking exemption revoked, or not renewed for cause, in the last seven (7) years under this article or a comparable city or township ordinance or state law, whether in Michigan or otherwise;
- (10) *Prior nuisance.* Any business in which the applicant has had an influential interest, has, in the previous seven (7) years, and at the time during which the applicant had the influential interest:
  - i. Been declared by a court of law to be a nuisance, as defined under the Revised Judicature Act, MCL 600.3801; or
  - ii. Been subject to an order of closure or padlocking.
- (11) *Disqualifying criminal act.* An applicant has been convicted of, or pled guilty, or nolo contendere, or no contest or entered an Alford plea, to a disqualifying criminal act as defined in this article;
- (12) *Additional licensing.* The business is not licensed to do business in Michigan or has not obtained a sales tax license;

- (d) *Reservation of authority.* Notwithstanding anything to the contrary in this article, no applicant has a right to the issuance of a license; and the City hereby reserves the right to determine who, if anyone, shall be entitled to the issuance of such a license, based on the objective criteria listed in this ordinance which relate to concerns for public health, safety, and welfare as identified herein.
- (e) *License contents; posting; possession.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, the address of the business. The business license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time.
- (f) *Other laws applicable.* Nothing in this article shall be construed to exempt the licensee from any other requirements set forth by City ordinance, state or federal law.

**Sec. 10-111. Fees.**

The fees for a license under this article shall be established by resolution adopted by the City Council and shall be placed on file, and made available, at the office of the City Clerk.

**Sec. 10-112. Inspection.**

Filing an application for a smoking lounge shall constitute consent to inspection by City officials as provided herein, for the purpose of ensuring compliance with the specific regulations of this article. During City business hours or at other mutually agreeable time, the applicant shall allow the representatives of City departments onto the property and into the proposed licensed premises to complete an inspection. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this article.

**Sec. 10-113. Transfer of license.**

- (a) A licensee shall not transfer the license to another, nor shall a licensee operate a smoking lounge under the authority of a license at any place other than the address designated in the smoking lounge license application. Any transfer shall be grounds for suspension and revocation. A proposed transfer shall require a new application be filed and shall be subject to the same procedures, standards and fees required for a new license. Each location operated by a licensee requires a separate license.
- (b) Approval of the transfer of a State issued exemption certificate by the State of Michigan shall not abrogate the requirement to apply for and obtain a smoking lounge license as required by this article. There shall be no transfer into the City of Auburn Hills of a State of Michigan Exemption Permit under the Dr. Ron L. Davis Act of 2009; MCL 333.12601, et. Seq., as amended.

**Sec. 10-114. Annual license, expiration.**

Each license shall expire annually on the thirty-first day of March unless otherwise suspended

or revoked. Such license may be renewed only by making application and payment of the fee as required by this article.

**Sec. 10-115 to 10-125. Reserved.**

**DIVISION 3. DENIAL, SUSPENSION, REVOCATION, HEARING**

**Sec. 10-126. Denial.**

In the event the City Clerk issues a written notice to deny for failure to comply with the requirements of section 10-110, the provisions of section 10-129 providing for an appeal hearing shall apply.

**Sec. 10-127. Suspension.**

The City Clerk shall suspend the license for a period of thirty (30) days if the licensee has knowingly violated this article or has knowingly allowed an employee to violate this article. Upon receiving notice of a violation, the Clerk shall issue a written notice to suspend, which shall include the grounds for the suspension, the effective date of the suspension, and that the licensee may within twenty (20) days, request in writing, an appeal hearing before the City Council pursuant to the provisions of section 10-129. The suspension shall take effect twenty-one (21) days after the date of the notice of suspension.

**Sec. 10-128. Revocation; non-renewal.**

- (a) *Violation after previous suspension.* The City Clerk shall issue a written notice of revocation if the licensee knowingly violates this article or has knowingly allowed an employee to violate this article and the licensee's license has been suspended within the previous twelve (12) month period.
- (b) *Grounds for revocation/non-renewal.* The City Clerk shall issue written notice to revoke or non-renewal of the license if:
  - (1) The licensee would not meet the standards set forth in section 10-110 if the licensee were an applicant for a new license.
  - (2) The licensee has knowingly or recklessly allowed two (2) or more violations of the regulations of this article in the preceding twelve (12) month period.
  - (3) The licensee has knowingly or recklessly allowed a nuisance, as defined under the Revised Judicature Act, MCL 600.3801, to be maintained upon the premises.
  - (4) The subject premises have existing violations of building, zoning, plumbing, mechanical, electrical, health or fire prevention codes.
  - (5) The operation of the licensed establishment has resulted in a pattern of patron conduct in the neighborhood of the establishment that substantially disturbs the peace, order, and tranquility of the neighborhood.
  - (6) The licensee has failed to maintain the grounds and exterior of the licensee's establishment by allowing litter, debris, and/or refuse to unreasonably remain on the



property or adjoining properties.

- (7) The licensee knowingly or recklessly operated the business during a period of time when the license was suspended.
  - (8) The licensee has knowingly or recklessly engaged in illegal activity or allowed any illegal activity to occur in or on the licensed premises.
- (c) *Effect of appeal of conviction.* The fact that any relevant conviction is being appealed shall have no effect on the revocation/non-renewal of the license, provided that, if any conviction which serves as a basis of a license revocation/non-renewal is overturned or reversed on appeal, that conviction shall be treated as null and of no effect and the license shall be reinstated.
- (d) *Effective date.* The revocation/nonrenewal shall not take effect for twenty-one (21) days from the date of the notice of revocation/non-renewal.
- (e) *Appeal.* The written notice to revoke/non-renewal, shall include the grounds for the revocation/non-renewal, the effective date of the revocation/non-renewal, and that the licensee may request in writing, within twenty (20) days of the date of the notice of suspension, or revocation/non-renewal, an appeal hearing before the City Board pursuant to the provisions of section 10-129. If not appealed, the suspension shall take effect twenty-one (21) days after the date of the notice of suspension.

**Sec. 10-129. Appeal hearing.**

- (a) *Notice of hearing.* Upon receipt of a request for appeal, the City Council shall provide the licensee with notice and an opportunity to be heard. The City Council shall serve notice upon the licensee by certified mail, not less than twenty (20) days prior to the hearing date. The notice shall state:
- (1) The date, time and place of the hearing.
  - (2) A statement that the licensee may present evidence and testimony, and may be represented by an attorney.
- (b) *Hearing and decision.* The hearing shall be conducted by the City Council and shall be open to the public. The City Council shall submit to the licensee a written statement of its findings, decision, specific grounds for its decision, and a statement that the decision may be appealed to a court of competent jurisdiction.

**Sec. 10-130- to 10-135. - Reserved.**

**DIVISION 4. REGULATIONS**

**Sec. 10-136. Hours of operation.**

Businesses operating a licensed smoking lounge shall be closed between the hours of 12:00 a.m. and 8:00 a.m. on any day. No one shall be allowed on the premises except employees after midnight. ~~Only a minimum of three (3) employees shall remain on the premises after midnight and shall carry proof of employment, such as an identification badge.~~

~~The manager and/or employees shall provide proof of employment when requested to do so by a member of the Police Department. Only employees and/or contractors shall remain on the premises after closing and shall carry proof of employment.~~

**Sec. 10-137. Local agent on premises.**

The licensee, or the local agent designated in the application, shall remain on the premises while open for business to supervise the activities and shall be responsible to ensure compliance with the regulations of this article. In the event a licensee changes the local agent, the licensee shall immediately notify the Clerk in writing of the name and business address of the new local agent. All managers or local agents shall be over the age of twenty-one (21) years old.

**Sec. 10-138. Mechanical ventilation required.**

Mechanical ventilation shall be supplied in compliance with the Michigan Mechanical Code to ensure sufficient ventilation of the smoking lounge. The recirculation and the natural ventilation of air from the smoking lounge is prohibited; and the air supplied to the smoking lounge shall be exhausted and discharged to an approved location in compliance with the Michigan Mechanical Code.

**Sec. 10-139. Off-street parking required.**

Off-street parking shall be provided for the smoking lounge business. The minimum amount of parking shall be calculated by utilizing the parking requirements listed for sit down restaurants contained in the Auburn Hills Zoning Ordinance.

**Sec. 10-140. Storage lockers prohibited.**

Storage lockers shall be prohibited on the premises of a smoking lounge, except that on-site humidors may be permitted in the smoking area of a cigar bar.

**Sec. 10-141. Outdoor activities prohibited.**

There shall not be any outdoor activities, outdoor public admission events, or outdoor seating. The business activities shall be conducted wholly indoors. In no event shall designated on-site parking areas be used for any other purpose than parking of passenger vehicles. To ensure that the smoke is contained within the smoking area, all windows and doors shall remain closed to ensure that the smoke does not infiltrate nonsmoking areas and is not emitted to passersby.

**Sec. 10-142. Loitering, exterior lighting, and monitoring requirements.**

It shall be the duty of the licensee or the designated local agent to:

- (a) *Signs.* Post conspicuous signs stating that no loitering is permitted on the premises; no minors are permitted on the premises; and patrons must leave the parking area immediately upon close of the business;

- (b) *Monitor.* Designate one (1) or more employees to monitor, while the premises are open for business, the activities of persons on the premises by visually inspecting the interior and exterior of the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitoring;
- (c) *Exterior.* Ensure lighting of the exterior premises is provided, including all parking areas, for visual inspection and security. All exterior lighting shall comply with all provisions of the Auburn Hills Zoning Ordinance;
- (d) *Parking area.* The licensee shall ensure that patrons are not parking in adjacent or neighboring parking lots or in residential areas that are not part of the parking area approved on the site plan for the licensed premises.

**Sec. 10-143. Disturbing the peace.**

The licensee or local agent, shall be responsible to maintain the premises to ensure there is not a violation of the Code of Ordinances, section 46-157, for disturbing the peace. If the licensee or designated local agent is convicted for a violation of 46-157, the conviction shall be grounds for revocation, denial or suspension of a license.

**Sec. 10-144. Prohibited activities.**

It is unlawful for a licensee or local agent to knowingly violate the following regulations or to knowingly allow an employee, patron or any other person to violate the following regulations.

The licensee or local agent shall remove anyone violating the following regulations:

- (a) *Minors prohibited.* No one shall be allowed on the premises of a smoking lounge business unless the individual is eighteen (18) years of age or older. The licensee and local agent shall ensure that identifications of individuals on the premises have been checked to determine that every individual is eighteen (18) years of age or older before entry into the premises. The exit doors shall be monitored to ensure that no one is attempting to gain secret entry into the premises. A sign shall be posted near the entrance stating “No one under the age of eighteen (18) allowed.”
- (b) *Alcoholic liquor.* No person shall sell, offer for sale, trade, provide, allow, possess, consume or attempt to consume any alcoholic liquor on the premises unless the licensee has obtained the appropriate license from the Liquor Control Commission pursuant to MCL 436.1101 *et seq.*, as amended.
- (c) *Nudity prohibited.* No one shall be allowed on the premises of a smoking lounge business to appear nude or in a state of nudity as defined in section 6-125 of this article.
- (d) *Controlled substances prohibited.* It shall be unlawful to permit ~~No person shall sell~~, sales, offer for sale, trade, provide, allow, possession, consumption or attempt to consume any controlled substance on the premises in violation of Article 7 of the Public Health Code, MCL 333.1101 *et seq.*

**10-145 to 10-150. Reserved.**

## **DIVISION 6. PENALTIES AND ENFORCEMENT**

### **Sec. 10-151. Penalties and enforcement.**

- (a) *Misdemeanor.* A person who violates or fails to comply with any of the provisions of this article shall be guilty of a misdemeanor, punishable by a maximum fine of five hundred dollars (\$500.00) and/or a maximum of ninety (90) days imprisonment. Each day a violation is committed, or permitted to continue, it shall constitute a separate offense and shall be treated as a separate offense.
- (b) *Civil proceedings.* The City Attorney or designee is hereby authorized to institute civil proceedings necessary for the enforcement of this article to restrain or correct ordinance violations, and for the recovery of costs and expenses incurred by the City, as authorized by law. Such proceedings, including injunctive relief, shall be brought in the name of the City, however, the institution of civil proceedings shall not preclude enforcement of misdemeanor, administrative, or any other proceeding authorized by ordinance, state or federal law.

**Sec. 10-152 to 10-153. Reserved.**

### **Section 2. Repealer**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

### **Section 3. Severability.**

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

### **Section 4. Savings.**

The proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

### **Section 5. Effective Date.**

The provisions of this Ordinance are hereby ordered to take effect upon publication in the manner prescribed by the Charter of the City of Auburn Hills.

### **Section 6. Adoption.**

This Ordinance is hereby declared to have been adopted by the City Council of the City of Auburn

Hills at a meeting thereof duly called and held on the \_\_\_\_ day of \_\_\_\_\_, 2013, and ordered to be given publication in a manner prescribed by the Charter of the City of Auburn Hills.

**AYES:**

**NAYES:**

**ABSTENTIONS:**

STATE OF MICHIGAN )

) ss.

COUNTY OF OAKLAND )

I, the undersigned, the duly qualified Clerk of the City of Auburn Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. \_\_\_\_ adopted by the Auburn Hills City Council on the \_\_\_\_ day of \_\_\_\_ 2013, the original of which is in my office.

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Terri Kowal, City Clerk

# A tough sell: Warning Dearborn teens of hookah's dangers

Many youths think it less risky than cigarettes

By Robin Erb  
Detroit Free Press

In a Dearborn classroom packed with teens in football jerseys, T-shirts and hijab, health educators are tackling more than nicotine and addiction.

They're taking on tradition. In particular, they're trying to educate youths about the health risks of hookah — a practice that in a single session might subject that user to 100 times as much smoke as a single cigarette, according to some research.

"It can be a tough sell to say, 'Even though most of the people in your family are doing this, you need to know the health risks and make your decision based on that,'" said Corey Beckwith, a health educator with the Arab Community Center for Economic and Social Services (ACCESS).

Especially for youths, he said, "that's difficult."

While tobacco use among youths has been on the decline in recent years, the exception is hookah, according to the longtime Monitoring the Future study, a national

survey — based at the University of Michigan — on tobacco use among youths.

Since 2010 — when study authors at U-M began tracking hookah use — the number of 12th graders across the U.S. reporting smoking it in the previous year has increased from 17.1% to 22.9% in 2014.

During the same period, daily use of cigarettes in the previous month among 12th graders fell from 11% to 7%.

Moreover, investigators found that 6% of all 12th graders this year reported using a hookah in the 12 months prior to the survey but had never smoked a cigarette.

## HOOKAH: Warning of health dangers is a tough sell to teens

FROM PAGE 4A

heavy metals, that are as high or higher than those in cigarette smoke, according to the American Cancer Society.

Richard Miech, one of the study authors, said future survey questions may drill deeper into youths' perception of hookah.

But his guess? "They see hookah as fundamentally different from cigarette use. Most likely they see it as safer," he said.

Plus, in the Arab-American communities of Dearborn, the youths "know more about hookah than they do cigarettes," said Ahlam Bokari, another ACCESS health educator.

Health educators with ACCESS hope that their campaign carries more weight because it comes from their own organization — a well-established human services organization that began serving a primarily Arab community in 1971.

In addition to the school program, ACCESS staff pass out literature that details the state's Smoke-Free Air law, which bans serving hookah to minors.

Approaching local business owners can be touchy. ACCESS must continue to be viewed as a service to its community, not as a threat, said Madiha Tariq, ACCESS public health manager.

Still, said Pakistan-born Tariq: Changing culture takes someone within that culture.

"We approach it as a way that the businessman knows the complexity of the laws," she said.

In the Woodworth classroom, Beckwith, who is Detroit-born, partners with Bokari, who is Yemeni-American and at times addresses the students in Arabic.

"It's more of a communication issue" rather than a credibility issue with youths, said Bokari, who added that some of the students will write out answers in Arabic.

"It helps them get more comfortable with what we're doing and will keep them engaged, and they don't feel left out or ostracized," she said.

rette in their life.

More than a personal habit, hookah is a social connector forged by the centuries of tradition in the Middle East and reinforced today by hookah bars in the Arab-American communities around Dearborn and on college campuses.

The water pipes used to smoke flavored tobacco are often passed from one person to the next.

But hookah can be deadly, according to a growing body of research. Hookah smoke can contain concentrations of toxins, such as carbon monoxide, nicotine, tar and

See HOOKAH, Page 6A

## HEALTH RISKS OF HOOKAH SMOKING

Although the hookah is seen as a safer tobacco use, smoking the Middle Eastern water pipe exposes users to high levels of toxins.

■ An hour with the hookah involves 200 puffs, compared with 20 puffs on a typical cigarette.

■ The amount of smoke inhaled in a typical hookah session is about 100 times that inhaled with a single cigarette.

■ The charcoal used to heat hookah tobacco produces carbon monoxide, metals and other toxins.

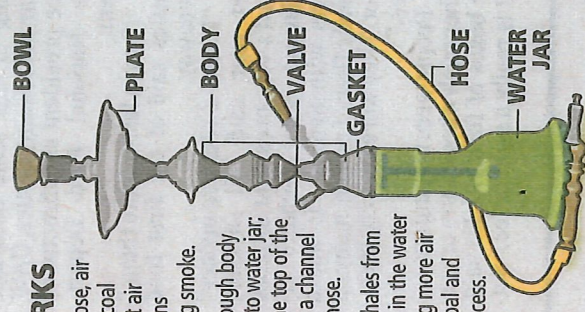
■ These toxins remain in the smoke even after it has passed through water.

■ Toxic agents in hookah are known to cause lung, bladder and oral cancers.

■ Tobacco juices from hookahs irritate the mouth and boost the odds of oral cancers.

■ Water pipe smoking delivers nicotine — the highly addictive drug found in other tobacco products.

SOURCES: Encyclopaedia Britannica, India Heritage, Fumari, WHO



### HOW IT WORKS

**1** Inhaling via the hose, air is pulled through coal and into bowl; hot air from charcoal burns tobacco, producing smoke.

**2** Smoke passes through body tube, extending into water jar; it bubbles up to the top of the water jar and into a channel connected to the hose.

**3** When a smoker inhales from the hose, pressure in the water jar changes, pulling more air through the charcoal and continuing the process.

DETROIT FREE PRESS, TRIBUNE NEWS SERVICE



ROMAIN BLANQUART/DETROIT FREE PRESS  
Naji Alsanea, 14, right, asks a question during a talk to his eighth-grade class at Woodworth Middle School in Dearborn earlier this month about the health dangers associated with smoking hookah.

That kind of dialogue isn't unusual, Beckwith said later.

Teens aren't going to sort out the dangers of drugs in conversations with their friends.

And especially in deeply de-

vout Muslim families, they're hesitant to ask parents or elders because alcohol and drug use is taboo.

"Here, this is an open forum to talk about what they want,

and they tend to take the opportunity," Beckwith said.

Contact Robin Erb: 313-222-2708 or [rerb@freepress.com](mailto:rerb@freepress.com). Follow her on Twitter @Freehealth.

12-20-14  
Detroit Free Press

**Michigan Smoke Free Law**  
**Frequently Asked Questions**  
**General Information**

Beginning May 1, 2010, smoking is prohibited in most public places in Michigan. The law will cover any workplace and any food service establishment. This law covers public places, including, but not limited to, restaurants, bars, shopping malls, bowling alleys, concert halls, arenas, museums, mechanic shops, health facilities, nursing homes, education facilities, and child care centers.

**Why was the law passed?**

The Michigan legislature passed the Dr. Ron Davis Smoke-Free Air Law on December 10, 2009 to preserve and improve the health, comfort, and environment of the people of the state by limiting exposure to secondhand smoke. Governor Granholm signed the bill into law on December 18, 2009.

**When does the law go into effect?**

May 1, 2010

**Will the local regulation/ordinance in my county/city/township still apply?**

The Dr. Ron Davis Smoke Free Air Act will not serve as the only smoke free law in the state, but it does set forth the minimum requirements for indoor workplaces and public places where smoking is regulated and these minimum standards apply state-wide. The statewide law does the following: (1) establishes where people can smoke and where they can't if your local community is not currently covered by any city or county local law; and (2) ensures that any provisions that are weaker in your local law (compared to the state law) are now made AT LEAST AS STRONG as the statewide law.

**Where are people not allowed to smoke?**

Under the new law, smoking is prohibited in public places and food service establishments. A public place means an (i) enclosed indoor area owned or operated by a state or local governmental agency and used by the general public; (ii) an enclosed indoor area used by the general public and is an educational facility, a home for the aged, nursing home, hospice, or hospital long-term care unit, auditorium, arena, theater, museum, concert hall, or any other facility during the period of its use for a performance or exhibit of the arts; (iii) unless otherwise exempted, a place of employment. Place of employment means an enclosed indoor area that contains one or more work area for one or more persons employed by a public or private employer.

**How are multi-unit apartment buildings and condominium buildings affected by the smoke-free law?**

All indoor common areas of apartment and condominium buildings must be smoke-free as of May 1, 2010. Living units of apartment and condominium buildings are not covered by the law. However, owners of apartment and condominium buildings are free to adopt smoke-free policies for their buildings which make the entire building smoke-free, including all living units.



## **Workplaces**

### **How is a place of employment defined?**

A place of employment means an enclosed indoor area that contains one or more work areas for one or more persons employed by a public or private employer. Work area means a site within a place of employment at which one or more employees perform services for an employer.

### **Is my home office exempt from the ban?**

Yes. You may smoke in a structure used primarily as the residence of the owner or lessee that is also used as an office for the owner/lessee and for no other employees is exempt from the ban.

### **Can I smoke in my private office in a commercial work establishment?**

No.

### **What do business operators need to do to comply with this law?**

Business operators shall prohibit smoking in areas where it is not permitted. Compliance is determined by the following:

- Clearly and conspicuously post “no smoking” signs or the international “no smoking” symbol at each entrance and in other areas where smoking is prohibited under this act. These other areas may include outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.
- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited. “Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking.
- Informing individuals smoking in violation of this act that they are in violation of state law and are subject to penalties.
- Refusing service to an individual smoking in violation of this act.
- Asking an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave.

### **Where are employees or patrons permitted to smoke?**

Smoking may be allowed in outdoor areas.

**How should I respond if someone is smoking in my establishment?**

You should politely ask the individual to stop smoking and inform them that they are in violation of the Smoke Free Law and they are subject to penalties. If the individual continues to smoke, you should refuse service to that individual and ask him or her to leave. It is recommended that you communicate this incident with your staff and log it into any tracking mechanism your establishment may have to document your actions.

**How far do people have to be from a building or entrance to smoke?**

The law is silent on distance requirements. However, please be advised there may be local regulations or ordinances that dictate distance requirements.

**Where does signage need to be placed?**

“No Smoking” signs or the international “no smoking” symbol must be clearly and conspicuously posted at all entrances to public places, food service establishments, and casinos subject to the smoke free law.

**Am I required to provide my employees with a smoking break?**

No. State law is silent on the issue of mandatory smoking breaks for employees.

**Are hotel/motel guest rooms included in the smoke free law?**

Yes. Guest rooms must be smoke free as of May 1, 2010.

## **Bars, Restaurants, and Other Food Service Establishments**

### **What is a food service establishment?**

A food service establishment is defined in section 1107(n) of the food law of 2000, 200 PA 92, MCL 289.1107 as: a fixed or mobile restaurant, a coffee shop, a cafeteria, short order café, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public.

### **Where is smoking prohibited in a restaurant?**

Smoking is not allowed in any indoor area as well as outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.

### **Where are restaurant guests or employees permitted to smoke?**

Smoking may be allowed in outdoor areas where food, beverages, or both are not intended to be served or consumed.

### **My establishment only has a liquor license, does the smoke free law still apply to me?**

Yes, your establishment is still considered a food service establishment under the Food Law Act No. 92 of 2000 as amended.

### **What do food service establishment operators need to do to comply with this law?**

Food service establishment operators shall prohibit smoking in areas where it is not permitted. Compliance is determined by the following:

- Clearly and conspicuously post “no smoking” signs or the international “no smoking” symbol at each entrance and in other areas where smoking is prohibited under this act. These other areas may include outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.
- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited. “Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking.

- Informing individuals smoking in violation of this act that they are in violation of state law and are subject to penalties.
- Refusing service to an individual smoking in violation of this act.
- Asking an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave.

### **How should I respond if someone is smoking in my establishment?**

You should politely ask the individual to stop smoking and inform them that they are in violation of the Smoke Free Law and they are subject to penalties. If the individual continues to smoke, you should refuse service to that individual and ask him or her to leave. It is recommended that you communicate this incident with your staff and log it into any tracking mechanism your establishment may have to document your actions.

### **How does the local regulation/ordinance affect smoking in my establishment?**

Currently, local smoking ordinances and regulations do not apply to food service establishments.

### **How far do people have to be from my bar/restaurant to smoke?**

There is no specific distance requirement that people are required to be from a food service establishment to be able to smoke. However it is recommended that smoking not be allowed at entrances or other areas that may allow smoke to infiltrate the establishment. There may be local regulations that require a particular distance smokers can be from businesses that are not licensed as food service establishments.

### **Where does signage need to be placed?**

“No Smoking” signs or the international “no smoking” symbol must be clearly and conspicuously posted at all entrances (front, side and/or rear). Additionally, signs must be posted at other areas where smoking is prohibited which may include patios, rooftops, outdoor tables and other areas where foods and/or beverages are intended to be served and/or consumed. For mobile food units and special transitory food units, this is typically at the entrance and/or food preparation areas of the unit. Due to the varied nature of temporary food establishments, the local health departments will work with the individual vendors and festival coordinators to determine non smoking areas.

### **Who will provide the signage?**

It is the responsibility of the food establishment to comply with the provisions of this law.

## Exemptions

### **Are there any places that are not required to comply with the smoke free law?**

Yes. Cigar bars, tobacco specialty retail stores, and the gaming floors of casinos may be granted exemptions from the smoke free law.

### **How can my bar become a cigar bar?**

Cigar bars must file an affidavit for an exemption with the Michigan Department of Community Health on or before June 1, 2010 and must renew that exemption by January 31 of each subsequent year. The cigar bar must also meet the following requirements:

- **Gross Revenue:** The cigar bar must demonstrate that it generated 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.
- **Physically Separated:** The cigar bar must be located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Physically separated means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from floor to ceiling. Smoke may not infiltrate into those nonsmoking areas.
- **Humidor:** The cigar bar must have an installed, on-site humidor. A humidor means an enclosure or fixture that is stationary and used for the humidification of cigars that is on the premises of the establishment.
- **No Minors:** The establishment must not allow individuals under the age of eighteen to enter during the time the cigar bar is open for business.
- **Retail:** The cigar bar must allow only the smoking of cigars on the premises that retail for over \$1.00 per cigar.
- **Cigars Only:** The cigar bar must prohibit the smoking of all other tobacco products.

### **How can I become a Tobacco Specialty Retail Store?**

Tobacco specialty retail stores must file an affidavit for an exemption with the Michigan Department of Community Health on or before June 1, 2010 and must renew that exemption by January 31 of each subsequent year. The tobacco specialty retail store must also meet the following requirements:

- **Gross Revenue:** The tobacco specialty retail store must generate 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.
- **Physically Separated:** The tobacco specialty retail store must be located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Physically separated means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from floor to ceiling. Smoke may not infiltrate into those nonsmoking areas.
- **No Minors:** The establishment must not allow individuals under the age of eighteen to enter during the time the tobacco specialty retail store is open for business.

### **What happens if I sell my cigar bar or tobacco specialty retail store?**

Both you and the purchaser of the establishment must notify the Department of Community Health of the sale in order to update the exemption information on file. The establishment will retain its exemption for the remainder of the calendar year, but the new owner/operator must file an affidavit with the Department after January 1 but before January 31 of each subsequent year.

### **What happens if I relocate my cigar bar or tobacco specialty retail store?**

You must notify the Department of Community Health of the relocation in order to update the exemption information on file.

### **What are the requirements for casinos?**

The gaming areas of Detroit's three casinos are exempted from the smoke free law. Every bar, restaurant, conference room, and lobby space outside of the gaming floor will be required to be smoke free. However, state law does not govern Native American land, so smoking may be allowed at tribal casinos.

### **How does the smoke free law apply to bingo halls and private clubs?**

Bingo halls are not exempt from the smoke free law. Any establishment that serves food or beverages – which requires a license from the state – cannot allow smoking, even if it only serves once a week or once a year. If clubs don't serve food or beverages, but employ at least one person, they must be smoke free.

### **Is my hookah bar exempt?**

A hookah bar may qualify as a tobacco specialty retail store. A hookah bar may not have a food service license, a liquor license, or both.

**Can I serve food in a tobacco specialty retail store?**

A tobacco specialty retail store may sell packaged, non-potentially hazardous foods, bottled beverages, or both, in incidental amounts, such as less than five percent of gross sales. If the facility has more than 5% of their sales from packaged foods and beverages, then the facility might require a food establishment license from the Michigan Department of Agriculture and may no longer be eligible to allow smoking. Additionally, if food preparation, food service, or other related activities that would require a food service license are found at the establishment, then the facility would lose its exemption and would no longer be eligible to allow smoking.

**Can customers bring food into a tobacco specialty retail store?**

The owner of a tobacco specialty retail store may allow customers to bring in food for his or her personal consumption. A customer may also have food delivered to the tobacco specialty retail store for his or her personal consumption.

**Can foods be catered to a tobacco specialty retail store?**

No. Catering operations are an extension of a food service license and there is no smoking allowed at a food service establishment.

**Where can I find the affidavits to apply for an exemption from the smoke free law?**

The affidavits can be found at [www.michigan.gov/smokefreelaw](http://www.michigan.gov/smokefreelaw)

**What if I don't have a Tobacco Tax License, can my tobacco specialty retail store or cigar bar apply for an exemption?**

Yes. You must provide the Michigan Department of Community Health with valid proof that demonstrates you have paid all of the necessary state excise taxes on tobacco products.

## **Enforcement**

### **How will the law be enforced?**

If you observe or note a possible violation, please notify the owner or manager of the establishment. They are responsible for compliance and are required to direct a person who is smoking to extinguish the lighted tobacco product.

### **How can I file a complaint if someone is smoking in a restaurant or bar?**

Information on how to file complaints will be available prior to the implementation date of May 1, 2010.

### **How can I file a complaint if someone is smoking in a workplace?**

Information on how to file complaints will be available prior to the implementation date of May 1, 2010.

### **What are the specific penalties for violating the smoke free law?**

Information regarding the specific penalties for violations of the law will be posted at a later date.



City of Ypsilanti  
**NOTICE OF ADOPTED ORDINANCE**  
Ordinance No. 1137

An ordinance to amend the text to the Articles I, VII, XI, XII, and XIII of the Zoning Ordinance to define medical marijuana uses and determine appropriate locations and conditions for said uses.

THE CITY OF YPSILANTI ORDAINS THAT SECTIONS OF ARTICLES I, VII, XI, XII, AND XIII OF THE ZONING ORDINANCE BE AMENDED AS FOLLOWS:

**Sec. 122-2. Definitions**

Add:

*Medical Marijuana Dispensary* means a facility, including a membership club where primary caregivers who are legally registered by the Michigan Department of Community Health (MDCH) may lawfully assist qualifying patients to whom the primary caregiver is connected through the state registration process and who are also legally registered by the MDCH with the medical use of marijuana in accordance with the Michigan Medical Marijuana Act, as amended. A use which purports to have engaged in the medical use of marijuana either prior to enactment of said Act, or after enactment of said Act but without being legally registered by the MDCH, shall be deemed to not be a legally established use, and therefore not entitled to legal nonconforming status under the provisions of this Ordinance and/or State Law.

**Sec. 122-2. Definitions**

Add:

*Medical Marijuana Growing/Manufacturing Facility.* A facility for the cultivation and processing of medical marijuana into a usable form by primary caregivers who are legally registered by the Michigan Department of Community Health (MDCH) in accordance with the Michigan Medical Marijuana Act, as amended. A use which purports to have engaged in the cultivation and processing of medical marijuana into a usable form either prior to enactment of said Act, or after enactment of said Act but without being legally registered by the MDCH, shall be deemed to not be a legally established use, and therefore not entitled to legal nonconforming status under the provisions of this Ordinance and/or State Law. A maximum of five (5) primary caregivers may operate at a medical marijuana growing/manufacturing facility, provided all applicable zoning ordinance standards can be met.

## Sec. 122-2. Definitions

Add:

*Medical Marijuana Home Occupation.* Means the cultivation of medical marijuana by a registered primary caregiver as defined in Sec. 3 of the Act, MCL §333.26423(g), in compliance with the General Rules of the Michigan Department of Community Health, the Michigan Medical Marijuana Act, Initiated Law 1 of 2008, MCL §333.26423(e), within a single family dwelling that is the registered primary caregiver's primary residence and which cultivation is in conformity with the restrictions and regulations contained in the Act and in the State Regulations developed by the Michigan Department of Community Health (MDCH). Medical Marijuana Home Use does not include any multi-family dwelling.

## Sec. 122-669. Home Occupations.

Modified to read as follows:

Sec. 122-669. Home occupations.

- (a) *Prohibited home occupations.* The following shall not be permitted as home occupations: animal grooming establishments, barber shops or beauty parlors with more than one stylist, clinics or hospitals, commercial stables, kennels, real estate offices, restaurants, vehicle repair or painting, retail or wholesale sales of any items stocked on the premises, landscape installation and maintenance businesses, construction contractors, snow removal, funeral homes, nursing homes, antique shops, bed and breakfast establishments, private clubs, or trailer rentals, adult regulated uses. However, this section is not intended to prohibit offices related to the administration of construction contracting, landscaping, maintenance, or snow removal businesses.
- (b) *Permitted home occupations.* Any home occupation that is not specifically prohibited by subsection (a) of this section shall be permitted if it meets the following standards:
- (1) All home occupations shall obtain a business license from the City Assessor; if the occupant is not the owner of the premises then consent must be obtained from the property owner to ensure the owner's knowledge of the use.
  - (2) The home occupation shall not change the outside appearance of the dwelling nor alter the residential character of the structure.
  - (3) The home occupation shall not be visible from the street.
  - (4) The home occupation shall be owned and operated only by a member or members of the immediate family residing on the premises.

- (5) No more than one other person shall be employed or involved with such activity on premises other than a member of the immediate family residing in the dwelling unit.
  - (7) All wholesale, jobbing or retail business shall be conducted entirely by mail, telephone, electronically or by delivery.
  - (8) Services and transactions shall be conducted by appointment only, walk-in trade shall be prohibited.
  - (9) The maximum area for home occupations shall be calculated as 25 percent of the usable residential floor area of a dwelling unit or 300 feet whichever is less. Areas designated for home occupations may be located in any useable area of the home, the basement, or any accessory building.
  - (10) No motor power other than electrically operated motors shall be utilized. No single electrical motor used in the home occupation shall exceed one horsepower. All electrical motors and equipment used in the conduct of the home occupation shall be shielded so as not to cause radio or television interference for adjoining properties.
  - (11) A home occupation shall not create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazards, or any other hazard or nuisance to any greater or more frequent extent than would normally be generated in the zoning district in which it is located.
  - (12) Signage shall be limited to a nameplate which shall not exceed one square foot in area.
  - (13) In no case shall a home occupation be open to the public earlier than 7:00 a.m. nor later than 9:00 p.m.
  - (14) There shall be no deliveries to or from the home occupation with a vehicle having more than two axles.
  - (15) No merchandise or articles for sale shall be displayed on the lot used for the home occupation.
  - (16) The home occupation may increase vehicular traffic flow and parking by no more than two additional vehicles at a time.
- (c) Medical Marijuana Home Occupation. In addition to the requirements in Section 122-669 (b), Medical marijuana home occupations shall be subject to the following requirements:
- (1) The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act and the General

Rules of the Michigan Department of Community Health, as they may be amended from time to time.

- (2) A registered primary caregiver operating a medical marijuana home occupation shall not be located within 1,000 feet of a school, as measured from the outermost boundaries of the lot or parcel on which the home occupation and school is located.
- (3) Not more than one (1) primary caregiver per parcel shall be permitted to grow or cultivate medical marijuana.
- (4) Not more than five (5) qualifying patients shall be assisted with the medical use of marijuana within any given calendar week.
- (5) All medical marijuana shall be contained within an enclosed, locked facility inside a primary or accessory building.
- (6) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marijuana are located.
- (7) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential periods between the hours of 11pm and 7am shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties.
- (8) That portion of the building where energy usage and heat exceeds typical residential use, such as grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Ypsilanti Fire Department to insure compliance with the Michigan Fire Protection Code.
- (9) The premises shall be open for inspection upon request by the Building Official the Fire Department and law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises.

Add:

### **Sec. 122-813. Medical Marijuana Dispensaries**

The intent of the Zoning Ordinance is to regulate medical marijuana dispensaries and growing/manufacturing facilities by providing for regulations and fees in a manner that promotes and protects the public health, safety and welfare, mitigates potential impacts on surrounding properties and persons, and that conforms with the policies and requirements of the

Michigan Medical Marijuana Act, MCL 333.26421, et seq (hereinafter "Act"). Nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with the Act or the General Rules,. Also, since Federal law is not affected by the Act or the General Rules, nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Act does not protect users, caregivers or the owners of properties on which the medical use of marijuana is occurring from Federal Prosecution, or from having their property seized by Federal authorities under the Federal Control Substances Act.

The following Standards for Medical Marijuana Dispensaries

- (1) The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marijuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time;
- (2) The dispensary shall not be located within one thousand (1,000) feet of a school, as measured from the outermost boundaries of the lot or parcel on which the dispensary and school are located;
- (3) The dispensary shall not be located within a five hundred (500) feet of a lawfully existing medical marijuana dispensary or growing/manufacturing facility as measured from the outermost boundaries of the lot or parcel on which the proposed dispensary and lawfully existing dispensary or growing/manufacturing facility is located;
- (4) Smoking and/or use of medical marijuana shall be prohibited at the dispensary;
- (5) All activity related to the dispensary shall be done indoors;
- (6) The premises shall be open for inspection upon request by the Building Official the Fire Department and law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises.
- (7) Quarterly inspections may be made by the City Official's designee to confirm the dispensary or growing/manufacturing facility is operating in accordance with applicable laws including, but not limited to, State Law and City Ordinances;

- (8) Any medical marijuana dispensary shall maintain a log book and/or database identifying by date the amount of medical marijuana on the premises for each qualifying patient/caregiver, keeping the qualifying patient and caregiver information confidential. This log shall be available to law enforcement personnel to confirm that the medical marijuana dispensary does not have more medical marijuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of medical marijuana at the facility. The facility shall maintain the confidentiality of qualifying patients in compliance with the Michigan Medical Marijuana Act, as amended.
- (9) If the dispensary ceases operation for a length of time of sixty (60) days or greater, the permit shall expire;
- (10) Dispensary drive-through facilities shall be prohibited;
- (11) All medical marijuana shall be contained within the main building in an enclosed, locked facility in accordance with the Michigan Medical Marijuana Act, as amended;
- (12) Application for a Medical Marijuana Dispensary License shall be made to the City Clerk upon application forms provided by the Clerk for Medical Marijuana Dispensary and signed by the applicant verifying the truth and accuracy of all information and representations in the application. Applications including information and documentation provided pursuant to an application shall be subject to the confidentiality rules under the Act. In addition to information and submittals, the application shall include payment of application fee in an amount set by the City Council;
- (13) The police department shall review the proposed application to operate a dispensary regarding public health, safety, and welfare concerns of the proposal;
- (14) Growing or cultivation of medical marijuana in a dispensary is prohibited;

#### **Sec. 122-814. Medical Marijuana Growing/Manufacturing Facility**

The intent of the Zoning Ordinance is to regulate medical marijuana dispensaries and growing/manufacturing facilities by providing for regulations and fees in a manner that promotes and protects the public health, safety and welfare, mitigates potential impacts on surrounding properties and

persons, and that conforms with the policies and requirements of the Michigan Medical Marijuana Act, MCL 333.26421, et seq (hereinafter "Act"). Nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with the Act or the General Rules,. Also, since Federal law is not affected by the Act or the General Rules, nothing in this Chapter, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Act does not protect users, caregivers or the owners of properties on which the medical use of marijuana is occurring from Federal Prosecution, or from having their property seized by Federal authorities under the Federal Control Substances Act.

A. The following Standards for Medical Marijuana Growing/Manufacturing Facilities Shall Apply:

- (1) The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marijuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time;
- (2) The growing/manufacturing facility site shall not be located within one thousand (1,000) feet of a school, as measured from the outermost boundaries of the lot or parcel on which the growing/manufacturing facility and school are located;
- (3) The growing/manufacturing facility site shall not be located within a five hundred (500) feet of a lawfully existing medical marijuana dispensary and/or lawfully existing growing/manufacturing facility as measured from the outermost boundaries of the lot or parcel on which the proposed growing/manufacturing facility and lawfully existing dispensary or growing/manufacturing facility is located;
- (4) Smoking and/or use of medical marijuana shall be prohibited at the growing/manufacturing facility;
- (5) All activity related to the growing/manufacturing facility shall be done indoors;
- (6) The premises shall be open for inspection upon request by the Building Official the Fire Department and law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises.

- (7) Quarterly inspections may be made by the City Official's designee to confirm the growing/manufacturing facility is operating in accordance with applicable laws including, but not limited to, State Law and City Ordinances;
- (8) Any medical marijuana growing/manufacturing facility shall maintain a log book and/or database identifying by date the amount of medical marijuana on the premises for each qualifying patient/caregiver, keeping the qualifying patient and caregiver information confidential. This log shall be available to law enforcement personnel to confirm that the medical marijuana dispensary or growing/manufacturing facility does not have more medical marijuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of medical marijuana at the facility. The facility shall maintain the confidentiality of qualifying patients in compliance with the Michigan Medical Marijuana Act, as amended.
- (9) If the growing/manufacturing facility ceases operation for a length of time of sixty (60) days or greater, the permit shall expire;
- (10) Growing/manufacturing facility drive-through facilities shall be prohibited;
- (11) All medical marijuana shall be contained within the main building in an enclosed, locked facility in accordance with the Michigan Medical Marijuana Act, as amended;
- (12) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marijuana are located;
- (13) That portion of the structure where the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Ypsilanti Fire Department to insure compliance with the Michigan Fire Protection Code;
- (14) Application for a Medical Marijuana Growing/Manufacturing Facility License shall be made to the City Clerk upon application forms provided by the Clerk for Medical Marijuana Growing/Manufacturing Facility License and signed by the applicant verifying the truth and accuracy of all information and representations in the application. Applications including



information and documentation provided pursuant to an application shall be subject to the confidentiality rules under the Act. In addition to information and submittals, the application shall include payment of application fee in an amount set by the City Council;

- (15) The police department shall review the proposed application to operate a dispensary or growing/manufacturing facility regarding public health, safety, and welfare concerns of the proposal;
- (16) The dispensing of medical marijuana at the medical marijuana growing/manufacturing facility shall be prohibited.
- (17) There shall be no other accessory uses permitted within the same building.

**Sec. 122-453. Special Uses (in the M1 Light Manufacturing District).**

Add:

- (3) Medical Marijuana Growing/Manufacturing Facility, subject to the specific provisions in section 122-814.

**Sec. 122-473. Special Uses (in the M2 General Manufacturing District).**

Add:

- (7) Medical Marijuana Growing/Manufacturing Facility, subject to the specific provisions in section 122-814.

**Sec. 122-518. Special Uses (in the CI Commercial-Industrial District).**

Add:

- (15) Medical Marijuana Growing/Manufacturing Facility, subject to the specific provisions in section 122-814.

**Sec. 122-372. Permitted Uses (in the B2 Community Business District).**

Add:

- (15) Medical Marijuana Dispensary, subject to the specific provisions in section 122-813.

**Sec. 122-392. Permitted Uses (in the B3 Central Business District).**

Add:

- (13) Medical Marijuana Dispensary, subject to the specific provisions in section 122-813.

**Sec. 122-412. Permitted Uses (in the B4 General Business District).**

Add:

- (20) Medical Marijuana Dispensary, subject to the specific provisions in section 122-813.

**2. Severability.** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

**3. Repeal.** All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

**4. Savings Clause.** The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

**4. Copies to be available.** Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours.

**5. Publication and Effective Date.** The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published by printing the same in the newspaper of record. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS 7th DAY OF December, 2010.

\_\_\_\_\_  
Frances McMullan, City Clerk

Attest

I do hereby confirm that the above Ordinance No. 1137 was published in the Ypsilanti Courier on the 16th day of December, 2010.

\_\_\_\_\_  
Frances McMullan, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the 7th day of December, 2010.

\_\_\_\_\_  
Frances McMullan, City Clerk

Notice Published: October 28, 2010  
First Reading: November 16, 2010  
Second Reading: December 7, 2010  
Published: December 16, 2010  
Effective Date: January 16, 2010

**SUBSTITUTE FOR  
HOUSE BILL NO. 4271**

A bill to regulate medical marihuana provisioning centers and other related entities; to provide for the powers and duties of certain state and local governmental officers and entities; to provide immunity for persons engaging in medical marihuana-related activities in compliance with this act; to prescribe penalties and sanctions and provide remedies; and to allow the promulgation of rules.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "medical marihuana provisioning center regulation act".

3           Sec. 2. As used in this act:

4           (a) "Debilitating medical condition" means that term as  
5 defined in section 3 of the Michigan medical marihuana act, MCL  
6 333.26423.

1 (b) "Excluded felony offense" means a felony involving illegal  
2 drugs. Excluded felony offense does not include a conviction for  
3 activity allowed under the Michigan medical marihuana act or this  
4 act, even if the activity occurred before the enactment of this act  
5 or the Michigan medical marihuana act.

6 (c) "Marihuana" means that term as defined in section 3 of the  
7 Michigan medical marihuana act, MCL 333.26423.

8 (d) "Medical marihuana" means marihuana for medical use as  
9 that term is defined in section 3 of the Michigan medical marihuana  
10 act, MCL 333.26423.

11 (e) "Medical marihuana provisioning center" or "provisioning  
12 center" means a commercial entity located in this state that  
13 acquires, possesses, manufactures, delivers, transfers, or  
14 transports medical marihuana and sells, supplies, or provides  
15 medical marihuana to registered qualifying patients, directly or  
16 through the patients' registered primary caregivers. Provisioning  
17 center includes any commercial property where medical marihuana is  
18 sold to registered qualifying patients and registered primary  
19 caregivers. The location used by a primary caregiver to assist a  
20 qualifying patient connected to the caregiver through the  
21 department's medical marihuana registration process in accordance  
22 with the Michigan medical marihuana act is not a provisioning  
23 center for purposes of this act.

24 (f) "Michigan medical marihuana act" means the Michigan  
25 medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430.

26 (g) "Municipality" means a city, township, or village.

27 (h) "Paraphernalia" means drug paraphernalia as defined in

## House Bill No. 4271 (H-3) as amended December 11, 2013

1 section 7451 of the public health code, 1978 PA 368, MCL 333.7451,  
2 that is or may be used in association with medical marihuana.

3 (i) "Provisioning center agent" means a principal officer,  
4 board member, employee, or operator, or any other individual acting  
5 as an agent of a provisioning center.

6 (j) "Registered primary caregiver" means a person who has a  
7 valid, unexpired registry identification card as a primary  
8 caregiver or who satisfies the criteria listed in section 9(b) or  
9 (c) of the Michigan medical marihuana act, MCL 333.26429, and  
10 possesses the documentation that constitutes a valid registry  
11 identification card under that section.

12 (k) "Registered qualifying patient" means a person who meets  
13 any of the following requirements:

14 (i) Has a valid, unexpired registry identification card as a  
15 qualifying patient.

16 (ii) Satisfies the criteria listed in section 9(b) or (c) of  
17 the Michigan medical marihuana act, MCL 333.26429, and possesses  
18 the documentation that constitutes a valid registry identification  
19 card under that section.

20 (l) "Registry identification card" means that term as defined  
21 in section 3 of the Michigan medical marihuana act, MCL 333.26423.

22 (m) "Safety compliance facility" means an entity that tests  
23 marihuana produced for medical use for contaminants.

24 (n) "Safety compliance facility agent" means a principal  
25 officer, board member, employee, operator, or agent of a safety  
26 compliance facility.

27 [

House Bill No. 4271 (H-3) as amended December 11, 2013

1

2

3       (o) "Usable marihuana" means the dried leaves, flowers, plant  
4 resin, or extract of the marihuana plant and any mixture or  
5 preparation thereof, but does not include the seeds, stalks, or  
6 roots of the plant or any inactive substance used as a delivery  
7 medium for usable marihuana.

8       (p) "Visiting qualifying patient" means a patient who is not a  
9 resident of this state or who has been a resident of this state for  
10 less than 30 days and who possesses a registry identification card,  
11 or its equivalent, that was issued under the laws of another state,  
12 district, territory, commonwealth, or insular possession of the  
13 United States and that allows the use of medical marihuana by the  
14 patient.

15       Sec. 3. (1) Except as otherwise provided in this act, if a  
16 provisioning center has been granted any applicable required  
17 municipal registration or license and is operating in compliance  
18 with this act and any applicable municipal ordinance, the  
19 provisioning center and the provisioning center agents acting on  
20 its behalf are not subject to any of the following for engaging in  
21 activities described in subsection (2):

22       (a) Criminal penalties under state law or local ordinances.

23       (b) State or local civil prosecution.

24       (c) Search or inspection, except for an inspection authorized  
25 by the municipality.

26       (d) Seizure.

27       (e) Any sanction, including disciplinary action or denial of a

1 right or privilege, by a business or occupational or professional  
2 licensing board or bureau.

3 (2) Activities that are exempt from regulation and sanctions  
4 under subsection (1) include all of the following:

5 (a) Purchasing, receiving, selling, or transferring marihuana  
6 from or to visiting qualifying patients, registered qualifying  
7 patients, registered primary caregivers, or provisioning centers.

8 (b) Purchasing or receiving medical marihuana from 1 or more  
9 other provisioning centers if purchasing or receiving medical  
10 marihuana from the provisioning center is not prohibited by the  
11 municipality where the provisioning center is located.

12 (c) Purchasing or receiving medical marihuana from a  
13 registered qualifying patient or a registered primary caregiver if  
14 purchasing or receiving medical marihuana from a registered  
15 qualifying patient or registered primary caregiver is not  
16 prohibited by the municipality where the provisioning center is  
17 located and if the amount purchased does not exceed the registered  
18 qualifying patient's or registered primary caregiver's medical  
19 marihuana possession limits under the Michigan medical marihuana  
20 act.

21 (d) Processing medical marihuana.

22 (e) Possessing or manufacturing paraphernalia.

23 (f) Possessing medical marihuana processed by the provisioning  
24 center or obtained pursuant to subdivision (a) or (b) on the  
25 provisioning center premises or while the medical marihuana is  
26 being transported pursuant to this section.

27 (g) Processing or manufacturing nonsmokable forms of medical



1 marihuana.

2 (h) If not prohibited by municipal law, transporting medical  
3 marihuana between the provisioning center and another provisioning  
4 center or a safety compliance facility.

5 (i) Transporting or delivering medical marihuana or  
6 paraphernalia to the residence of a registered qualifying patient  
7 or a registered primary caregiver if transportation and delivery  
8 are not prohibited by the municipality in which the transportation  
9 and delivery occur.

10 (j) Supplying, selling, providing, transferring, or delivering  
11 medical marihuana, paraphernalia, or related supplies and  
12 educational materials in compliance with the procedures and  
13 limitations detailed in section 7(11) to (13) and the testing and  
14 labeling requirements in section 7(4).

15 Sec. 3a. An entity that, on the effective date of this act, is  
16 operating in this state as a provisioning center, is operating and  
17 continues to otherwise operate in compliance with this act, and is  
18 not prohibited by any applicable municipal ordinance may continue  
19 to operate as a provisioning center under this act. An entity  
20 described in this section is considered a provisioning center under  
21 this act, and the entity and the agents acting on its behalf are  
22 eligible for the immunity provided in this act and are subject to  
23 the penalties, sanctions, and remedies prescribed or provided in  
24 this act.

25 Sec. 4. (1) Except as otherwise provided in this act, a safety  
26 compliance facility that has been granted any applicable required  
27 municipal registration or license and is operating in compliance

1 with any applicable municipal ordinance and this act is not subject  
2 to any of the following for engaging in activities described in  
3 subsection (2):

4 (a) Criminal penalties under state law or local ordinances.

5 (b) State or local civil prosecution.

6 (c) Search or inspection, except for an inspection authorized  
7 by the municipality.

8 (d) Seizure.

9 (e) Any sanction, including disciplinary action or denial of a  
10 right or privilege, by a business or occupational or professional  
11 licensing board or bureau.

12 (2) Activities that are exempt from regulation and sanction  
13 under subsection (1) include all of the following:

14 (a) Acquiring or possessing medical marihuana obtained from  
15 registered qualifying patients, registered primary caregivers, or  
16 provisioning centers.

17 (b) Returning the medical marihuana to the registered  
18 qualifying patient, registered primary caregiver, or provisioning  
19 center that delivered the medical marihuana to the safety  
20 compliance facility.

21 (c) Transporting medical marihuana to or from a registered  
22 qualifying patient, registered primary caregiver, or provisioning  
23 center.

24 (d) Possessing medical marihuana on the safety compliance  
25 facility's premises for testing, if the medical marihuana was  
26 obtained pursuant to subdivision (a) or (b).

27 (e) Receiving compensation for actions permitted pursuant to

1 this section and municipal law.

2       Sec. 5. (1) A municipality may prohibit the operation of  
3 provisioning centers or safety compliance facilities within the  
4 municipality. A provisioning center is not exempt under section 3  
5 from state criminal and civil penalties if it operates in a  
6 municipality that prohibits provisioning centers. A safety  
7 compliance facility is not exempt under section 4 from state  
8 criminal and civil penalties if it operates in a municipality that  
9 prohibits safety compliance facilities.

10       (2) A municipality may enact an ordinance to impose and  
11 enforce additional local requirements on provisioning centers or  
12 safety compliance facilities. A municipality may require and issue  
13 a registration or license to a provisioning center or safety  
14 compliance facility and may regulate operations and impose civil or  
15 criminal penalties for the violations of the local ordinance. A  
16 municipality may charge a registration or licensing fee for a  
17 provisioning center or safety compliance facility that does not  
18 exceed the costs to the municipality of regulation, licensing,  
19 testing, and inspection.

20       (3) A provisioning center or safety compliance facility  
21 located in a municipality that requires a registration or license  
22 is exempt under section 3 or 4 from criminal penalties only if the  
23 provisioning center or safety compliance facility holds that  
24 license or registration.

25       (4) A municipality shall require, as a condition of  
26 registration or licensure, that a provisioning center or a safety  
27 compliance facility provide results of testing of its medical

1 marihuana and medical marihuana products for quality control,  
2 purity, contaminants, or any other analysis to protect the health  
3 and safety of registered qualifying patients and to assure  
4 compliance with this act and an ordinance adopted by the  
5 municipality as described in this section.

6       Sec. 6. (1) The exemptions for a provisioning center or safety  
7 compliance facility under section 3 or 4 apply only if the  
8 indicated activities are carried out in compliance with this act.

9       (2) Except for the Michigan medical marihuana act, all other  
10 acts and parts of acts inconsistent with this act do not apply to  
11 the use of medical marihuana as provided for by this act.

12       (3) This act does not limit the ability of a primary caregiver  
13 to assert the medical purpose defense provided in section 8 of the  
14 Michigan medical marihuana act, 2008 IL 1, MCL 333.26428, to any  
15 prosecution involving marihuana.

16       Sec. 7. (1) Unless explicitly allowed by a municipal ordinance  
17 that was in effect before the effective date of this act, a  
18 provisioning center or a safety compliance facility shall not be  
19 located within 1,000 feet of the property line of a preexisting  
20 primary or secondary school.

21       (2) A provisioning center shall not share office space with a  
22 physician.

23       (3) The premises of a provisioning center shall have a  
24 security alarm system that is enabled when a provisioning center  
25 agent is not present.

26       (4) A provisioning center shall not sell, transfer, or  
27 provide a preparation that includes usable marihuana for

1 ingestion or topical application unless the preparation has been  
2 tested by a safety compliance facility and is enclosed in a  
3 container that bears a securely affixed label displaying all of  
4 the following information:

5 (a) The name of the registered qualifying patient or  
6 visiting qualifying patient for whom the preparation is  
7 obtained.

8 (b) Certification that the product has been tested by a  
9 licensed safety compliance facility as required in section 12  
10 and does not contain detectable mold, mildew, fungi, or  
11 pesticides.

12 (c) The total weight of the preparation and the weight of the  
13 usable marihuana in the container. The weight of usable marihuana  
14 in the container shall be calculated as the same fraction of the  
15 total weight of the usable marihuana that was used in preparing the  
16 product as the fraction that the preparation in the container is of  
17 the total amount of product made from that usable marihuana. If the  
18 provisioning center does not prepare the usable marihuana for  
19 ingestion or topical application, it shall obtain documentation  
20 from the preparer with the information necessary to determine the  
21 usable marihuana content.

22 (d) The words "WARNING: This product contains marihuana. For a  
23 registered qualifying patient's medical use only." or substantially  
24 similar text.

25 (5) A provisioning center that advertises medical marihuana  
26 for sale shall not include an image of a marihuana leaf or a  
27 marihuana cigarette and shall not depict favorably or promote

1 nonmedical, social use of marihuana in the advertisement.

2 (6) A provisioning center or safety compliance facility shall  
3 not knowingly employ an individual who has been convicted of an  
4 excluded felony offense during the immediately preceding 10-year  
5 period or who is under 21 years of age. A provisioning center or  
6 safety compliance facility shall perform a background check on an  
7 individual before he or she is offered employment to verify that he  
8 or she has not been convicted of an excluded felony offense during  
9 the immediately preceding 10-year period.

10 (7) A provisioning center shall maintain records listing each  
11 individual employed by the provisioning center, including the  
12 beginning employment date and the date a background check was  
13 performed.

14 (8) A provisioning center shall not allow on-site consumption  
15 of medical marihuana, except that a provisioning center agent or  
16 employee who is a registered qualifying patient may be permitted to  
17 use a medical marihuana-infused topical product.

18 (9) A provisioning center shall not provide more usable  
19 marihuana or marihuana-infused products in solid form, gaseous  
20 form, or liquid form to an individual in any 10-day period than the  
21 amount for which the individual is granted immunity for possession  
22 under the Michigan medical marihuana act.

23 (10) A provisioning center shall ensure compliance with the  
24 limit under subsection (9) by maintaining internal, confidential  
25 records that specify the amount of medical marihuana provided to  
26 each registered qualifying patient and registered primary caregiver  
27 and whether it was provided to the registered primary caregiver or

1 directly to the registered qualifying patient. Each entry shall  
2 include the date and time the medical marihuana was provided.  
3 Entries shall be maintained for at least 90 days. For any  
4 registered qualifying patient or registered qualifying caregiver in  
5 possession of a registry identification card, a record shall be  
6 kept using the patient's or caregiver's registry identification  
7 card number instead of the patient's or caregiver's name.  
8 Confidential records under this act are subject to reasonable  
9 inspection by a municipal employee authorized to inspect  
10 provisioning centers under municipal law to ensure compliance with  
11 this act, but may be stored off-site. Confidential records under  
12 this act are exempt from disclosure under the freedom of  
13 information act, 1976 PA 442, MCL 15.231 to 15.246. Except as  
14 otherwise required by a court order, a provisioning center shall  
15 not disclose confidential records to any person other than a  
16 municipal employee performing an inspection in compliance with this  
17 subsection or to a provisioning center agent.

18 (11) A provisioning center agent shall not provide, transfer,  
19 or sell medical marihuana to an individual knowing that the  
20 individual is not a registered qualifying patient, registered  
21 primary caregiver, or provisioning center agent working on behalf  
22 of a provisioning center that is not prohibited from operating or  
23 obtaining medical marihuana from other provisioning centers under  
24 municipal law.

25 (12) Before medical marihuana is provided or sold from a  
26 provisioning center, in addition to complying with subsection (13),  
27 a provisioning center agent shall do 1 of the following:

1 (a) Verify that the individual requesting medical marihuana  
2 holds what the provisioning center agent reasonably believes to be  
3 a valid, unexpired registry identification card.

4 (b) Require the individual requesting medical marihuana to do  
5 all of the following:

6 (i) Certify that he or she is a qualifying patient who  
7 submitted a valid, complete application for a registry  
8 identification card under the Michigan medical marihuana act at  
9 least 20 days earlier.

10 (ii) Certify that, to the best of his or her knowledge, this  
11 state has not denied the application described in subparagraph (i)  
12 or issued a registry identification card.

13 (iii) Present a copy of the completed registry identification  
14 card application and proof of receipt by the state department that  
15 processes medical marihuana registry identification card  
16 applications at least 20 days before the date of the requested sale  
17 or transaction.

18 (c) If the individual requesting medical marihuana indicates  
19 that he or she is a provisioning center agent, make a diligent,  
20 good-faith effort to verify that the individual is a provisioning  
21 center agent for a provisioning center that is allowed to operate  
22 by a municipality.

23 (13) Before medical marihuana is provided or sold from a  
24 provisioning center, a provisioning center agent shall make a  
25 diligent, good-faith effort to determine that the individual named  
26 in the registry identification card or other documentation  
27 submitted under subsection (12) is the individual seeking to obtain



1 medical marihuana, by examining what the provisioning center agent  
2 reasonably believes to be valid government-issued photo  
3 identification.

4 (14) An individual who is under 21 years of age or who has  
5 been convicted of an excluded felony offense during the immediately  
6 preceding 10-year period shall not serve as a provisioning center  
7 agent or safety compliance facility agent.

8 (15) A provisioning center agent shall not, for monetary  
9 compensation, refer an individual to a physician.

10 (16) A provisioning center or safety compliance facility shall  
11 not permit a physician to advertise in a provisioning center or  
12 safety compliance facility or to hold any financial interest in or  
13 receive any compensation from the provisioning center or safety  
14 compliance facility.

15 (17) A provisioning center agent or safety compliance facility  
16 agent shall not transport or possess medical marihuana on behalf of  
17 the provisioning center or safety compliance facility in or upon a  
18 motor vehicle or any self-propelled vehicle designed for land  
19 travel unless all of the following conditions are met:

20 (a) The agent possesses a document signed and dated by a  
21 manager or operator of the provisioning center or safety compliance  
22 facility that employs the agent, stating the agent's name, the date  
23 the medical marihuana will be transported, the approximate amount  
24 of medical marihuana transported, and the name of the provisioning  
25 center or safety compliance facility from which the medical  
26 marihuana is being transported.

27 (b) The medical marihuana is located in 1 or more of the

1 following:

2 (i) An enclosed locked container, such as a safe, briefcase, or  
3 other case.

4 (ii) The trunk of the vehicle.

5 (iii) A space that is inaccessible from the passenger  
6 compartment of the vehicle.

7 Sec. 8. (1) A provisioning center that violates section 7(1)  
8 or (2) is responsible for a state civil infraction and may be  
9 ordered to pay a civil fine of not more than \$5,000.00. A  
10 municipality in which the provisioning center or safety compliance  
11 facility operates in violation of section 7(1) or (2) may petition  
12 the court for an injunction to close the provisioning center or  
13 safety compliance facility.

14 (2) A person who violates section 7(3) to (10), (15), or (16)  
15 is responsible for a state civil infraction and may be ordered to  
16 pay a civil fine of not more than \$1,000.00.

17 (3) A person who transfers medical marihuana in violation of  
18 section 7(11) to (13) or who works in violation of section 7(14) is  
19 not exempt under section 3 or 4 from arrest, prosecution, or  
20 criminal or other penalties.

21 (4) A person who violates section 7(17) is guilty of a  
22 misdemeanor punishable by imprisonment for not more than 93 days or  
23 a fine of not more than \$500.00, or both.

24 Sec. 9. (1) A municipality may establish procedures to suspend  
25 or revoke a registration, license, or other permission to operate  
26 if a provisioning center knowingly or negligently allows medical  
27 marihuana to be provided to an individual who is not a registered

1 qualifying patient or registered primary caregiver or if a  
2 provisioning center or safety compliance facility commits multiple  
3 or serious violations of this act or 1 or more local ordinances.

4 (2) This act does not require the violation of federal law and  
5 does not give immunity from prosecution under federal law.

6 (3) This act does not prevent federal enforcement of federal  
7 law.

8 (4) Sections 3, 4, and 10 do not exempt a provisioning  
9 center or its agents, safety compliance facility or its agents,  
10 visiting qualifying patient, registered qualifying patient, or  
11 registered primary caregiver from criminal penalties or civil  
12 prosecution under a law of general application that would apply  
13 even if medical marihuana or paraphernalia were not involved.

14 (5) A provisioning center or safety compliance facility is  
15 not exempt from criminal or civil prosecution or sanctions for  
16 cultivating marihuana.

17 Sec. 10. (1) Except as otherwise provided in this act, a  
18 visiting qualifying patient, registered qualifying patient, or  
19 registered primary caregiver who supplies, sells, transfers, or  
20 delivers marihuana to a provisioning center that is registered,  
21 licensed, or otherwise allowed by the municipality in which it  
22 operates in compliance with this act is not subject to any of the  
23 following for engaging in that activity:

24 (a) Criminal penalties under state law or local ordinances.

25 (b) State or local civil prosecution.

26 (c) Search or inspection, except for an inspection authorized  
27 by the municipality.

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1 (d) Seizure.

2 (e) Any sanction, including disciplinary action or denial of a  
3 right or privilege, by a business or occupational or professional  
4 licensing board or bureau.

5 (2) Except as otherwise provided in this act, a registered  
6 qualifying patient is not subject to any of the inspections or  
7 sanctions listed in subsection (1)(a) to (e) for any of the  
8 following:

9 (a) Purchasing or acquiring [usable marihuana or marihuana-infused  
10 products in solid form, gaseous form, or liquid form from 1 or more  
11 provisioning centers if the amount purchased or acquired in any 10-day  
12 period is not more than the amount for which the individual is granted  
immunity for possession under the Michigan medical marihuana act.]

13 (b) Supplying, selling, transferring, or delivering medical  
14 marihuana to a provisioning center that is registered, licensed, or  
15 otherwise allowed by the municipality in which it operates if all  
16 of the following requirements are met:

17 (i) The medical marihuana was produced by the registered  
18 qualifying patient or registered primary caregiver.

19 (ii) The municipality in which the provisioning center operates  
20 allows the transfer of medical marihuana from a registered  
21 qualifying patient to a provisioning center.

22 (iii) The amount of medical marihuana transferred does not  
23 exceed the amount of medical marihuana the registered qualifying  
24 patient is allowed to possess under the Michigan medical marihuana  
25 act.

26 (3) Except as otherwise provided in this act, a registered  
27 primary caregiver is not subject to any of the inspections or  
sanctions listed in subsection (1)(a) to (e) for any of the

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1 following:

2 (a) Purchasing or acquiring [usable marihuana or marihuana-infused  
3 products in solid form, gaseous form, or liquid form from 1 or more  
4 provisioning centers if the amount purchased or acquired in any 10-day  
5 period is not more than the amount for which the individual is granted  
6 immunity for possession under the Michigan medical marihuana act.

7 ]

8 (b) Supplying, selling, transferring, or delivering medical  
9 marihuana to a provisioning center that is registered, licensed, or  
10 otherwise allowed by the municipality in which it operates if all  
11 of the following requirements are met:

12 (i) The medical marihuana was produced by the registered  
13 primary caregiver and is excess medical marihuana above the amount  
14 necessary to satisfy the needs of the registered qualifying  
15 patients the primary caregiver is designated to serve.

16 (ii) The municipality in which the provisioning center operates  
17 allows the transfer of medical marihuana from a registered primary  
18 caregiver to a provisioning center.

19 (iii) The amount of medical marihuana transferred does not  
20 exceed the amount of medical marihuana the registered primary  
21 caregiver is allowed to possess under the Michigan medical  
22 marihuana act.

23 Sec. 11. (1) A municipality shall not issue a license to a  
24 laboratory as a safety compliance facility unless the laboratory is  
25 able to accurately determine whether any of the following are  
26 present in marihuana, edible marihuana products, and marihuana-  
27 infused products that are sold or may be sold at medical marihuana

1 provisioning centers in this state:

2 (a) Mold, mildew, or fungi.

3 (b) Pesticides.

4 (2) A laboratory shall not handle, test, or analyze marihuana  
5 after March 31, 2015 unless the laboratory meets all of the  
6 following conditions:

7 (a) The laboratory is licensed as a safety compliance facility  
8 by a local municipality.

9 (b) A person with a direct or indirect interest in the  
10 laboratory does not have a direct or indirect financial interest in  
11 a provisioning center, marihuana producer, certifying physician, or  
12 any other entity that may financially benefit from the production,  
13 manufacture, dispensing, sale, purchase, or use of marihuana.

14 (c) The laboratory employs at least 1 individual who has  
15 earned a bachelor's degree or higher in the chemical or biological  
16 sciences and has a minimum of 1 year of postgraduate laboratory  
17 experience to oversee and be responsible for laboratory testing.

18 (d) The laboratory is accredited by a private laboratory  
19 accreditation service.

20 Sec. 12. (1) Beginning April 1, 2015, a provisioning center  
21 shall not distribute or sell any product containing marihuana  
22 unless the product has been tested for mold, mildew, fungi, and  
23 pesticides by a licensed safety compliance facility and does not  
24 contain detectable mold, mildew, fungi, or pesticides. A  
25 provisioning center shall make the laboratory test results  
26 available upon request to a qualifying patient, a primary  
27 caregiver, the licensing municipality, or a physician who has

1 certified a qualifying patient.

2 (2) If a medical marihuana provisioning center elects to  
3 manufacture and distribute a marihuana-infused product, as defined  
4 in the Michigan medical marihuana act, the medical marihuana  
5 provisioning center must comply with all of the following:

6 [(a) Keep the grounds of the provisioning center under the control  
7 of the operator free from improperly stored equipment, litter, waste,  
8 refuse, and uncut weeds or grass and assure that floors, walls, ceilings,  
9 and equipment are kept clean and in good repair.

10 (b) Keep food preparation areas separated from poisons, undesirable  
11 microorganisms, chemicals, filth, or other extraneous material by  
12 partition, location, or other effective means. Marihuana is not  
prohibited in food preparation areas under this subdivision.

(c) Provide adequate lighting in all areas where food or food  
ingredients are examined, processed, or stored, and in hand washing  
areas, toilet rooms, and places where equipment or utensils are cleaned.

(d) Provide adequate ventilation or control equipment to minimize  
odors and noxious fumes, dust, or vapors, including steam, in areas where  
they may contaminate food.

(e) Ensure that all provisioning center equipment and utensils are  
suitable for their intended use and are designed and constructed with  
material and workmanship that allows them to be cleanable and properly  
maintained.

(f) Ensure that the provisioning center is properly equipped with  
adequate sanitary facilities and accommodations.

(g) Ensure that the provisioning center has a water supply that is  
sufficient for the operations intended and is derived from an approved  
source.

(h) Ensure that all sewage and liquid waste is disposed of in a  
public or municipal sewerage system, or, if an adequate public disposal  
system is not available, in an approved septic tank system or by another  
acceptable method that does not create a nuisance, insanitary condition,  
or public health hazard.

(i) Provide employees with adequate, completely enclosed toilet  
rooms and conveniently located associated hand washing facilities that  
are maintained in a sanitary condition and kept in good repair at all  
times.

(j) Provide adequate and convenient facilities for hand washing  
that are furnished with hot and cold or tempered running water, effective

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hand cleaning and sanitizing preparations, disposable sanitary towel service or suitable drying devices, and easily cleanable waste receptacles.

(k) Provide for conveying, storing, and disposal of rubbish and offal in a manner that minimizes odor, prevents waste from becoming an attractant or a harbor or breeding place for vermin, and prevents contamination of food, food contact surfaces, ground surfaces, and water supplies.

(l) Maintain the building, fixtures, and other physical facilities of the provisioning center in good repair and in sanitary condition.

(m) Prohibit live birds or other animals in the provisioning center, except that a guide dog accompanying a blind person is permitted in selling areas.

(n) Clean all utensils and product contact surfaces of equipment as frequently as necessary to prevent contamination of food and food products and all nonproduct contact surfaces of equipment used in food preparation areas as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris.

(o) Conduct all operations in receiving, inspecting, transporting, packaging, segregating, preparing, processing, and food storing areas in accordance with good sanitation principles and take all reasonable precautions to assure that production procedures do not contribute contamination, such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material, to the processed product.

(p) Conduct all food processing, packaging, storage, and transporting of food under conditions and controls that minimize the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product, product ingredients, or product containers.

(q) Ensure that all food and drink is clean and wholesome, and manufactured, handled, stored, prepared, transported, offered for sale, and sold in a manner that keeps it safe for human consumption.

(r) Not allow an individual who is affected by a disease in a communicable form, a carrier of such a disease, or afflicted with boils, sores, infected wounds, or other abnormal sources of microbiological contamination to work in the provisioning center in any capacity in which there is a reasonable possibility that food or food ingredients will become contaminated or that the disease will be transmitted to other individuals.

(s) Require all individuals working in direct contact with food preparation, food ingredients, or surfaces coming into contact with food ingredients to do all of the following:

(i) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty to the extent necessary to prevent contamination of food products.

(ii) Before starting work, after each absence from the work station, and at any other time when hands may have become soiled or contaminated, wash their hands thoroughly in an adequate hand washing facility and sanitize their hands if necessary to prevent contamination.



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(iii) Remove any jewelry that cannot be adequately sanitized and all insecure jewelry from hands when food is manipulated by hand.

(iv) Maintain any gloves used in food handling in an intact, clean, and sanitary condition and use only gloves made of an impermeable material, except when that usage would be inappropriate or incompatible with the work involved.

(v) Wear effective hairnets, headbands, or caps to constrain the hair properly.

(vi) Refrain from storing clothing or other personal belongings, eating, drinking, or using tobacco in any form in areas where food or food ingredients are exposed, or in areas used for washing equipment or utensils.

(vii) Take any other necessary precautions to prevent contamination of foods with microorganisms or other foreign substances, including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicants.]

13 (3) Subsection (2) does not prohibit a municipality from  
14 imposing additional regulations on medical marihuana provisioning  
15 centers that elect to manufacture and distribute a marihuana-  
16 infused product.

[(4) The local county health department shall inspect a provisioning center at least annually for compliance with subsections (2) and (3). The provisioning center shall pay for all costs associated with the inspection under this subsection.]

**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**DIRECTOR'S OFFICE**

**MICHIGAN MEDICAL MARIHUANA**

(By authority conferred on the director of the department of licensing and regulatory affairs by section 5 of initiated law 1 of 2008, MCL 333.26425 and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1 and 2011-4, MCL 330.3101, MCL 445.2001, MCL 445.2011 and 445.2030)

**R 333.101 Definitions.**

Rule 1. As used in these rules:

(1) "Act" means the Michigan medical marihuana act, Initiated Law 1 of 2008, MCL 333.26421 to 333.26430.

(2) "Applicant" means a qualifying patient applying for a medical marihuana registry identification card on a form provided by the department of licensing and regulatory affairs.

(3) "Code" means 1978 PA 368, MCL 333.1101 to 333.25211.

(4) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.

(5) "Debilitating medical condition" means 1 or more of the following:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or its treatment that produces, for a specific patient, 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(c) Any other medical condition or treatment for a medical condition approved by the department pursuant to a petition submitted under R 333.133.

(6) "Department" means the department of licensing and regulatory affairs.

(7) "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other

functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the departmental registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and

equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

(a) The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with the intent to permanently retain those plants at the second location.

(b) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.

(8) "Marihuana" means that term as defined in section 7106 of the code.

(9) "Medicaid health plan" means the medical assistance program managed by the department.

(10) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(11) "Paraphernalia" means any item defined as "drug paraphernalia" pursuant to section 7451 of the code.

(12) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.

(13) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under R 333.101(5).

(14) "Physician" means an individual licensed as a physician under part 170 or 175 of the code. For purposes of the act, neither a physician assistant nor a nurse practitioner is authorized to sign the statement attesting to the patient's debilitating medical condition.

(15) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(16) "Public place" means a place open to the public.

(17) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(18) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(19) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(20) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(21) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(22) "Written certification" means a document signed by a physician stating all of the following:

(a) The patient's debilitating medical condition.

(b) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation.

(c) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(23) Terms defined in the act have the same meanings when used in these rules.

History: 2009 AACCS; 2013 AACCS.

**R 333.103 New registration application; qualifying patient and primary caregiver.**

Rule 3. A qualifying patient applying for a registry identification card shall comply with all of the following:

(a) Submit a completed application on a form provided by the department, together with the requisite fee. The completed application shall include all of the following:

(i) Name, address, and date of birth of the qualifying patient. The address for the qualifying patient shall be a physical address located in this state. A qualifying patient who is homeless shall not be required to provide a physical address.

(ii) Name, address, and telephone number of the qualifying patient's physician.

(iii) The name, address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver.

(vi) A primary caregiver shall authorize the department to use the information provided on the application to secure his or her criminal conviction history to determine if he or she has been convicted of any of the following:

(A) Any felony within the past 10 years.

(B) A felony involving illegal drugs

(C) A felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) Submit proof of Michigan residency. For the purposes of this subdivision, an applicant shall be considered to have proved legal residency in this state if he or she provides the department with either of the following:

(i) A copy of a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(ii) A copy of a valid Michigan voter registration.

(c) Submit photographic identification of both the qualifying patient and the patient's primary caregiver, if applicable. If the qualifying patient is under the age of 18 and does not have photographic identification, no photographic identification is required. Photocopies of the following shall be considered acceptable forms of identification:

(i) Current driver's license or identification card, with photo, issued by a state.

(ii) Identification card with photo issued by a federal, state, or government agency.

(iii) Current military identification card.

(iv) Current passport.

(v) Current student identification card with photo.

(vi) Native American tribal identification with photo

(vii) Permanent resident card or alien registration receipt card.

(d) Submit a written certification, as defined in R 333.101(22), signed by a licensed physician. If the qualifying patient is under the age of 18, written certifications from 2 physicians are required.

(e) If the qualifying patient is under the age of 18, submit a declaration of person responsible form.

History: 2009 AACCS; 2013 AACCS.

### **R 333.105 Declaration of person responsible form.**

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form shall include all of the following:

(a) A statement that the qualifying patient's physician has explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.

(b) Consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.

(c) Consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

History: 2009 AACCS.

### **R 333.107 Incomplete application.**

Rule 7. If an applicant fails to provide the information required under R 333.103 or R 333.105, as applicable, the application shall be denied. The department shall notify the applicant of the information that is missing in the event the applicant wishes to reapply. An applicant may reapply at any time.

History: 2009 AACCS.

### **R 333.109 Verification of information.**

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

(a) Contacting each applicant by telephone or by mail. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.

(b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18.

(c) Verifying that a physician is licensed to practice in the state.

(d) Contacting the certifying physician directly to confirm the validity of the written certification.

History: 2009 AACCS.

### **R 333.111 Fees; reduced fees; renewal.**

Rule 11. (1) The fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current enrollment in the Medicaid health plan or receipt of current Supplemental Security Income benefits, in which case the application fee is \$25.00. To qualify for a reduced fee, an applicant shall satisfy either of the following requirements:

(a) Submit a copy of the qualifying patient's current Medicaid health plan enrollment statement.

(b) Submit a copy of the qualifying patient's current monthly Supplemental Security Income benefit card, showing dates of coverage.

(2) The department shall deny the application of a qualifying patient who submits a reduced fee for which he or she is not eligible and shall notify the qualifying patient of the application denial. A qualifying patient may resubmit the correct fee with his or her qualifying documentation at any time.

(3) The fee for a revised or duplicate copy of the registration identification card for the qualifying patient or the primary caregiver is \$10.00. If a duplicate card is requested, the qualifying patient or primary caregiver shall submit to the department the fee with a statement attesting to the loss or destruction of the card.

History: 2009 AACCS.

### **R 333.113 Registration approval; denial.**

Rule 13. (1) Pursuant to section 6(c) of the act, the department shall approve or deny an application within 15 business days of receiving a completed application and the requisite fee.

(2) If an application is approved, within 5 business days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. The registry identification card shall include all of the following:

(a) The name, address, and date of birth of the registered qualifying patient.

(b) If the registered qualifying patient has designated a primary caregiver, the name, address, and date of birth of the registered primary caregiver.

(c) The issue date and expiration date of the registry identification card.

(d) A random identification number.

(e) A clear designation showing whether the registered primary caregiver or the registered qualifying patient will be authorized to possess marihuana plants for the registered qualifying patient's medical use. The designation shall be determined based solely on the registered qualifying patient's preference.

(3) When a registered qualifying patient has designated a primary caregiver, the department shall issue a registry identification card to the registered primary caregiver. The registered primary caregiver's registry identification card shall contain the information specified in subrule (2) of this rule.

(4) The department shall deny an application for any of the following:

(a) The applicant did not provide the physician's written certification.

(b) The department determines that any information provided by the applicant was falsified.

(c) An applicant fails to provide a physical address located in this state. This subdivision shall not apply if the applicant is homeless.

(d) The applicant failed to meet the requirements of R 333.107.

(5) If the department denies an application, the department shall mail the applicant a denial letter within 15 business days of receipt of the completed application. The denial letter shall be sent by certified mail to the address listed on the application form and shall state the reasons for denial and when the applicant may reapply.

(6) Denial of a registry identification card shall be considered a final department action, subject to judicial review.

History: 2009 AACCS; 2013 AACCS.

### **Rule 333.115 Primary caregiver; number of qualified patients; compensation.**

Rule 15. (1) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. A registered primary caregiver may assist not more than 5 qualifying patients with their medical use of marihuana.

(2) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of a controlled substance.

History: 2009 AACCS.

### **R 333.117 Biennial renewal; expiration of registry identification card; fee.**

Rule 17. (1) Pursuant to section 6 (e) of the act, MCL 333.26426(e), a registry identification card shall be renewed on a biennial basis to maintain active status as a registered qualifying patient or a registered primary caregiver.

(2) A registry identification card shall expire on the first day of the month 2 years following issuance of the card.

(3) An applicant for renewal of a registry identification card shall submit an application and information as provided in R 333.103.

(4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card shall be considered null and void and of no further effect. The applicant may submit a new application to the department.

(5) The department shall verify the renewal application information in the same manner as specified in R 333.109.

History: 2009 AACCS; 2013 AACCS.

### **R 333.119 Changes in status; notifications; requirements.**

Rule 19. (1) In order to update registry information for a qualifying patient or primary caregiver, the registered qualifying patient, registered primary caregiver, or registered qualifying patient's parent or legal guardian, as applicable, is responsible for notifying the department of a change in any of the following:

- (a) The registered qualifying patient's name.
- (b) The registered qualifying patient's address.
- (c) The registered qualifying patient's primary caregiver.
- (d) The registered qualifying patient's legal guardian.

(2) The department may notify a registered primary caregiver by certified mail at the address of record within 14 days of any changes in status including, but not limited to, both of the following:

(a) The registered qualifying patient's termination of the individual's status as primary caregiver or designation of another individual as the registered primary caregiver.

(b) The end of eligibility for the registered qualifying patient to hold a registry identification card.

(3) If the department is notified by a registered qualifying patient that the registered primary caregiver for the patient has changed, the department may notify the initial primary caregiver by certified mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

(4) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 14 days of receipt of the written notification that the patient's registry identification card is null and void and of no effect.

History: 2009 AACCS.

### **R 333.121 Confidentiality.**

Rule 21. (1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marihuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:



- (a) Applications and supporting information submitted by qualifying patients.
- (b) Information related to a qualifying patient's primary caregiver.
- (c) Names and other identifying information of registry identification cardholders.
- (d) Names and other identifying information of pending applicants and their primary caregivers.

(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees or contractors of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.

(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.

History: 2009 AACCS; 2013 AACCS.

### **Rule 333.123 Complaints.**

Rule 23. The department shall refer criminal complaints against a registered qualifying patient or registered primary caregiver to the appropriate state or local authorities.

History: 2009 AACCS.

### **R 333.125 Revocation; nullification.**

Rule 25. (1) A registered qualifying patient or registered primary caregiver who has been convicted of selling marihuana to someone who is not allowed to use marihuana for medical purposes under the act, shall have his or her registry identification card revoked and may be found guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(2) A registry identification card that is later determined to be based on fraudulent information is null and void and of no effect.

(3) Any person who has been convicted of any felony within the past 10 years, a felony involving illegal drugs, or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a shall not serve as a qualifying patient's primary caregiver under the act.

(4) The department shall send written notice by certified mail to a registered qualifying patient or the patient's registered primary caregiver of either of the following:

- (a) An intent to revoke or nullify a registry identification card.
- (b) That a primary caregiver no longer qualifies for approval under the act based on the caregiver's conviction of a felony specified in subrule (3) of this rule.
- (5) The notice referenced in subrule (4) of this rule shall include the right to request a contested case hearing. If the request for hearing is not filed with the department within 21 days from the date the notice was mailed by the department, the right to request a contested case hearing shall be waived.

History: 2009 AACCS; 2013 AACCS.

### **R 333.127 Management of medical marihuana.**

Rule 27. (1) 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 marihuana in accordance with the act, if the qualifying patient possesses an amount of marihuana that does not exceed the following:

- (a) Two and one-half (2.5) ounces of usable marihuana.

- (b) If the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

- (c) Any incidental amount of seeds, stalks, and unusable roots.

(2) A primary caregiver 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 assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with the act, if the primary caregiver possesses an amount of marihuana that does not exceed the following:

- (a) Two and one-half (2.5) ounces of usable marihuana for each registered qualifying patient to whom he or she is connected through the department's registration process.

- (b) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

- (c) Any incidental amount of seeds, stalks, and unusable roots.

(3) An individual may simultaneously be registered as a qualifying patient and as a primary caregiver.

(4) The privilege from arrest under subrule (1) of this rule applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

(5) The privilege from arrest under subrule (2) of this rule applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver.

History: 2009 AACCS; 2013 AACCS.

**Rule 333.131 Review panel for reviewing petitions for additional medical conditions or treatments.**

Rule 31. (1) The department shall appoint a panel of not more than 15 members to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under R 333.101 (5). A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(2) Members of the review panel shall include, but not be limited to, the Michigan chief medical executive and 7 appointed members of the advisory committee on pain and symptom management as described in MCL 333.16204a. The 7 review panel members from the advisory committee on pain and symptom management shall include 4 licensed physicians and 3 non-physicians.

(3) The department shall provide staff support to the review panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(4) A quorum of the review panel shall concur with the recommendation in order to be considered an official recommendation of the panel. For the purposes of this subrule, a majority of the members appointed and serving on the review panel constitutes a quorum.

History: 2009 AACCS.

**Rule 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.**

Rule 33. (1) The department shall accept a written petition from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under R 333.101.

(2) The department shall submit the written petition to the review panel. Within 60 days of receipt of the petition, the panel shall make a recommendation to the department regarding approval or denial of the petition.

(3) Upon receipt of a recommendation from the review panel, the department shall do all of the following:

(a) Post the panel's recommendations on the department's website for public comment for a period of 60 days.

(b) Give notice of a public hearing not less than 10 days before the date of the hearing.

(c) Hold a public hearing within the 60-day time period that the recommendation from the panel is posted on the department's website.

(4) After a public hearing, the department shall forward comments made during the hearing to the panel for review. If, based on a review of the comments, the panel determines that substantive changes should be made to its initial recommendation, the

petition shall be denied, the department shall provide the petitioner with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner may resubmit the petition to the department at any time. If no changes are made to the initial recommendation or the changes are minor and do not affect the general content of the recommendation, the department shall forward the recommendation to the department director for a final determination on the petition.

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition shall be considered a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under R 333.101. Until such time as these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.

History: 2009 AACCS.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

MICHIGAN MEDICAL MARIHUANA

Proposed Draft June 20, 2014

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of licensing and regulatory affairs by section 5 of initiated law 1 of 2008, MCL 333.26425 and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1 and 2011-4, MCL 330.3101, MCL 445.2001, MCL 445.2011 and 445.2030)

R 333.101, R 333.103, R 333.105, R 333.109, R 333.111, R 333.113, R 333.117, R 333.119, R 333.123, R 333.125, R 333.131, and R 333.133 of the Michigan Administrative Code are amended, R 333.126 is added to the code, and R 333.107, R 333.121, and R 333.127 are rescinded as follows:

R 333.101 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan medical marijuana act, Initiated Law 1 of 2008, MCL 333.26421 to 333.26430.

(2) "Applicant" means a qualifying patient applying for a medical marijuana registry identification card on a form provided by the department of licensing and regulatory affairs.

~~(3) "Code" means 1978 PA 368, MCL 333.1101 to 333.25211.~~

~~(4) (3) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.~~

~~(5) "Debilitating medical condition" means 1 or more of the following:~~

~~—(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.~~

~~—(b) A chronic or debilitating disease or medical condition or its treatment that produces, for a specific patient, 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.~~

~~—(c) Any other medical condition or treatment for a medical condition approved by the department pursuant to a petition submitted under R 333.133.~~

(6) "Department" means the department of licensing and regulatory affairs.

June 20, 2014

(7) "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marijuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the departmental registration process as the primary caregiver for the registered qualifying patient or patients for whom the marijuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:

–(a) The vehicle is being used temporarily to transport living marijuana plants from 1 location to another with the intent to permanently retain those plants at the second location.

–(b) An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marijuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.

**(4) "Legal name" means a qualifying patient or primary caregiver's name as it appears on a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or a voter registration card issued under 1954 PA 116, MCL 168.1 to 168.992.**

(8) "Marijuana" means that term as defined in section 7106 of the code.

(9) "Medicaid health plan" means the medical assistance program managed by the department.

(10) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

–(11) "Paraphernalia" means any item defined as "drug paraphernalia" pursuant to section 7451 of the code.

(12) **(5) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.**

(13) **(6) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under R 333.101(5) section 3(b) of the act, MCL 333.26423(b).**

(14) "Physician" means an individual licensed as a physician under part 170 or 175 of the code. For purposes of the act, neither a physician assistant nor a nurse practitioner is authorized to sign the statement attesting to the patient's debilitating medical condition.

–(15) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marijuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(16) "~~Public place~~" means a place open to the public.

(17) "~~Qualifying patient~~" or "~~patient~~" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(18) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.~~

~~(19) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.~~

~~(20) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.~~

~~(21) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.~~

~~(22) "Written certification" means a document signed by a physician stating all of the following:~~

~~(a) The patient's debilitating medical condition.~~

~~(b) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in person, medical evaluation.~~

~~(c) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.~~

~~(23) (7) Terms defined in the act have the same meanings when used in these rules.~~

R 333.103 New registration application; qualifying patient and primary caregiver.

Rule 3. (1) A qualifying patient applying for a registry identification card shall comply with all of the following: **apply for a registry identification card in a manner prescribed by the department, which may include an online application. An applicant for a registry card shall submit the required fee and all of the following:**

(a) ~~Submit a~~ **An original**, completed application **that is signed by the qualifying patient and dated within 1 year of the date the application is received.** ~~on a form provided by the department , together with the requisite fee.~~ **The qualifying patient shall submit the original completed application, which shall include all of the following information:**

(i) ~~Name~~ **The legal name, mailing** address, and date of birth of the qualifying patient. The address for the qualifying patient shall be a physical address located in this state. A qualifying patient who is homeless shall not be required to provide a physical address, **but he or she shall provide a mailing address where the department can send correspondence regarding the patient's registry status.**

(ii) ~~Name~~ **The physician's name as it appears on his or her Michigan physician's license, mailing** address, and telephone number of the qualifying patient's physician **who provided the written certification.**

(iii) The **legal name, mailing** address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver. **The attestation must be signed by the primary caregiver and dated within 1 year of the date the application is received. The attestation shall authorize the department to use the information provided on the application or as part of the attestation to secure the primary caregiver's criminal conviction history and determine if he or she has been convicted of any of the offenses provided under section 3(h) of the act, MCL 333.26423(h).**

~~(vi) A primary caregiver shall authorize the department to use the information provided on the application to secure his or her criminal conviction history to determine if he or she has been convicted of any of the following:~~

~~–(A) Any felony within the past 10 years.~~

~~–(B) A felony involving illegal drugs~~

~~–(C) A felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.~~

**(vi) The department may require the attestation required under paragraph (v) of this subdivision to be submitted as part of the supporting documents and information required under subdivision (b) of this subrule.**

**(b) The supporting documents and information required under section 6 of the act, MCL 333.26426, which shall include all of the following:**

~~(b) (i) Submit proof~~ **Proof of the patient's Michigan residency.** For the purposes of this subdivision ~~paragraph~~, an applicant shall be considered to have proved legal residency in this state if he or she provides the department with either of the following:

~~(i) (A) A copy of a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.~~ **The department may waive this requirement if the department is able to verify the applicant's Michigan driver license or personal identification card online through the department of state.**

~~(ii) (B) A copy of a valid Michigan voter registration.~~

~~(e) Submit photographic identification of both the qualifying patient, and the patient's primary caregiver, if applicable. If the qualifying patient is under the age of 18 and does not have photographic identification, no photographic identification is required. Photocopies of the following shall be considered acceptable forms of identification:~~

~~(i) Current driver's license or identification card, with photo, issued by a state.~~

~~(ii) Identification card with photo issued by a federal, state, or government agency.~~

~~(iii) Current military identification card.~~

~~(iv) Current passport.~~

~~(v) Current student identification card with photo.~~

~~(vi) Native American tribal identification with photo~~

~~(vii) Permanent resident card or alien registration receipt card.~~

~~(d) (ii) Submit a~~ **A written certification, as defined in section 3(m) of the act, MCL 333.26423(m), R-333.101(22), signed by a licensed physician in the course of a bona fide physician-patient relationship as defined in section 3(a) of the act, MCL 333.26423(a), and is dated within 1 year of the date the application is received.** If the qualifying patient is under the age of 18, written certifications from 2 physicians are required. **The physician shall include the legal name and date of birth of the qualifying patient, the physician's name as it**



**appears on his or her physician's license, physician's license number, mailing address, and telephone number on the written certification.**

(e) ~~(iii)~~ If the qualifying patient is under the age of 18, ~~submit~~ a declaration of person responsible form.

**(2) The department may require that an application and all required supporting documentation or information be submitted online in a manner prescribed by the department. An online application process that meets the requirements of the act meets the requirements of this rule.**

R 333.105 Declaration of person responsible form.

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form shall include all of the following:

(a) A statement that the qualifying patient's physicians ~~has~~ **have** explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.

(b) ~~Written~~ **Written** consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.

(c) ~~Written~~ **Written** consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

**(d) The qualifying patient's parent or legal guardian shall provide proof of parentage or legal guardianship by submitting a copy of a power of attorney or documentation issued by a governmental entity.**

R 333.107 ~~Incomplete application.~~ **Rescinded.**

~~Rule 7. If an applicant fails to provide the information required under R 333.103 or R 333.105, as applicable, the application shall be denied. The department shall notify the applicant of the information that is missing in the event the applicant wishes to reapply. An applicant may reapply at any time.~~

R 333.109 Verification of information.

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

(a) Contacting ~~each~~ **an applicant or primary caregiver** by telephone, **e-mail**, or by mail. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.

(b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18.

(c) Verifying that a physician is licensed to practice in the state.

(d) Contacting the certifying physician directly **by telephone, e-mail, or mail** to confirm the validity of the written certification.

R 333.111 Fees; ~~reduced fees; renewal.~~ **patient refunds.**

Rule 11. (1) ~~The A qualifying patient shall pay a \$60.00 fee for a new or renewal application. \$100.00, unless a qualifying patient can demonstrate his or her current enrollment in the Medicaid health plan or receipt of current Supplemental Security Income benefits, in which case the application fee is \$25.00. To qualify for a reduced fee, an applicant shall satisfy either of the following requirements:~~

- ~~–(a) Submit a copy of the qualifying patient's current Medicaid health plan enrollment statement.~~
- ~~–(b) Submit a copy of the qualifying patient's current monthly Supplemental Security Income benefit card, showing dates of coverage.~~

**(2) A primary caregiver shall pay a \$25 processing fee each time the department is required to secure the primary caregiver's criminal conviction history and verify his or her eligibility to be a registered primary caregiver. The processing fee applies to new applications, renewal applications, and change forms that designate a primary caregiver.**

~~–(2) (3) The department shall deny the~~ **The application of a qualifying patient who fails to submit the required fee submits a reduced fee for which he or she is not eligible and shall notify the qualifying patient of the application denial or whose primary caregiver fails to submit the required processing fee is considered incomplete and shall be denied. A qualifying patient may resubmit the correct fee with his or her qualifying documentation at any time.**

~~(3) (4) The A registered qualifying patient or registered primary caregiver, as applicable, shall pay a \$10 fee for a revised or duplicate copy of the registration identification card for the qualifying patient or the primary caregiver. is \$10.00. If a duplicate card is requested, the qualifying patient or primary caregiver shall submit to the department the required fee with a statement attesting to the loss or destruction of the card.~~

**(5) A registered qualifying patient or registered primary caregiver, as applicable, shall submit a \$10 fee with the change form required in R 333.119.**

**(6) A registered qualifying patient or primary caregiver is not eligible for a refund if any of the following occurs:**

**(a) The qualifying patient's application is denied or the qualifying patient withdraws from the registry program.**

**(b) The department has processed the application or change form and issued a registry card to the patient or primary caregiver.**

**(c) The department determines the primary caregiver listed on the application or change form is ineligible.**

R 333.113 Registration approval; denial.

Rule 13. (1) Pursuant to section 6(c) of the act, **MCL 333.26426(c)**, the department shall approve or deny an application within 15 business days of receiving a **the original** completed application, **and the requisite required fees, and required supporting documentation and information.**

(2) If an application is approved, within 5 business days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. **For the purpose of this subrule, "issue" means the department has printed the registry identification card and mailed it to the qualifying patient and registered primary caregiver, if applicable.** The registry identification card shall include all of the following:

- (a) The **legal** name, **mailing** address, and date of birth of the registered qualifying patient.
- (b) If the registered qualifying patient has designated a primary caregiver, the **legal** name, **mailing** address, and date of birth of the registered primary caregiver.
- (c) The issue date and expiration date of the registry identification card.
- (d) A random identification number.
- (e) A clear designation showing whether the registered primary caregiver or the registered qualifying patient will be authorized to possess marijuana plants for the registered qualifying patient's medical use. The designation shall be determined based solely on the registered qualifying patient's preference.

(3) When a registered qualifying patient has designated a primary caregiver, the department shall issue a registry identification card to the registered primary caregiver. The registered primary caregiver's registry identification card shall contain the information specified in subrule (2) of this rule.

(4) **If an application is denied, within 5 business days of denying the application, the department shall mail the applicant a denial letter that states the reasons for denial.** The department shall deny an application for any of the following reasons:

- (a) ~~The applicant~~ **qualifying patient, did not provide the physician's written certification. provided an incomplete application or incomplete supporting documents or information.**
- (b) **The qualifying patient or caregiver, if applicable, did not submit the required fee.**
- ~~(b)~~ (c) **The department determines that any information provided by the applicant** **qualifying patient, primary caregiver, or physician** was falsified, fraudulent, incomplete, or cannot be verified.
- ~~(e)~~ (d) ~~An applicant fails to provide a physical address located in this state. This subdivision shall not apply if the applicant is homeless.~~ **The qualifying patient designates a primary caregiver on the application and the department determines the primary caregiver is ineligible.**
- ~~(d)~~ (e) ~~The applicant~~ **qualifying patient, primary caregiver, or physician, as applicable, failed to meet the requirements of R 333.107. sign and date the application, caregiver attestation, or written certification.**

(f) **The department was unable to verify the information provided.**

~~(5) If the department denies an application, the department shall mail the applicant a denial letter within 15 business days of receipt of the completed application. The denial letter shall be sent by certified mail to the address listed on the application form and shall state the reasons for denial and when the applicant may reapply. A qualifying patient whose application is denied may reapply at any time by submitting a new application and the supporting documents and information as specified in R 333.103. Any fee that a patient submits with an application that is denied is valid for 2 years from the date the department received the fee and may be used by the patient to reapply. This provision does not apply to processing fees submitted by primary caregivers who the department has determined to be ineligible.~~

~~(6) Denial of a registry identification card shall be considered a final department action, subject to judicial review.~~

R 333.117 Biennial renewal; expiration of registry identification card; fee.

Rule 17. (1) Pursuant to section 6 (e) of the act, MCL 333.26426(e), a registry identification card shall be renewed on a biennial basis to maintain active status as a registered qualifying patient or a registered primary caregiver.

(2) A registry identification card shall ~~expire on the first day of the month 2 years following issuance of the card~~ **be valid for a period of 2 years.**

(3) An applicant for renewal of a registry identification card shall submit an application and **the required supporting documents and** information as provided in R 333.103 **and R 333.105, as applicable.**

(4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card shall be considered null and void and of no further effect. The applicant may submit a new application to the department.

**(5) An applicant may submit a renewal application up to 60 days before the expiration date on the registry identification card. A registry card is not renewed unless the department approves the renewal application prior to the expiration date of the registry card.**

~~(5)~~ **(6)** The department shall verify the renewal application information in the same manner as specified in R 333.109.

R 333.119 Changes in status; notifications; requirements.

Rule 19. (1) ~~In order to update registry information for a qualifying patient or primary caregiver, the~~ **After a registry card is issued and before the renewal period, a** registered qualifying patient, registered primary caregiver, or ~~the~~ registered qualifying patient's parent or legal guardian, as applicable, ~~is responsible for notifying the department of a change in~~ **may submit a change form to the department to do any** of the following:

(a) ~~The~~ **Change the** registered qualifying patient's name. **Proof of change of name shall be satisfied by submitting the documents required to prove residency as specified in R 333.103 or documents specified in subrule (3)(a) of this rule.**

(b) ~~The~~ **Change the** registered qualifying patient's address.

(c) ~~The registered qualifying patient's primary caregiver.~~ **Change the individual designated as registered qualifying patient's primary caregiver, including removing or replacing the current registered primary caregiver.**

(d) ~~The~~ **Change the** registered qualifying patient's legal guardian. **Proof of change of legal guardian shall be satisfied by submitting documentation consistent with R 333.105(d).**

(2) A registered primary caregiver may submit a change form to the department to do any of the following:

(a) **Change the registered primary caregiver's name. Proof of name change shall be established by submitting a true copy of an official record, a certified marriage license, divorce decree, or a legal name change document. A true copy is an exact copy of a document with no alterations or changes.**

(b) **Change the registered primary caregiver's address.**

(c) **Terminate the registered primary caregiver's status as a patient's primary caregiver.**

(3) **Any changes made under subrule (1) or subrule (2) of this rule do not take effect until the department has verified and processed the requested change or changes. Receipt of the new registry card or cards will be notification that the changes have taken effect.**

~~–(2) The department may notify a registered primary caregiver by certified mail at the address of record within 14 days of any changes in status including, but not limited to, both of the following:~~

~~–(a) The registered qualifying patient's termination of the individual's status as primary caregiver, or designation of another individual as the registered primary caregiver.~~

~~–(b) The end of eligibility for the registered qualifying patient to hold a registry identification card.~~

~~–(3) (4) If the department is notified by a registered qualifying patient that the~~ **removes or replaces a registered primary caregiver for the patient has changed under subrule (1)(c) of this rule,** the department ~~may~~ **shall** notify the initial primary caregiver by certified mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

~~–(4) (5) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 14~~ **20 business** days of receipt of the written notification that the patient's registry identification card is null and void and of no effect. **The registry card shall become null and void upon notification by the department to the patient.**

**(6) Any notifications the department makes under subrules (4) and (5) of this rule are subject to the confidentiality provisions in R 333.121 and section 6(h) of the act, MCL 333.26426(h).**

#### R 333.121-Confidentiality. **Rescinded.**

~~–Rule 21. (1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marijuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:~~

~~–(a) Applications and supporting information submitted by qualifying patients.~~

~~–(b) Information related to a qualifying patient's primary caregiver.~~

~~–(c) Names and other identifying information of registry identification cardholders.~~

~~–(d) Names and other identifying information of pending applicants and their primary caregivers.~~

~~–(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees or contractors of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.~~

~~–(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.~~

~~–(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.~~

~~–(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.~~

#### Rule 333.123 Complaints.

Rule 23. The department shall refer criminal complaints against a registered qualifying patient or registered primary caregiver to the appropriate state or local authorities. **This includes instructing the individual making the complaint to contact the appropriate state or local law enforcement authorities.**

**R 333.125 Revocation; nullification; notification.**

~~Rule 25. (1) A registered qualifying patient or registered primary caregiver who has been convicted of selling marihuana to someone who is not allowed to use marihuana for medical purposes under the act, shall have his or her registry identification card revoked and may be found guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.~~

~~(2) (1) A registry identification card that is later determined to be based on fraudulent information is null and void and of no effect.~~

~~(3) Any person who has been convicted of any felony within the past 10 years, a felony involving illegal drugs, or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a shall not serve as a qualifying patient's primary caregiver under the act.~~

~~(4) (2) The department shall send written notice by certified mail to a registered qualifying patient or the patient's registered primary caregiver of either of the following: intent to revoke or nullify a registry card or cards. This subrule does not apply if a patient has requested the nullification of his or her caregiver's registry card or a registry card was issued by the department due to an administrative error.~~

**(3) The department shall send a final written notice to a registered qualifying patient or the patient's registered primary caregiver when a registry card or cards is revoked or nullified.**

~~(a) An intent to revoke or nullify a registry identification card.~~

~~(b) That a primary caregiver no longer qualifies for approval under the act based on the caregiver's conviction of a felony specified in subrule (3) of this rule.~~

~~(5) (4) The notice referenced described in subrule (4) (2) of this rule shall include the right to request a contested case hearing. If the request for hearing is not filed with the department within 21 days from the date the notice was mailed by the department, the right to request a contested case hearing shall be waived.~~

**R 333.126 Withdrawal.**

**Rule 26. (1) A registered qualifying patient or registered primary caregiver may voluntarily withdraw from the Michigan medical marihuana program.**

**(2) A registered qualifying patient or registered primary caregiver who chooses to withdraw from the program shall submit written notice to the department stating he or she no longer wishes to participate in the Michigan medical marihuana program. Upon receiving confirmation from the department that his or her withdrawal has been processed, the registered qualifying patient or registered primary caregiver shall destroy the registry identification card.**

**(3) A registered qualifying patient or registered primary caregiver's withdrawal from the Michigan medical marihuana program will not result in the destruction of any confidential**

records the department is required to maintain under section 6(h) of the act, MCL 333.26426(h).

R 333.127 ~~Management of medical marihuana.~~ **Rescinded.**

~~–Rule 27. (1) 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 marihuana in accordance with the act, if the qualifying patient possesses an amount of marihuana that does not exceed the following:~~

~~–(a) Two and one half (2.5) ounces of usable marihuana.~~

~~–(b) If the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.~~

~~–(c) Any incidental amount of seeds, stalks, and unusable roots.~~

~~–(2) A primary caregiver 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 assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with the act, if the primary caregiver possesses an amount of marihuana that does not exceed the following:~~

~~–(a) Two and one half (2.5) ounces of usable marihuana for each registered qualifying patient to whom he or she is connected through the department's registration process.~~

~~–(b) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.~~

~~–(c) Any incidental amount of seeds, stalks, and unusable roots.~~

~~–(3) An individual may simultaneously be registered as a qualifying patient and as a primary caregiver.~~

~~–(4) The privilege from arrest under subrule (1) of this rule applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.~~

~~–(5) The privilege from arrest under subrule (2) of this rule applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver.~~

Rule 333.131 Review panel for reviewing petitions for additional medical conditions or treatments; **terms.**

Rule 31. (1) The department shall appoint a panel of not more than 15 members to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under ~~R 333.101 (5)~~ **section 3(b) of the act, MCL 333.26423(b), and to address the palliative and therapeutic benefits that use of medical marihuana will provide for the medical condition or the treatment of the medical conditions. The panel shall meet at least twice**

each year and shall review and make a recommendation to the department concerning any petitions that have been submitted that meet the requirements of R 333.133(1). A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(2) Members of the review panel shall include, but not be limited to, the Michigan chief medical executive and 7 appointed members of the advisory committee on pain and symptom management as described in MCL 333.16204a. The 7 review panel members from the advisory committee on pain and symptom management shall include 4 licensed physicians and 3 non-physicians. A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(3) The members of the review panel shall be appointed for a term of 4 years. A member of the panel shall not serve more than 2 terms and 1 partial term, consecutive or otherwise. However, a panel member serving on the effective date of this rule may complete the term to which the member was appointed.

(4) The department shall provide staff support to the review panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(5) A quorum majority of the review panel of those who are present at each meeting shall concur with the recommendation in order to be considered an official recommendation of the panel. For the purposes of this subrule, a majority of the members appointed and serving on the review panel constitutes a quorum.

Rule 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.

Rule 33. (1) The department shall accept a written petition on a form prescribed by the department from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under ~~R 333.101~~ section 3(b) of the act, MCL 333.26423(b). The petition shall include current medical, empirical, and evidence-based data, including both of the following:

(a) A summary of the evidence that the use of marijuana will provide palliative or therapeutic benefit for the medical condition or a treatment of the medical condition.

(b) Articles published in peer-reviewed scientific journals reporting the results of research on the effects of marijuana on the medical condition or treatment of the medical condition and supporting why the medical condition should be added to the list of debilitating medical conditions under section 3(b) of the act, MCL 333.26423(b).

(2) The department shall submit the written petition to the review panel. Within 60 days of receipt of the petition, the panel shall make a recommendation to the department regarding approval or denial of the petition. If the petition does not contain current medical, empirical, and evidence-based data as described in subrule (1) of this rule, the department shall return the petition to the petitioner as incomplete.

(3) Upon receipt of a recommendation from the review panel petition that meets the requirements in subrule (1) of this rule, the department shall do all of the following:

(a) Post the panel's recommendations on the department's website for public comment for a period of 60 days. Transmit the petition to the review panel.



(b) Give notice of a public hearing not less than 10 days before the date of the hearing.

(c) ~~Hold a public hearing within the 60 day time period that the recommendation from the panel is posted on the department's website.~~ **Accept comments on the petition for a period of 5 business days beginning on the date of the public hearing.**

(4) After a public hearing, the department shall forward **the petition and any public** comments made **that were received during and after** the hearing to the **review panel for review discussion and to vote on a recommendation to the department director.** ~~If, based on a review of the comments, the panel determines that substantive changes should be made to its initial recommendation, the petition shall be denied, the department shall provide the petitioner with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner may resubmit the petition to the department at any time. If no changes are made to the initial recommendation or the changes are minor and do not affect the general content of the recommendation, the department shall forward the recommendation to the department director for a final determination on the petition.~~

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition shall be considered a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under ~~R 333.101~~ **section 3(b) of the act, MCL 333.26423(b).** Until such time as these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.

Michigan Department of Licensing and Regulatory Affairs  
**Office of Regulatory Reinvention**  
611 W. Ottawa Street; 2nd Floor, Ottawa Building  
PO Box 30004; Lansing, MI 48909  
Phone (517) 335-8658 FAX (517) 335-9512

**REGULATORY IMPACT STATEMENT  
and  
COST-BENEFIT ANALYSIS**

**PART 1: INTRODUCTION**

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

**ORR-assigned rule set number:**

2013-105

**ORR rule set title:**

Michigan Medical Marihuana

**Department:**

Licensing and Regulatory Affairs

**Agency or Bureau/Division**

Bureau of Health Care Services

**Name and title of person completing this form; telephone number:**

Elaine Barr, Policy Analyst (517) 373-0042

**Reviewed by Department Regulatory Affairs Officer:**

Liz Arasim  
Department of Licensing and Regulatory Affairs

## **PART 2: APPLICABLE SECTIONS OF THE APA**

### **MCL 24.207a “Small business” defined.**

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

### **MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).**

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

**MCL 24.245 (3)** “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

**MCL 24.245b Information to be posted on office of regulatory reinvention website.**

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
  - (b) Instructions on any existing administrative remedies or appeals available to the public.
  - (c) Instructions regarding the method of complying with the rules, if available.
  - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

### PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

#### Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

##### **Authority to Promulgate Rules**

MCL 333.26425(a) of the Michigan Medical Marihuana Act requires the Department to promulgate rules to govern the manner in which the department shall consider the addition of medical conditions to the list of debilitating medical conditions set forth in section 3(a) of the Act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions.

MCL 333.26425(b) of the Michigan Medical Marihuana Act authorizes the Department to promulgate rules that govern the manner in which it shall consider applications for and renewals of registry cards for qualifying patients and primary caregivers. This section provides that the rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering the Act.

##### **Comparison to Federal Rules or Standards Set By a National Licensing Agency or Accreditation Association**

The Department is not aware of any similar rules or regulations adopted by the state government that the rules are in conflict with or duplicate. However, 20 other states and the District of Columbia have passed laws that allow for the medical use of marihuana.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

Currently, 20 states and the District of Columbia have some statute or regulation permitting the use of medical marihuana. The only other Great Lakes State which permits medical marihuana in limited cases is Illinois. The Illinois statute went into effect on January 1, 2014 and rulemaking has not been completed. The enabling language of the Illinois statute is very different from Michigan's in many relevant portions as it is only designated as a pilot project. For example, the Illinois statute requires a higher burden of documentation on patients, caregivers, and physicians in order to receive a registry card.

Arizona requires the patient application to be submitted electronically, but there are no other states that explicitly require, or to the Department's knowledge, utilize an electronic registration system.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The Department is not aware of any similar rules or regulations adopted by the state government that the rules are in conflict with or duplicate.

**Purpose and Objectives of the Rule(s):**

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

In 2008, MCL 333.26425(a) of the Michigan Medical Marihuana Act allowed the Department 120 days to implement the program and promulgate administrative rules. As a result, a number of unanticipated issues have emerged which were not addressed in the short period of time available for implementation. While several of the administrative rules have been revised to comply with Public Acts 460 and 512 of 2012 that revised the Michigan Medical Marihuana Act, the rule set has not undergone a comprehensive evaluation since the statute was implemented.

The administrative rules that implement the requirements of the Act are being revised to do all of the following:

**R 333.101**

This rule will be updated to remove definitions that are already contained in the statute and to include a definition for “legal name.”

**R 333.103**

The rule will be amended to allow a patient to apply for a registry card, which may include an online application. Additionally, the requirements for the caregiver attestation will be expanded and clarified to conform with the statute. Requirements for the application, caregiver attestation and physician certification will be expanded and clarified to conform to the statute, address processing problems, and reduce chance of fraud.

**R 333.105**

This rule will be expanded to require proof of parentage or legal guardianship when the qualifying patient is under the age of 18 and to clarify that written consent of the parent or legal guardian is required to allow the minor’s use of medical marihuana and that the parent or legal guardian will serve as the minor patient’s primary caregiver.

**R 333.107**

This rule is being rescinded because the language repeats the statute.

**R 333.109**

The rule will be expanded to allow verification of the information contained in an application to be conducted by e-mail.

**R 333.111**

The rule will be updated to establish a flat fee for all new or renewal applications, ultimately reducing the cost of application for approximately 88% of patients. Currently, 88% of patients pay \$100 for a two year registration. These rules propose to reduce the fee to \$60 for a two-year registration.

An applicant who qualified for a reduced fee previously paid \$25 per year. Now that the patient card will be issued for two years, the patient will pay \$60 for years.

The update will end the reduced fee structure, but because the registration cycle has switched from one year to two years, the cost will be the same for applicants who qualified for the reduced fee as it was before the recent switch to two-year registration.

These changes will eliminate staff time spent processing and verifying the supporting documentation required for reduced fees. The rule will be updated to require a caregiver to pay for the cost of securing their criminal history record (\$25). Additionally, the updated rule will clarify the instances when an applicant is not eligible for a refund of their application fee.

**R 333.113**

The updated rule will clarify the reasons an application may be denied and the process for reapplying.

**R 333.117**

The proposed rule will clarify that an applicant may submit a renewal application up to 60 days before the expiration date on the registry card.

**R 333.119**

The amended rule provides the required documentation for a patient or caregiver to change this or her information and caregiver designation on their registry card. The rule also provides for a caregiver to terminate his or her relationship as a patient's primary caregiver.

**R 333.121**

This rule is being rescinded because the language repeats the statute.

**R 333.123**

The revised rule will clarify that an individual making a complaint concerning a registered caregiver or patient will be instructed to make the complaint to state or local authorities.

**R 333.125**

The revised rule will outline the processes for registry card revocation, nullification, and notification. The revised rule will remove the sections of the current rule which are already contained in the statute and clarify the circumstances under which the Department will send notice of intent to revoke or nullify a card.

**R 333.126**

This new rule will establish that a qualifying patient or primary caregiver may voluntarily withdraw from the Michigan Medical Marihuana Program upon notification to the Department. This practice is currently allowed so the rule is being added to be consistent with current procedure.

**R 333.127**

This rule is being rescinded because most of the language repeats the statute.

**R 333.131**

The amended rule will address the structure and composition of the review panel for reviewing petitions for additional medical conditions. The composition of the panel will be simplified to require that a majority of the panel members be licensed physicians. Additionally, the members of the review panel shall be appointed for a term of 4 years, and a member shall not serve more than 2 terms and one partial term. A majority of the review panel members who are present at each meeting will be empowered to provide an official recommendation of the panel.

**R 333.133**

The rule will be amended to change the requirements of the contents of the petition. After the rule is promulgated, the petition shall include current medical, empirical, and evidence-based data supporting the addition of the proposed condition to the list of debilitating medical conditions for which medical marihuana may be prescribed. A summary of the evidence that the use of marihuana will provide palliative or therapeutic benefit for the medical condition or a treatment of the medical condition, and

articles published in peer-reviewed scientific journals reporting the supporting research will also be required. If this information is not included, the petition will be returned to the petitioner as incomplete. The Department will accept comments on the petition for a period of 5 days beginning on the date of the public hearing.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

Without the implementation of an online application process, the applications for registration and renewal will have to continue to be processed on paper, costing the Department extra staff time and resulting in mistaken denials. Under the proposed rules, the petition process to add qualifying medical conditions or treatments to the list of debilitating medical conditions will be streamlined, resulting in a shorter period of time for processing the petition and preventing unnecessary or unintended denials of conditions that might otherwise qualify.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The common complaint from applicants for renewal and registration is that the process takes too long. This issue is compounded when an applicant who would otherwise qualify for registration submits an incomplete application, is denied, and must begin the process anew. The online process would prevent incomplete applications from being submitted, eliminate processing errors, and allow the applications to be processed more efficiently. Further, the online process may reduce the costs the Department incurs to process applications.

The revised rules will enable a patient or caregiver to voluntarily withdraw from the program, to change the identifying information on his or her registry card, and will provide the mechanisms by which to make these changes.

The review panel and petition process to add new debilitating conditions will also be revised to allow for more meaningful public input and a streamlined method of reporting the recommendations of the panel to the Department.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

R 333.107, R 333.121, R 333.127 will be rescinded, as they are already contained in the statute and are unnecessary in the rule set.

### **Fiscal Impact on the Agency:**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

The proposed rules, once fully implemented will have a potential savings effect for the Department. Ultimately, the use of an online registration and renewal system will save many staff hours in both the initial processing of an application and reduction of time in addressing errors, as an online system will not allow for the submission of an incomplete application. Additionally, most materials will be submitted electronically, requiring less staff time to sort through physical documents.



(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

The proposed rules do not require an additional agency or appropriation funding source.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

In 2008, MCL 333.26425(a) of the Michigan Medical Marihuana Act gave the Department only 120 days to implement the program and promulgate administrative rules. As a result, a number of unanticipated issues have emerged that were not addressed in the short period of time available for implementation. While several of the administrative rules have been revised to comply with Public Acts 460 and 512 of 2012, the entire rule set has not undergone a comprehensive evaluation since the statute was implemented.

The administrative rules that implement the requirements of the Act are being revised to do all of the following:

- Address problems with the current paper application process that may result in registry cards being issued in error or unnecessary denials.
- Authorize the Department to require individuals to apply for and renew registry cards online, after the Department acquires the technology to process these applications on line.
- Establish a process for online applications and renewals.
- Clarify or revise provisions in the rules that impede the Department's ability to comply with the statutory time frames for approving or denying applications and issuing registry identification cards.
- Establish a flat fee for all qualifying patients, which will reduce costs for approximately 88% of applicants and allow applications to be processed more efficiently. Currently, the rules specify one fee for new applications and renewal applications. The rules also specify a separate fee for persons who are enrolled in the Medicaid health plan or are recipients of the Supplemental Security Income benefits.
- Require that caregivers pay a processing fee to cover the cost of the criminal background check that is required to verify they meet the requirements of MCL 333.26423(h) of the Medical Marihuana Act.
- Ensure the rules are consistent with all of the statutory requirements.
- Clarify and/or revise the provisions regarding the review panel and the process for adding other qualifying medical conditions.
- Ensure the rules accurately reflect the Department's policy and procedures.

The burdens on individuals will ultimately be lessened after the changes in the rules are implemented. Individuals will see the benefits of the changes in overall fee reduction, faster application processing, and clarified and revised review panel process.

#### **Impact on Other State or Local Governmental Units:**

(11) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

The online program increases revenues for the Department of Technology, Management, and Budget. DTMB will charge an initial fee for the set-up of the online program and ongoing fees to pay for technical support. Any costs incurred from DTMB implementation of the online program or transactional costs related to the program's ongoing operation will come from the MMP's revenues or money that is

currently allocated towards this project.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not impose a program, service, duty or responsibility on any city, county, town, village, or school district.

(13) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No, the Michigan Medical Marihuana Act requires the program be self-funding and no appropriation to state or local governmental units has been made. State or local governmental units will not incur any additional expenditures because of the proposed rules. Therefore, there is no reason to provide a funding source for state or local governmental units.

#### **Rural Impact:**

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed rule does not establish any requirements that will have a negative impact on the public or private interests in rural areas. However, residents of rural areas with inconsistent internet service may complain about needing to submit applications online.

#### **Environmental Impact:**

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

No, these rules do not have an impact on the environment.

#### **Small Business Impact Statement:**

*[Please refer to the discussion of "small business" on page 2 of this form.]*

(16) Describe whether and how the agency considered exempting small businesses from the proposed rules.

The Michigan Medical Marihuana Act does not provide authority to regulate small businesses, only individuals. Therefore, small business exemptions were not considered.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

The rules cannot exempt small businesses because the rules do not directly regulate small businesses, only individuals.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

No small businesses will be affected by the proposed rules.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The rules do not regulate small businesses or require reporting, record keeping, and administrative costs.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

The rules do not regulate small businesses, so there are no simplified or consolidated compliance and reporting requirements the Department considered for small businesses.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

Performance standards were not established to replace design or operation standards, because the rules do not have a negative impact on small businesses.

(18) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

Because the rules do not affect small businesses, the rules will not have a disproportionate impact on small businesses because of their size or geographic location.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

The proposed revision to the rules does not impose any new or additional costs on small businesses.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

Small businesses are not affected by the proposed rules. Certifying physicians will have to create an online account in order to certify the patient's application, but there will be no fee for the physician to create the necessary account.

(21) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

Small businesses will not incur any additional legal, consulting, or accounting services costs as a result of these rules.

(22) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The proposed rules do not affect small businesses.

(23) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules do not affect small businesses.

(24) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not affect small businesses.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The proposed rules do not affect small businesses, so small businesses were not engaged in the development of the rules.

#### **Cost-Benefit Analysis of Rules (independent of statutory impact):**

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result

of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no compliance costs as a result of the rule amendments on businesses or groups.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The rules will be updated to establish a flat fee for all new or renewal applications, ultimately reducing the cost of application for approximately 88% of patients. Currently, 88% of patients pay \$100 for a two-year registration. These rules propose to drop the fee to \$60 for a two-year registration.

An applicant who qualified for a reduced fee previously paid \$25 per year. Now that the patient card will be issued for two years, the patient will pay \$60 for two years.

The update will end the reduced fee structure, but because the registration cycle has switched from one year to two years, the cost will be the same for applicants who qualified for the reduced fee as it was before the recent switch to two year registration.

Under the proposed rules, there will be a new \$10 fee for a revised or duplicate patient or caregiver card.

The rules will be updated to require a caregiver to pay for the cost of securing their criminal history record (\$25). This is being added because the Department bears a significant cost in checking criminal histories of caregivers.

Pursuant to the requirements of the Michigan Medical Marihuana Act, the Department shall charge fees sufficient to cover the costs of administering the program.

(28) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

The Department will ultimately experience a reduction in cost as a result of the online system. Additionally, qualifying patients renewing or initiating the application process will now only pay a fee of \$60 instead of \$100. While the reduced fee structure will be eliminated, the cost of application or renewal will be decreased for 88% of registrants. Cost will remain the same for applicants formerly qualifying for the reduced fee, as it will be the same as it was before the law changed to require a 2 year renewal cycle.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The benefits of the rule changes include ultimately reducing cost to the Department by switching to an electronic application system, streamlining the petition and review panel process, and clarifying the requirements for initial application, renewal, and personal information alterations. Additionally, an online system provides more security for sensitive information than the current paper system. Also, the proposed rule changes will result in a cost savings for 88% of patients.

(30) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The Department does not expect the proposed rules to have a direct impact on business growth or job creation or elimination.

(31) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The Department does not expect any businesses to be disproportionately affected by the proposed rules as a result of their industrial sector, segment of the public, business size, or geographical location. Individuals without easy access to the internet will be affected.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

[http://www.michigan.gov/documents/lara/BHCS\\_MMMP\\_MCL\\_333.26426i12345\\_Report\\_FINAL\\_12-4-13\\_441658\\_7.pdf](http://www.michigan.gov/documents/lara/BHCS_MMMP_MCL_333.26426i12345_Report_FINAL_12-4-13_441658_7.pdf)

[http://www.michigan.gov/documents/lara/BHCS\\_MMMP\\_PA\\_59\\_2013\\_Report\\_Sections\\_7261\\_and\\_2\\_2013\\_Report\\_FINAL\\_12-26-13\\_443192\\_7.pdf](http://www.michigan.gov/documents/lara/BHCS_MMMP_PA_59_2013_Report_Sections_7261_and_2_2013_Report_FINAL_12-26-13_443192_7.pdf)

<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

### Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

The Michigan Medical Marijuana Act could be amended to reflect the proposed rule changes.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There is not a feasible regulatory program that would operate through private market-based mechanisms. There are no other private systems utilized by other states.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Medical Marijuana Program considered submission of paper applications under certain circumstances, but this structure is neither feasible nor efficient.

### Additional Information

(36) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

As required by the Medical Marijuana Act, the prospective patient must complete a form and submit it to the Department. The instructions for completing this form are contained within the document.

## PART 4: REVIEW BY THE ORR

**Date Regulatory Impact Statement (RIS) received:**

5-20-2014

**Date RIS approved:**

5-23-2014

<b>ORR assigned rule set number:</b>	2013-105 LR
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<b>Date of disapproval:</b>	Explain:
<b>More information needed:</b>	Explain:

(ORR-RIS March 2014)