

# *OWOSSO*

## *Planning Commission*



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



## MEMORANDUM

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

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DATE: November 24, 2017

TO: Chairman Wascher and the Owosso Planning Commission

FROM: Susan Montenegro, Asst. City Manager / Director of Community Development

RE: Regular Planning Commission Meeting: November 27, 2017

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

I hope you all had an enjoyable Thanksgiving and have been able to spend time celebrating with those you love. Please be sure to attend the Glo Parade tonight if you are able. The parade will come down Washington Street and starts at 6:45 pm with lighting of the tree to take place after the parade. Hope to see you there!

Monday night's meeting will be spent discussing the attached draft language for Medical Marihuana Facilities within the city of Owosso. The draft has language that seems pretty standard among communities; however, I have highlighted sections that reflect different nuances from those communities as well. Please take time to read through the draft. Additionally, I have included an article from the Michigan Municipal League on local communities choosing to opt in or opt out. Although the article is meant for the municipal attorney I thought it was very informative.

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

Enjoy your weekend!

Sue

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

CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA: November 27, 2017

APPROVAL OF MINUTES: October 23, 2017

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from October 23, 2017.
3. Draft ordinance for Medical Marihuana.
4. Medical Marihuana Facilities Opt In/Opt Out – Michigan Municipal League

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARING:

1. None.

SITE PLAN REVIEW:

1. None.

BUSINESS ITEMS:

1. None.

ITEMS OF DISCUSSION:

1. Draft ordinance language for Medical Marihuana Facilities Licensing. Look at proposed ordinance language and discuss.
2. CIP. Meeting date has been set for December 7, 2017 to begin the task of choosing forms to use in the CIP. A report will be presented at the December meeting.

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: **Next meeting will be Monday, December 11, 2017 \*(moved ahead two weeks due to Christmas, please mark your calendar!)**

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

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

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

**Resolution 171127-01**

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

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

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

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved: \_\_\_\_

Denied: \_\_\_\_

**Resolution 171127-02**

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

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

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

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved: \_\_\_\_

Denied: \_\_\_\_

**Resolution 171127-03**

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

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

The Owosso Planning Commission hereby adjourns the November 27, 2017 meeting, effective at \_\_\_\_\_pm.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved: \_\_\_\_

Denied: \_\_\_\_

**MINUTES  
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION  
COUNCIL CHAMBERS, CITY HALL  
MONDAY, OCTOBER 23, 2017 – 6:30 P.M.**

**CALL TO ORDER:** Chairman Wascher called the meeting to order at 6:31 p.m.

**PLEDGE OF ALLEGIANCE:** Recited.

**ROLL CALL:** Susan Montenegro, acting recording secretary.

**MEMBERS PRESENT:** Chairman Wascher, Vice-Chair Livingston, Secretary Janae Fear, Commissioners Michelle Collison, Tom Cook, Jake Adams and Dan Law.

**MEMBERS ABSENT:** Commissioner Tom Taylor.

**OTHERS PRESENT:** Assistant City Manager Susan Montenegro, Christopher Germain of the MEDC.

**APPROVAL OF AGENDA:**  
**MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER COLLISON TO APPROVE THE AGENDA FOR OCTOBER 23, 2017.**

**YEAS ALL. MOTION CARRIED.**

**APPROVAL OF MINUTES:**  
**MOTION BY COMMISSIONER LIVINGSTON SUPPORTED BY COMMISSIONER COOK TO APPROVE THE MINUTES FOR THE SEPTEMBER 25, 2017 MEETING.**

**YEAS ALL. MOTION CARRIED.**

**COMMUNICATIONS:**

1. Staff memorandum.
2. PC minutes from September 25, 2017.
3. Capital Improvements Plan Guide – RRC.
4. CIP Guideline – MAP.
5. CIP Program – MAP.
6. Master Plan Update Guide – RRC.

**COMMISSIONER/PUBLIC COMMENTS**

None.

**BUSINESS ITEMS:**

1. **Capital Improvements Plan.** A requirement of obtaining certification in the Redevelopment Ready Communities (RRC) program is to create a capital improvements plan (CIP). Christopher Germain, of the MEDC, informed planning commission they are an advisory board and the bulk of the work is done by staff. Department heads will provide project and cost details, planning commission will then prioritize this information and tying it to the Master Plan. Timeline is to have the CIP approved prior to adoption of the city's annual budget in late spring.

Mr. Germain suggested forming a CIP core group with two members from planning commission, one member from city council, the finance director, assistant city manager, public services director and public safety director. The goal of this group will be to figure out which forms to use, define the CIP and prioritize. Janae Fear and Jake Adams volunteered to be the two members representing planning commission. Dan Law stated he would serve as the representative from city council.

Mr. Germain also shared the city of Owosso has been chosen by the Michigan Association of Planning as a location to host a Capital Improvements Plan training event. A date has not been chosen yet. Ms. Montenegro will provide potential locations to Mr. Germain.

**ITEMS OF DISCUSSION:**

1. Developing an RRC core group. This discussion did not take place.
2. Draft version of Parks and Recreation Plan. A draft version of the plan is available on the city website. Planning commission members were asked to look at the plan and give feedback.
3. Master Plan Update. Planning commission members discussed the process of updating the 2012 Master Plan and what that would entail. Christopher Germain, from the MEDC, pointed out the current master plan has a lot of the groundwork already in place. His recommendation is to review the master plan and utilize the Report of Findings from the RRC self-evaluation to implement suggested changes. The Master Plan needs to be updated prior to updating/redoing the zoning ordinance.

**COMMISSIONER/PUBLIC COMMENT:**

Commissioners discussed the Medical Marihuana Facilities Licensing Act workshops that were recently held. The next step is for planning commission to develop a draft ordinance. Part of the November and December meetings will be used for that purpose. Ms. Montenegro shared she will be speaking at the DDA's business owner's meeting on October 24<sup>th</sup> to inform business owners and get their input. Ms. Montenegro also shared she has reached out to Westown business owners and hopes to schedule a meeting with them soon.

**ADJOURNMENT:**

**MOTION BY VICE-CHAIR LIVINGSTON, SUPPORTED BY COMMISSIONER FEAR TO ADJOURN AT 8:00 P.M. UNTIL THE NEXT MEETING ON November 27, 2017.**

**YEAS ALL, MOTION CARRIED.**

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Janae L. Fear, Secretary

**ORDINANCE NO.**  
**AN ORDINANCE TO AUTHORIZE "MEDICAL MARIHUANA FACILITIES",**  
**TO THE CITY OF OWOSSO CODE OF ORDINANCES**

THE CITY OF OWOSSO ORDAINS:

**Section 1: Purpose and Intent**

- A. Purpose. The purpose of this Ordinance is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marihuana Facilities Licensing Act, so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical marihuana facilities can be operated in the City. Further, the purpose of this Ordinance is to:
1. Provide for a means of cultivation, processing, and distribution of medical marihuana to patients who qualify to obtain, possess, and use marihuana for medical purposes under the Michigan Medical Marihuana Act, (MCL 333.26421 et seq.), the Medical Marihuana Facilities Licensing Act (MCL 333.27101 et seq.) and the Marihuana Tracking Act (MCL 333.27901 et seq.);
  2. Protect public health and safety through reasonable limitations on medical marihuana commercial entity operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the facility and its personnel, and other health and safety concerns;
  3. Protect residential neighborhoods by limiting the location and the concentration of types of medical marihuana commercial entities to specific areas of the City;
  4. Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marihuana facilities;
  5. Coordinate with laws and regulations that may be enacted by the State addressing medical marihuana; and
- B. To restrict the issuance of medical marihuana facility licenses only to individuals and entities that have demonstrated an intent and ability to comply with this Ordinance. Legislative Intent. This Ordinance authorizes the establishment of medical marihuana facilities within the City of Owosso consistent with the provisions of the qualifying State of Michigan legislation; and subject to the following:
1. Medical marihuana cultivation and processing can have an impact on health, safety, and community resources, and this Ordinance is intended to permit medical marihuana cultivation and processing where it will have a minimal impact.
  2. Use, distribution, cultivation, production, possession, and transportation of medical marihuana remains illegal under Federal law and medical marihuana remains classified as a "controlled substance" by federal law.

3. The regulations for medical marihuana commercial entities are not adequate at the State level to address the impacts on the City of the commercialization of medical marihuana, making it appropriate for local regulation of the impact of medical marihuana commercial entities on communities.
  4. Nothing in this Ordinance is intended to promote or condone the distribution, or possession of marihuana in violation of any applicable law.
  5. This Ordinance is to be construed to protect the public over medical marihuana facility interests. Operation of a medical marihuana facility is a revocable privilege and not a right in the City. There is no property right for an individual or facility to engage or obtain a license to engage in medical marihuana as a commercial enterprise in the City.
  6. Because medical marihuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law; the City shall not therefore be required to issue warnings before issuing citations for violations of this Ordinance.
- C. Relationship to Federal Law. As of the effective date of this ordinance, marihuana is classified as a Schedule 1 controlled substance under Federal law which makes it unlawful to manufacture, distribute, cultivate, produce, possess dispense or transport marihuana. Nothing in this ordinance is intended to grant immunity from any criminal prosecution under Federal law.
- D. Relationship to State Law.
1. Except as otherwise provided by the Acts and this Ordinance, a licensee and its employees and agents who are operating within the scope of a valid State-issued operating license are not subject to criminal or civil prosecution under City ordinances regulating medical marihuana.
  2. Except as otherwise provided by the Acts and this Ordinance, a person who owns or leases real property upon which a medical marihuana facility is located and who has no knowledge that the licensee is violating or violated the Acts or a provision of this Ordinance, is not subject to criminal or civil prosecution under City ordinances regulating medical marihuana.
  3. Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act and all applicable rules promulgated by the State of Michigan regarding medical marihuana. Strict compliance with any applicable State law or regulation shall be deemed a requirement for the issuance or renewal of any license issued under this Ordinance, and noncompliance with any applicable State law or regulation shall be grounds for revocation or nonrenewal of any license issued under the terms of this Ordinance.
  4. A registered qualifying patient or registered caregiver is not subject to criminal prosecution or sanctions for any transfer of 2.5 ounces or less of medical marihuana to a safety compliance facility for testing.



5. In the event of any conflict, the terms of this Ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the Acts or the rules adopted by the Board to implement, administer or enforce the Acts.

#### E. City Liability and Indemnification

1. By accepting a license issued pursuant to this Ordinance, the licensee waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of medical marihuana facility owners, operators, employees, clients or customers for a violation of State or federal laws, rules or regulations.
2. By accepting a license issued pursuant to this Ordinance, all licensees, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including, but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility or use of a product cultivated, processed, distributed or sold that is subject to the license, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c).
3. By accepting a license issued pursuant to the Ordinance, a licensee agrees to indemnify, defend and hold harmless, the City, its officers, elected officials, employees, and insurers, against all liability, claims, penalties, or demands arising on account any alleged violation of the federal Controlled Substances Act, 21.U.S.C. §801 et. Seq. or Article 7 of the Michigan Public Health Code, MCL 33.7101 et seq.

### Section 2 Definitions

- A. "Acts" means any or any combination thereof of the following Michigan State laws:
  1. "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL 333.26421 et seq. as, may be amended.
  2. "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended
  3. "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended.
- B. "Applicant" means a person who applies for a State operating license. With respect to disclosures in an application, or for purposes of ineligibility for a license, the term applicant includes an officer, director, managerial employee of the applicant and a person who holds any direct or indirect ownership interest in the applicant.
- C. "Board" means the medical marihuana licensing board created pursuant to Part 3 of the MMFLA.

- D. "Caregiver" or "Registered primary caregiver" means a registered primary caregiver who has been issued a current registry identification card under the Acts,
- E. "Cultivate" or "Cultivation" means (1) all phases of medical marihuana growth from seed to harvest; and (2) the preparation, packaging, and labeling of harvested usable medical marihuana.
- F. "Department" or "LARA" means the Michigan refers to the State of Michigan State Licensing and Regulatory Affairs, or its successor agency.
- G. "Grower" means a licensee that is a commercial entity that cultivates, dries, trims, or cures and packages medical marihuana for sale to a processor or provisioning center.
- H. "Licensee" means an individual or legal entity holding a State operating license.
- I. "Medical Marihuana" means that term as defined in section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
- J. "Medical marihuana commercial entity" means any and all of the following medical marihuana facilities:
1. a grower
  2. a processor
  3. a secure transporter
  4. a provisioning center
  5. a safety compliance facility
- K. "Marihuana facility" means a location at which a licensee is licensed to operate under the Acts and this Ordinance.
- L. "Marihuana plant" means any plant of the species Cannabis Sativa L.
- M. "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable medical marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000PA92, MCL 289.1101 et seq.
- N. "Michigan Medical Marihuana Act" or "MMMA" means 2008 IL1, MCL 333.26421 et seq. as, may be amended.
- O. "Michigan Medical Marihuana Facilities Licensing Act" or "MMFLA" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended
- P. "Michigan Marihuana Tracking Act" means Public Act 282 of 2016, MCL 333.27901 et seq., as may be amended.
- Q. "Paraphernalia" means any equipment, product, or material of any kind that is designed for or used in growing, cultivating, producing, manufacturing, compounding, converting, storing, processing, preparing, transporting, injecting, smoking, ingesting, inhaling, or otherwise introducing into the human body, medical marihuana.

- R. "Patient" or "Registered Qualifying Patient" means a qualifying patient who has been issued a current registry identification card under the Acts or a visiting qualifying patient as that term is defined in the Acts.
- S. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- T. "Plant" means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.
- U. "Processor" means a licensee that is a commercial entity that purchases medical marihuana from a grower and that extracts resin from the marihuana or creates a medical marihuana-infused product for sale and transfer in packaged form to a provisioning center.
- V. "Provisioning center" means a licensee that is a commercial entity that purchases medical marihuana or medical marihuana infused product, from a grower or processor and sells, supplies, or provides medical marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers.
1. Provisioning center includes any commercial property where medical marihuana or medical marihuana infused products are sold at retail to registered qualifying patients or registered primary caregivers.
  2. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the Department's medical marihuana registration process in accordance with the Acts is not a provisioning center for purposes of this Ordinance.
- W. "Registered primary caregiver" means a primary caregiver who has been issues a current registry identification card under the MMMA.
- X. "Registered qualifying patient" means a qualifying patient who has been issued a current registry identification card under the MMMA or a visiting qualifying patient as that term is identified in the MMMA.
- Y. "Registry identification card" means that term as defined in the Acts.
- Z. "Rules" mean rules promulgated by the Department in consultation with the Board to implement the Acts.
- AA. "Safety compliance facility" means a licensee that is a commercial entity that receives medical marihuana from a medical marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results and may return the medical marihuana to the originating medical marihuana facility.
- BB. "Secure transporter" means a licensee that is a commercial entity that stores medical marihuana and transports medical marihuana between medical marihuana facilities for a fee.
- CC. "State" means Michigan unless otherwise specified.

DD. "State operating license" or, unless the context requires a different meaning, "license" means a license that is issued under the Acts and this Ordinance that allows the licensee to operate as 1 of the following medical marihuana commercial entities, as specified in the license:

1. A grower.
2. A processor.
3. A secure transporter.
4. A provisioning center.
5. A safety compliance facility.

EE. "Statewide monitoring system" or, unless the context requires a different meaning, "system" means an internet-based, Statewide database established, implemented, and maintained by the Department under the Acts, that is available to licensees, law enforcement agencies, and authorized State departments and agencies on a 24-hour basis for all of the following:

1. Verifying registry identification cards.
2. Tracking medical marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.
3. Verifying in commercially reasonable time that a transfer will not exceed the limit that the patient or caregiver is authorized to receive under section 4 of the Michigan Medical Marihuana Act, MCL 333.26424.

FF. "True party of interest" means:

1. For an individual or sole proprietorship: the proprietor and spouse.
2. For a partnership and limited liability partnership: all partners and their spouses. For a limited partnership and limited liability limited partnership all general and limited partners and their spouses. For a limited liability company: all members, managers and their spouses.
3. For privately held corporation: all corporate officers or persons with equivalent titles and their spouses and all stockholders and their spouses.
4. For a publically held corporation: all corporate officers or persons with equivalent titles and their spouses.
5. For a multilevel ownership enterprise: any entity or person that receives or has the right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
6. For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.
7. For a trust: the names of the beneficiaries. However, "true party of interest" does not mean:

- a. A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.
- b. A person who receives a bonus as an employee if the employee is on a fixed wage or salary and the bonus is not more than 25% of the employee's pre-bonus annual compensation or if the bonus is based on a written incentive or bonus program that is not out of the ordinary for the services rendered.

GG. "Usable medical marihuana" means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant.

**SECTION 3 Licensing of Medical Marihuana Facilities**

A. Number of Permitted Facilities The maximum number of each type of medical marihuana commercial entity permitted in the City is as follows:

Type of Facility	Number
Grower	
Processor	
Provisioning Center	
Safety Compliance Facility	
Secure Transporter	

- 1. Provided that while there is no limit on the number of growers and or processors, no more than four (4) structures in the City of Owosso Industrial Park may house grow, processing or provisioning facilities or any combination thereof, at any given time.
- 2. No medical marihuana facility shall be eligible to be issued a license unless at the time of application for such license, the location of the proposed facility complies with the zoning and separation distances from other uses as set forth in the City Zoning Ordinance as required for the specific type of medical marihuana facility for which licensure is being sought.
- 3. A licensee shall not operate a medical marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk.

B. License and Annual Fee Required

- 1. No person shall establish or operate a medical marihuana commercial entity in the City without first having obtained from the City and the State a license for each such facility to be operated. License certificates shall be kept current and publically displayed within the facility. Failure to maintain or display a current license certificate shall be a violation of this Ordinance.

2. An annual nonrefundable fee to defray the administrative and enforcement costs associated with medical marihuana facilities located in the City of not more than \$5,000 per licensed facility as set by resolution adopted by the City Council.
3. The annual nonrefundable fee required under this Section shall be due and payable with the application for a license and upon the application for renewal of any such license under this Ordinance.
4. The license fee requirement set forth in this Ordinance shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, State, or City ordinance, including, by way of example any applicable zoning or building permits.
5. The issuance of any license pursuant to this Ordinance does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.
6. A separate license shall be required for each activity or premise from which a medical marihuana facility is operated. Except as specifically provided in this Chapter, no two or more different medical marihuana facilities may be treated as one premise. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between a medical marihuana facility and any adjacent business.

### **Section 3.A General License Application Requirements**

- A. A person seeking a license pursuant to the Acts and the provisions of this Ordinance shall submit an application to the City on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present a suitable form of identification.
  1. Applicants must submit an initial review fee not to exceed \$2,500 with their application for a provisional license.
  2. Upon approval by the State, a final fee not to exceed \$2,500 must be submitted prior to starting operations.
- B. The applicant shall also provide the following information, under the penalty of perjury, on the City-issued form approved by or acceptable to, the City Clerk and Police Chief or their designee. Such information is required for the applicant, the proposed manager of the medical marihuana commercial entity, and all persons who are true parties of interest in the medical marihuana commercial entity that is the subject of the application:
  1. The name, address, date of birth, business address, business telephone number, social security number, and, if applicable, federal tax identification number;
  2. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the State of Michigan, as applicable;

3. The identity of every person having any ownership interest in the applicant with respect to which the license is sought.
4. If the applicant is not the owner of the proposed licensed premises, a notarized Statement from the owner of such property authorizing the use of the property for a medical marihuana facility;
5. A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;
6. A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which medical marihuana will be stored, grown, manufactured or dispensed.
7. An approved Special Land Use (SLU) Permit from the City of Owosso Planning Commission as well an approved Building Permit by the City of Owosso Building Official as appropriate.
8. A comprehensive facility operation plan for the marihuana commercial entity which shall contain, at a minimum, the following:
  - a. A security plan indicating how the applicant will comply with the requirements of this Chapter and any other applicable law, rule, or regulation. The security plan shall include details of security arrangements and will be protected from disclosure as provided under the Michigan Freedom of Information Act, MCL 15.231 et seq. If the City finds that such documents are subject to disclosure, it will attempt to provide at least 2 business days' notice to the applicant prior to such disclosure.
  - b. For grower and processing facilities, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the City;
  - c. A lighting plan showing the lighting outside of the medical marihuana facility for security purposes and compliance with applicable City requirements;
  - d. A plan for disposal of any medical marihuana or medical marihuana-infused product that is not sold to a patient or primary caregiver in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
  - e. A plan for ventilation of the medical marihuana facility that describes the ventilation systems that will be used to prevent any odor of medical marihuana off the premises of the business. For medical marihuana facilities that grow medical marihuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For medical marihuana businesses that produce medical marihuana-infused products, such

plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.

- f. A description of all toxic, flammable, or other materials regulated by a federal, state, or local authority that would have jurisdiction over the business if it was not a marihuana business, that will be used or kept at the medical marihuana business, the location of such materials, and how such materials will be stored.
  - g. A statement of the amount of the projected daily average and peak electric load anticipated to be used by the business and certification from a licensed electrician that the premises are equipped to safely accept and utilize the required or anticipated electric load for the facility.
9. Proof of Insurance. A licensee shall at all time maintain full force and effect for duration of the license, workers compensation as required by State law, and general liability insurance with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit issued from a company licensed to do business in Michigan having an AM Best rating of at least A-.
- a. A licensee shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds.
  - b. The policy shall name the City of Owosso and its officials and employees as additional insureds to the limits required by this section. A licensee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification to that effect. The licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the City Clerk within five (5) business days in the event of expiration or cancellation of coverage.
10. Whether an applicant has been indicted for, charged with, arrested for, or convicted of, plead guilty or nolo contendere to, forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled-substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise, including the date, the name and location of the court, arresting agency, and prosecuting agency, the case caption, the docket number, the offense, the disposition, and the location and length of incarceration.
11. Whether an applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a Statement describing the facts and circumstances concerning the application, denial, restriction,



suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken, and the reason for each action.

12. Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body, regarding the delinquency in the payment of, or a dispute over the filings concerning the payment of, any tax required under federal, State or local law, including the amount, type of tax, taxing agency, and time period intervals involved.
  13. A description of the type of medical marihuana facility; and the anticipated or actual number of employees.
  14. An acknowledgement and consent that the City, including the Owosso Police Department, may conduct a background investigation, including a criminal history check, and that the City may be entitled to full and complete disclosure of all financial records of the medical marihuana commercial entity, which may include any/all records of deposit, withdrawals, balances and loans upon request; and
  15. Any additional information that the City Clerk, Police Chief, Fire Chief, Public Works Director, Zoning Administrator, Building Official, Utilities Director, City Administrator and/or City Attorney or their designees reasonably determines to be necessary in connection with the investigation and review of the application.
- C. Consistent with the Acts and Freedom of Information Act, MCL 15.231 et seq., the information provided to the City Clerk pursuant to this section relative to licensure is exempt from disclosure.
- D. All medical marihuana commercial entities shall obtain all other required permits of licenses related to the operation of the medical marihuana commercial entity, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.
- E. If the City Clerk identifies a deficiency in an application, the applicant shall have five (5) business days to correct the deficiency after notification by the City Clerk.
- F. Upon an applicant's completion of the above-provided form and furnishing of all required information and documentation, the City Clerk shall accept the application and assign it an application number by facility type.
- G. Upon receipt of a completed application, the application will be distributed to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

### **Section 3.B Denial of Application**

- A. The City Clerk shall reject any application that does not meet the requirements of the Acts or this Ordinance, or any pertinent provision of any State of Michigan or City of Owosso laws, rules or regulations.

B. An applicant is ineligible to receive a license under this Ordinance if any of the following circumstances exist regarding a true party of interest of the applicant:

1. Conviction of or release from incarceration for a felony under the laws of Michigan, any other State or the United States within the past ten (10) years or conviction of a controlled substance related felony within the past ten (10) years.
2. Within the past five (5) years, conviction of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any State or been found responsible for violating a local ordinance in any State involving a controlled substance, dishonesty, theft or fraud that substantially corresponds to a misdemeanor in that State.
3. The applicant has knowingly submitted an application for a license that contains false, misleading or fraudulent information, or who has intentionally omitted pertinent information for the application for a license.
4. Is a member of the Board
5. The applicant fails to provide and maintain adequate premises liability and casualty insurance for its proposed medical marihuana facility.
6. Holds an elective office of a governmental unit of this State, another State, or the federal government; is a member of or employed by a regulatory body of a governmental unit in this State, another State, or the federal government; or is employed by a governmental unit of this State. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.
7. The applicant, if an individual, has been a resident of this State for less than a continuous 2-year period immediately preceding the date of filing the application. This requirement does not apply after June 30, 2018.
8. The applicant fails to meet other criteria established by State-issued rule.

C. Denial of Application; Due Process

- a. Any applicant, whose application is denied because of missing, incomplete, erroneous, false, misleading or negligent information or because of a lack of submission of full fees due, does not have the right to appeal the decision.
- b. Those applicants denied a license based on qualifications, may appeal the decision.
  - i. The applicant must submit a narrative Request for Due Process that includes detailed information and all supporting documentation for any/all points they wish to have City staff consider. City staff shall hear and decide questions or requests for due process that arise and make a decision upon the claim.
  - ii. Upon determination by City staff, the applicant has the right to request further due process. The City Administrator shall hear and decide questions or requests for due process that arise after City staff have reviewed and provided a decision and the applicant wishes to further appeal the denial.

iii. Should the applicant request further guidance, the City Council shall hear and decide questions or requests for due process that arise after City Administrator has reviewed and provided a decision that the applicant wishes to further appeal.

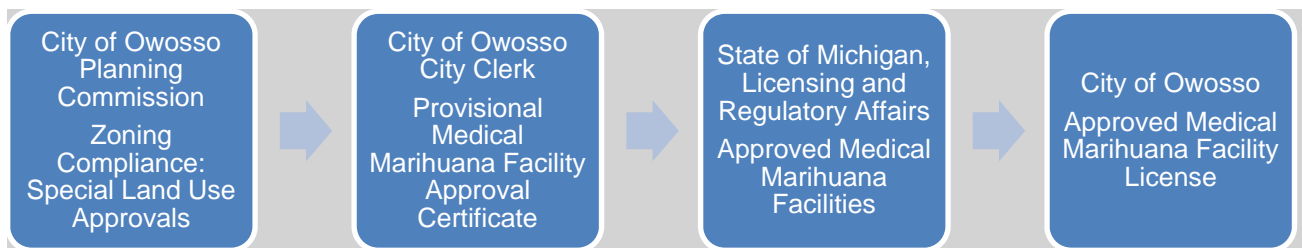
1. This shall be conducted at a public meeting of the Council and a concurring vote of a majority of the members of the City Council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this Ordinance.

2. The applicant must be present at the designated Council meeting or forfeits their right to due process.

3. The decision of the City Council is final.

### Section 3.C Issuance of Provisional Approval Certificate

A. Prior to opening any medical marihuana business in the City of Owosso, all proper permitting, licensing, fee submission and compliance documents must be finalized and approved. The submission process for provisional medical marihuana facility approvals is as follows:



a. Compliance with all City of Owosso Zoning Regulations proven by obtaining an approved Special Land Use zoning compliance permit from the City of Owosso Planning Commission. See accompanying City of Owosso zoning regulations.

b. A provisional medical marihuana facility approval certificate must be obtained from the City of Owosso City Clerk.

i. Complete applications for a medical marihuana facility license determined to be in full compliance with the requirements of this Ordinance shall be issued a provisional medical marihuana facility approval certificate in accordance with the procedures specified in this Section.

ii. The City Clerk shall issue a provisional medical marihuana facility approval certificate if the inspection, background checks, and all other information available to the City verify that the applicant as a grower, processor, safety compliance facility, or secure transporter has submitted a full and complete application, has made improvements to the business location consistent with the application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with the City Code of Ordinances and any other applicable law, rule, or regulation.

- iii. A provisional medical marihuana facility approval certificate means only that the applicant has submitted a valid application for a medical marihuana facility license, and is eligible to receive the appropriate medical marihuana facility license from the Board.
  1. The applicant shall not locate or operate a medical marihuana facility in the City without obtaining a license approved by the Board and issued by the State.
  2. A provisional certificate issued by the City on or before December 31, 2018 will expire and be void after one (1) year, or will expire and be void after six (6) months for a provisional license issued after January 1, 2019, if such State approval is not diligently pursued to completion by the applicant or on the date that State approval is denied to the applicant, whichever first occurs.
- iv. The conditions of an approval of a medical marihuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

### **Section 3.D Issuance of City Medical Marihuana Facility Operating License**

- A. An applicant holding an unexpired provisional certificate issued pursuant to this Ordinance and for which the Board has granted the appropriate medical marihuana facility State operating license shall provide proof of same to the City Clerk.
- B. Inspection. An inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating license. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.
- C. After verification that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation, the City Clerk shall issue a City medical marihuana operating license whose term shall run concurrent with the State operating license for the facility.
- D. Maintaining a valid medical marihuana facility license issued by the State is a condition for the issuance and maintenance of the City medical marihuana facility operating license issued under this Ordinance and the continued operation of any medical marihuana facility.
- E. The City of Owosso will authorize approved medical marihuana businesses license(s) to entities in the following order and on the condition that a license and facility location are available in the City per the City's Zoning Ordinance:
  - a. On or after December 15, 2017 the proposed medical marihuana facility has completed and received approvals as outlined in this Ordinance as verified by the City Clerk or their designee; **and**

- b. Paid all licensing fees due to the City of Owosso; **and**
- c. The entity(ies) holds an approved and fully authorized State of Michigan; Department of Licensing and Regulatory Affairs approved Medical Marihuana Facility License to the City Clerk; **and**
- d. An approved certificate of occupancy from the City of Owosso Fire Chief and/or Building Official.

### **Section 3.E License Forfeiture**

In the event that a medical marihuana facility does not commence operations within one (1) year of issuance of a City operating license, the license shall be deemed forfeited; the business may not commence operations and the license is not eligible for renewal.

### **Section 3.F License Renewal**

- A. A City medical marihuana facility operating license shall run concurrent with the State operating medical marihuana license issued for the facility, unless revoked as provided by law.
- B. A valid medical marihuana facility license may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of an annual license fee.
  - a. An application to renew a marihuana facility license shall be filed at least ninety (90) days prior to the date of its expiration. The annual renewal fee shall be assigned by the City Council and not to exceed \$5,000.
    - i. In the event that the renewal application is not submitted in accordance with this section, the City will assess a late fee of \$25.00/day for each day that the renewal application is submitted late.
    - ii. In the event that an application is not received by the date of expiration, an additional late fee shall be assigned by the City Council not exceed \$2,000, in addition to the daily late fees outlined in Section III.F.B.i and annual renewal fee.
    - iii. In the event that an application is not received within five (5) business days of expiration, the license will be revoked and all operations must immediately cease by Order of the Police Chief.
    - iv. A notice of local revocation will be issued to the State of Michigan and the licensee will have to resubmit all documentation and receive all approvals as a new entity should they wish to reopen their business.
- C. Prior to the issuance of a renewed medical marihuana facility license by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Ordinance.

### **Section 3.G Transfer, Sale or Purchase of License**

- A. A medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marijuana business license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this Ordinance.
- B. Each operating license is exclusive to the licensee and a licensee or any other person must submit an application for licensure with the City Clerk before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a license without prior application with the City Clerk is grounds for suspension or revocation of the license.
- C. After January 1, 2018 and in compliance with any/all rules issued by the Board regarding the sale, transfer or purchase of existing licenses; any entity that holds a Department issued license may transfer or sell their license to a qualifying applicant.
  - a. Any entity purchasing or receiving a transferred license must submit an application and all associated documentation and all fees.
  - b. The applicant who is receiving the transfer or purchasing the license must have submitted all new application fees (of not more than \$5,000 per licensed facility as set by resolution adopted by the City Council) and received all local and State approvals on all applications and associated documentation as well as all inspections as outlined in this Ordinance and the Acts prior to beginning or taking over operations.

### **Section 3.H License as Revocable Privilege**

- A. An operating license granted by this Ordinance is a revocable privilege granted by the City and is not a property right Granting a license does not create or vest any right, title, franchise, or other property interest.
- B. Each license is exclusive to the licensee, and a licensee or any other person must apply for and receive the City's approval before a license is transferred, sold, or purchased.
- C. A licensee or any other person shall not lease, pledge, or borrow or loan money against a license.
- D. The attempted transfer, sale, or other conveyance of an interest in a license without prior Board or City approval is grounds for suspension or revocation of the license or for other sanction considered appropriate by the City.
- E. Any effort to circumvent the protocol listed in this Ordinance and/or the City of Owosso Zoning Ordinance will result in the immediate denial of application or complete revocation of the City of Owosso issued Medical Marijuana Facilities License.

### **Section 3.I Nonrenewal, Suspension or Revocation of License.**

- A. The City may, after notice, suspend, revoke or refuse to renew a license for any of the following reasons:
  - 1. The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Ordinance or with any applicable State or local law or regulation;

2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the State or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license; or
  3. The medical marijuana commercial entity has been operated in a manner that adversely affects the public health, safety or welfare.
  4. The licensee has not submitted all necessary documentation and/or fees to renew their license.
- B. Evidence to support a finding under this section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana commercial entity or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana commercial entity, or an ongoing nuisance condition emanating from or caused by the medical marijuana commercial entity. Criminal conduct shall be limited to the violation of a State law or regulation or City ordinance.
- C. City staff (or ZBA) shall hear and decide questions that arise in the administration of this Ordinance, including appeals of suspension and revocations of City operating licenses.
1. Any licensee whose license has been suspended, revoked or not renewed because of missing, incomplete, erroneous, false, misleading or negligent information or because of a lack of submission of full fees due, does not have the right to appeal the decision.
  2. Those licensees denied a license based on qualifications, may appeal the decision.
    - i. The applicant must submit a narrative Request for Due Process that includes detailed information and all supporting documentation for any/all points they wish to have City staff consider. City staff shall hear and decide questions or requests for due process that arise and make a decision upon the claim.
    - ii. Upon determination by City staff, the applicant has the right to request further due process. The City Administrator shall hear and decide questions or requests for due process that arise after City staff have reviewed and provided a decision and the applicant wishes to further appeal the denial.
    - iii. Should the applicant request further guidance, the City Council shall hear and decide questions or requests for due process that arise after City Administrator has reviewed and provided a decision that the applicant wishes to further appeal.
      1. This shall be conducted at a public meeting of the Council and a concurring vote of a majority of the members of the City Council is necessary to reverse an order, requirement, decision or determination of an administrative official in the interpretation of this Ordinance.
      2. The applicant must be present at the designated Council meeting or forfeits their right to due process.

3. The decision of the City Council is final.

## **SECTION 4 Specific Medical Marihuana Facility Requirements**

### **Section IV4A Grower License**

- A. A grower may not hold more than one (1) class of grower license.
- B. An applicant and each investor in a grower license cannot have an interest in a secure transporter or safety compliance facility.
- C. A grower shall comply with the following:
  1. Until December 31, 2021, have an active employee who is an individual who has a minimum of two (2) years experience as a registered primary caregiver.
  2. While holding a license as a grower, not be a registered caregiver and not employ an individual who is simultaneously a registered primary caregiver.
  3. Enter all transactions, current inventory, and other information into the Michigan Statewide monitoring/tracking system as required by the Acts.
  4. Sell or transfer medical marihuana seeds or medical marihuana plants only to another grower by means of a licensed secure transporter.
  5. Sell or transfer medical marihuana, other than seeds, only to a licensed processor or provisioning center by means of a licensed secure transporter.
  6. The sale or transfer of medical marihuana waste must be conducted in a manner prescribed by the Acts, Department and/or Board. Absolutely no medical marihuana based waste products may be disposed of in a traditional waste elimination receptacle (trash can, dumpster, etc.).
  7. No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marihuana cultivated, produced, or distributed by a medical marihuana business.
  8. A medical marihuana business shall be ventilated so that the odor of medical marihuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marihuana business or at any adjoining use or property as outlined in the City's Zoning Ordinance.

### **Section 4.B Processor License**

- A. A processor license authorizes the purchase or transfer of medical marihuana only from a licensed grower and sale or transfer of marihuana-infused products or medical marihuana only to a licensed provisioning center.
- B. The applicant and each investor in a processor license cannot have an interest in a secure transporter or safety compliance facility.



C. A processor shall comply with all of the following:

1. Until December 31, 2021, have as an active employee an individual who has, a minimum of 2 years' experience as a registered primary caregiver who does not hold a current/valid registered primary caregiver license in any State.
2. While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
3. Enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required in this act, rules, and the Acts.
4. Transfer medical marihuana and medical marihuana-infused products only by means of a licensed secure transporter.

#### **Section 4.C Secure Transporter License**

- A. A secure transporter license authorizes the storage and transport of medical marihuana, marihuana-infused products and money associated with the purchase or sale of medical marihuana and medical marihuana-infused products between medical marihuana facilities at the request of a person with legal custody of the medical marihuana, medical marihuana-infused products or money. It does not authorize transport to a registered qualifying patient or registered primary caregiver who is not a licensee.
- B. An applicant and each investor with an interest in secure transporter license cannot have an interest in a grower, processor, provisioning center or safety compliance facility and cannot be a registered qualifying patient or a registered primary caregiver.
- C. A secure transporter which operates from a medical marihuana facility located within the City shall secure a license from the City. A State-licensed secure transporter which does not have a facility located in the City, may, without securing a license from the City operate on public streets and highways within the City.
- D. A secure transporter shall comply with all of the following:
  1. Each driver transporting medical marihuana, medical marihuana-infused products, or money related to the purchase or sale of medical marihuana or medical marihuana-infused products must have a chauffeur's license issued by the State of Michigan.
  2. Each employee of a secure transporter who has custody of medical marihuana, medical marihuana-infused products or money that is related to the purchase or sale of medical marihuana or medical marihuana-infused products shall not have been convicted of or released from incarceration for a felony under the laws of this State, any other State, or the United States within the past five (5) years or have been convicted of a misdemeanor involving a controlled substance within the past five (5) years.
  3. Each vehicle shall be operated with a two- (2) person crew with at least one (1) individual remaining with the vehicle at all times during the transportation of medical marihuana or medical marihuana-infused products.

4. A route plan and manifest shall be entered into the Statewide monitoring/tracking system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement officer upon request.
5. The medical marihuana and medical marihuana-infused products shall be transported in (one) 1 or more sealed containers and shall not be accessible while in transit.
6. A secure transporting vehicle shall not bear markings or other indication that it is carrying medical marihuana or medical marihuana-infused product.
7. A secure transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of medical marihuana or medical marihuana-infused products to determine compliance with this Act.
8. A secure transporter shall enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required by the Acts.
9. When determining and reporting the route to take, a secure transporter shall select the most direct route that provides efficiency and safety.

#### **Section 4.D Provisioning Center License**

- A. A licensed provisioning center is authorized:
  1. To purchase or transfer medical marihuana only from a licensed grower;
  2. To purchase or transfer medical marihuana or medical marihuana-infused products from a licensed processor; and
  3. Sell or transfer medical marihuana or medical marihuana-infused products only to registered qualifying patients and registered qualifying caregivers.
- B. All transfers of medical marihuana and medical marihuana-infused products to a provisioning center from a separate medical marihuana facility shall be by means of a secure transporter.
- C. A provisioning center license authorizes the provisioning center to transfer medical marihuana to or from a safety compliance facility for testing by means of a secure transporter.
- D. An applicant and each investor in a provisioning center cannot have an interest in a secure transporter or safety compliance facility.
- E. A provisioning center shall comply with all of the following:
  1. Sell or transfer medical marihuana to a registered qualifying patient or registered primary caregiver only after it has been tested and bears the label required for retail sale.
  2. Enter all transactions, current inventory, and other information into the Statewide monitoring system as required in this act, rules, and the Acts.

3. Before selling or transferring medical marihuana or medical marihuana-infused products to a registered qualifying patient or to a registered primary caregiver on behalf of a registered qualifying patient, inquire of the Statewide monitoring/tracking system to determine whether the patient and, if applicable, the care giver holds a valid, current, unexpired and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.
4. Not allow the sale, consumption or use of alcohol or tobacco products on the premises.  
(can we limit consumption of marihuana product on site?)
5. Not allow a physician, nurse practitioner, physician's assistant or other registered medical professional to conduct medical examination or issue a medical certification document on the premises.
6. No marihuana plants shall be located in a provisioning center.

#### **Section 4.E Safety Compliance Facility License**

- A. A licensed safety compliance facility is authorized to:
  1. Receive medical marihuana from, test medical marihuana for, and return medical marihuana to a medical marihuana facility; and
  2. Receive from, test for, and return 2.5 ounces or less of medical marihuana to a registered primary caregiver.
- B. A safety compliance facility must be accredited by an entity approved by the Board by 1 year after the date the license is issued or have previously provided drug testing services to this State or this State's court system and be a vendor in good standing in regard to those services. The Board may grant a variance from this requirement upon a finding that the variance is necessary to protect and preserve the public health, safety, or welfare.
- C. An applicant and each investor with any interest in a safety compliance facility cannot have an interest in a grower, secure transporter, processor, or provisioning center.
- D. A safety compliance facility shall comply with all of the following:
  1. Perform tests to certify that medical marihuana is reasonably free of chemical residues such as fungicides and insecticides.
  2. Use validated test methods to determine tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid levels.
  3. Perform tests that determine whether medical marihuana complies with the standards the Board establishes for microbial and mycotoxin contents.
  4. Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.

5. Enter all transactions, current inventory, and other information into the Statewide monitoring/tracking system as required in this rule and the Acts.
6. Have a secured laboratory space that cannot be accessed by the general public.
7. Retain and employ at least one (1) staff member with a relevant advanced degree in medical or laboratory science if/as required by the Acts.

## **SECTION 5 General Requirements**

### **SECTION 5.A Compliance with Rules; Inspections**

- A. A licensee shall strictly comply with the rules and emergency rules that may from time to time be promulgated by the Department and the City of Owosso.
- B. A licensee shall adopt and use the Statewide monitoring system of inventory control and tracking authorized by the Marihuana Tracking Act so as to provide the capability for the licensee to comply with the State requirements applicable to the type of license held by the licensee.
- C. A medical marihuana facility and all articles of property in the facility are subject to inspection, search and examination at any time by a member of the Department of State Police or Owosso Public Safety.
- D. Any failure by a licensee to comply with Department rules or the provisions of this Ordinance is a violation of this Ordinance and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this Ordinance.

### **SECTION 5.B Prohibited Acts**

- A. It shall be unlawful for any licensee to permit the consumption of alcohol beverages on the licensed premises.
- B. It shall be unlawful for any licensee holding a provisioning venter license, or for any agent, manager, or employee thereof to:
  1. Sell, give, dispense or otherwise distribute medical marihuana or medical marihuana paraphernalia from any outdoor location;
  2. Sell, give, dispense or otherwise distribute to any patient or primary caregiver who is not a licensee more usable form of medical marihuana (including the useable medical marihuana equivalent of medical marihuana-infused products) within any seven (7) day period of time than they are allowed by the MMMA to possess.
  3. It shall be unlawful for retail medical marihuana establishments to distribute medical marihuana or medical marihuana-infused products to a consumer free of charge.
  4. It shall be unlawful for any licensee to permit the consumption of retail medical marihuana or retail medical marihuana products on the licensed premises.

5. It shall be unlawful for any licensee to sell medical marihuana or medical marihuana products at a licensed provisioning center at any time other than between the hours of 7:00 a.m. and 10:00 p.m. daily. (?)

#### Signage and advertising.

All signage and advertising for a medical marihuana facility shall comply with all applicable provisions of this Code and the City Zoning Code. In addition, it shall be unlawful for any licensee to:

(1) Use signage or advertising with the word "marihuana", "marijuana" or "cannabis" or any other word, phrase or symbol commonly understood to refer to marihuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols;

(2) Use advertising material that is misleading, deceptive or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors;

(3) Advertise in a manner that is inconsistent with the medicinal use of medical marihuana or use advertisements that promote medical marihuana for recreational or any use other than for medicinal purposes;

#### Warning Signs

There shall be posted in a conspicuous location in each facility a legible sign containing the content of this section warning that:

A. The possession, use or distribution of marihuana is a violation of federal law;

B. It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marihuana; and

C. No one under the age of eighteen (18) years is permitted on the premises.

#### Security requirements.

A. Security measures at all licensed premises shall comply with the requirements of all applicable rules and regulations promulgated by the Department.

B. A description of the security plan shall be submitted with the application for a City operating license. The security system, shall be maintained in good working order and provide twenty-four hours per day coverage. A separate security system is required for each facility.

C. The security plan must include, at a minimum, the following security measures:

(1) Cameras. The medical marihuana business shall install and use security

cameras to monitor and record all areas of the premises (except in restrooms) where persons may gain or attempt to gain access to marihuana or cash maintained by the medical marihuana business entity. Cameras shall record operations of the business to the off-site location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty-five (45) days in a secure offsite

location in the City or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The offsite location shall be included in the security plan submitted to the City and provided to the Department of Public Safety upon request, and updated within seventy-two hours of any change of such location.

(2) Use of Safe for Storage. The medical marihuana business shall install and use a safe for storage of any processed marihuana and cash on the premises when the business is closed to the public. The safe shall be incorporated into the building structure or securely attached thereto. For medical marihuana-infused products that must be kept refrigerated or frozen, the business may lock the refrigerated container or freezer in a manner authorized by the city in place of use of a safe so long as the container is affixed to the building structure.

(3) Alarm System. The medical marihuana business shall install and use an alarm system that is monitored by a company that is staffed twenty-four hours a day, seven days a week. The security plan submitted to the city shall identify the company monitoring the alarm, including contact information, and updated within seventy-two hours of any change of monitoring company.

Visibility of activities; control of emissions.

A. All activities of marihuana commercial entities, including, without limitation, the cultivating, growing, processing, displaying, manufacturing, selling, and storage of marihuana and marihuana-infused products shall be conducted indoors and out of public view.

B. No medical marihuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a marihuana commercial entity must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a marihuana commercial entity, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Marihuana cultivation.

A. Cultivation, generally .

(1) No marihuana cultivation shall be conducted openly or publicly.

(2) Marihuana cultivation shall comply with all applicable requirements of the laws and regulations of the City and the State.

(3) Marihuana cultivation shall not occur in detached outbuildings.

(4) All marihuana cultivation shall take place in a locked and enclosed space.

B. All marihuana products kept on premises where marihuana plants are grown shall be stored in a locked and enclosed space.

C. The use of any lighting for indoor marihuana cultivation shall be limited to light-emitting diodes (LEDs), compact fluorescent lamps (CFLs) or other fluorescent lighting. All high-intensity discharge (HID) lighting, including, but not limited to, mercury-vapor lamps, metal-halide (MH) lamps, ceramic MH lamps, sodium-vapor lamps, high-pressure sodium (HPS) lamps and xenon short-arc lamps, is prohibited.

D. No marihuana cultivation activity shall result in the emission of any gas, vapors, odors, smoke, dust, heat or glare that is noticeable at or beyond the property line of the dwelling at which the cultivation occurs. Sufficient measures and means of preventing the escape of such substances from a dwelling must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat or glare or other substances exit a dwelling, the owner of the subject premises shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The owner shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and the lessee shall be jointly and severally liable for such conditions.

#### Odor Control

A. No person, tenant, occupant, or property owner shall permit the emission of marihuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.

B. Whether or not a marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.

C. A grower or a processor shall install and maintain in operable condition a system which precludes the emission of marihuana odor from the premises.

### SECTION 5.C Reports of Crime

Reports of all criminal activities or attempts of violation of any law at the medical marihuana facility or related thereto shall be reported to City of Owosso Police Department within twelve hours of occurrence, or its discovery, whichever is sooner.

### SECTION 5.D Inspection of Licensed Premises

- A. During all business hours and other times when the premises are occupied by the licensee or an employee or agent of the licensee, all licensed premises shall be subject to examination and inspection by City of Owosso Police Department and all other City departments for the purpose of investigating and determining compliance with the provisions of this Ordinance and any other applicable State and local laws or regulations.
- B. Consent to Inspection. Application for a medical marihuana business license or operation of a medical marihuana business, or leasing property to a medical marihuana business, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the City Administrator, or their designee, to conduct routine examinations and inspections of the medical marihuana business to ensure compliance with this Ordinance or any other applicable law, rule or regulation.

- C. For the purposes of this Ordinance, examinations and inspections of medical marihuana businesses and recordings from security cameras in such businesses are part of the routine policy of enforcement of this Ordinance for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana business, and the adjoin properties and neighborhoods.
- D. Application for medical marihuana business license constitutes consent to the examination and inspection of the business as a public premise in accordance with the Acts.
- E. A licensee, or an employee or agent of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or a City inspector or investigator in the course of making an examination or inspection of the licensed premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, inspector, or investigator in the performance of his or her duties to enforce this Ordinance, the Acts, or applicable State administrative rules.

#### **SECTION 5.E Other Laws Remain Applicable**

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marihuana, the additional or stricter regulation shall control the establishment or operation of any medical marihuana commercial entity in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Section, and noncompliance with any applicable State law or regulation shall be grounds for the revocation or suspension of any license issued hereunder.

#### **SECTION 5.F Grant of Administrative Authority**

The City Clerk is granted the power and duty through its official designee to fully and effectively implement and administer the license application process and issuance of Provisional Approval Certificates and Operating Licenses issued by the City under this Ordinance. The City Clerk, after consultation with other City departments, may promulgate such rules as necessary to implement and administer this Ordinance.

#### **SECTION 5.G Miscellaneous**

- A. **Violations and Penalties:** In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Ordinance, any person, including, but not limited to, any licensee, manager or employee of a medical marihuana commercial entity, or any customer of such business, who violates any of the provisions of this Section, shall be guilty of a misdemeanor punishable in accordance with §1.7 of this Code unless a different penalty is provided herein. "
- B. **Repealer:** All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.
- C. **Severability:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.



D. **Effective Date:** The provisions of this ordinance shall become effective \_\_\_\_\_, 2017 and only if an ordinance is adopted by the City Commission amending the City Zoning Code to permit the location of medical marihuana facilities in the City.



michigan municipal league



# Medical Marijuana Facilities - Opt In/Opt Out

November 15, 2017

# CONSIDERATIONS FOR THE MUNICIPAL LAWYER

This publication is for municipal lawyers whose clients are considering “opting in” to allow medical marihuana uses under Public Act 281 of 2016, the Medical Marihuana Facilities Licensing Act (MMFLA). It will not address most of the substantive requirements of that law, or of its companion laws, Public Acts 282 and 283, or how they operate to establish the new “seed-to-sale” state regulatory scheme. It assumes that by now most municipal attorneys have familiarized themselves with the basics of how those laws operate to authorize the five kinds of facilities under consideration (grow operations, processing centers, testing facilities, secure transporters, and provisioning centers).

Rather, the purpose of this publication is to assemble some thoughts on advising municipalities about the sorts of things that they should consider when evaluating their options under the new state regulatory scheme. Collected below are some of the concerns to be addressed first in deciding whether to opt in to authorize the medical marihuana uses now allowed, and second, if your municipality chooses to do so, what sort of things should be in the regulatory ordinance(s) that must be adopted in order to do so.

The state’s Department of Licensing and Regulatory Affairs has begun issuing Advisory Bulletins and other information that is relevant and useful as this process unfolds, and that needs to be regularly monitored for updates. The “home page” for the Bureau of Medical Marihuana Regulation (BMMR), which is responsible for oversight of medical marihuana in Michigan, is found at [www.Michigan.gov/medicalmarihuana](http://www.Michigan.gov/medicalmarihuana).

In a bulletin issued on October 26, 2017, the BMMR has confirmed that “municipalities are not required to ‘opt out’ or prohibit marihuana facilities within their boundaries. If municipalities do nothing, marihuana facilities will be unable to be licensed at the state level to operate in their locality.” <http://www.michigan.gov/lara/0,4601,7-154-79571-450903--,00.html>. The bulletin also implicitly confirms that there is no deadline to opt in. So, a community that decides to wait beyond the December 15, 2017 date on which applicants may begin submitting applications to the state, may do so without waiving any future opt-in rights. What follows is intended for use by those who might want to opt in.

This paper is being provided by the Michigan Municipal League (MML) to assist its member communities.

The MML Legal Defense Fund authorized its preparation, by Thomas R. Schultz of Johnson, Rosati, Schultz & Joppich. The document does not constitute legal advice and the material is provided as information only. All references should be independently confirmed.

The information contained in this paper might become outdated as additional materials are released by LARA and the BMMR and administrative rules are put in place.

The spelling of “marihuana” in this paper is the one used in the Michigan statute and is the equivalent of “marijuana.”

## OTHER RESOURCES

The Michigan Municipal League has compiled numerous resource materials on medical marihuana. They are available via the MML web site at: [www.mml.org/resources/information/mi-med-marihuana.html](http://www.mml.org/resources/information/mi-med-marihuana.html)

# DECIDING WHETHER TO OPT IN

## What sorts of arguments have been made in favor of opting in?

### FILLING A NEED

An argument that your clients will hear frequently from the industry is that allowing medical marijuana facilities will fill a need in the community and provide easier access to medical marijuana for people who are in chronic pain due to a debilitating medical condition. This argument assumes the medical benefits of marijuana and focuses on the pain-relieving aspects of it. There are some effective advocates on the industry side on this point, and you may see some very personal messaging at your meeting.

### IT'S WHAT THE PEOPLE WANT

A similar argument is that the authorization of medical marijuana use in a community reflects the attitude of a majority of a particular locality. Proponents regularly point out the healthy margin by which the initial medical marijuana law passed in 2008, and the number of states where marijuana uses have been authorized over the years since then. This is obviously something that each community will need to evaluate and address; some areas seem “all in” on the issue, while others have met substantial opposition.

### REVENUE GENERATION

Proponents argue that medical marijuana facilities can generate revenue for a community. The act allows a municipality to charge a nonrefundable fee in an amount “not more than” \$5,000 annually to help “defray administrative and enforcement costs.” MMFLA, Section 205(3). Of course, the fees charged probably do need to approximate those costs, so this fee might end up a wash.

Arguments have also been made that the uses can possibly fill vacant buildings or lots and thereby increase property tax revenues. Some jobs will likely be created—i.e., provisioning centers will require retail workers, large grow operations could employ multiple people to engage in plant cultivation, etc.

### EASIER MONITORING

Proponents also argue that allowing commercial medical marijuana activities, and regulating them through ordinances that focus production and distribution into fewer sites, could make law enforcement monitoring easier.

### AVOIDS LEGISLATION BY CITIZEN “INITIATIVE”

Some municipal lawyers and others have pointed out the practical concern that would exist if a local elected body determines to “opt out” by not enacting an ordinance to allow marijuana facilities, only to have the initiative provisions of its charter be used to draft an ordinance to place before the voters without any input by that legislative body. Adopting an ordinance limiting the number of facilities and their location through study and debate might be preferable to leaving that task to the industry or your local residents by the initiative process where available.

Generally, the initiative process for local legislation (ordinance amendments) is available to cities under the Home Rule City Act (HCRA), MCL 117.4i(g) where a city charter permits it. There is no specific statutory authority for townships or general law villages to use the initiative process to amend ordinances, although it may be available in a charter village. There is probably no right in any municipality to amend a zoning ordinance by initiative. See *Korash v Livonia*, 388 Mich 737 (1972). Charter amendments by voter-initiative are permitted in home rule cities (MCL 117.18-25) and charter villages (MCL 78.14-18).

### SERVE AS A “TEMPLATE” FOR RECREATIONAL MARIJUANA?

It seems likely that “recreational” marijuana will eventually get on the ballot in Michigan as it has elsewhere in the country. Current expectations are that this could be as early as November 2018. Having a regulatory scheme in place if and when that happens—even if it might need to be changed or revisited—could put the community in a better position to react than if the policymakers have never addressed the issue.

### EARLY APPLICANTS THE BEST APPLICANTS?

An argument can be made that delay just means that your community is only missing out on the best, most reputable industry members—those who might be more likely to cooperate with the community as part of an early approval process. If you assume that everyone will have to opt in eventually, what could be left by the time you do might not be the best local partners.

# What are the reasons to be cautious/skeptical?

## FEDERAL LAW ISSUE

All of these uses are still illegal under federal law, and we don't know for sure what the federal government will do in the future with regard to these specified uses. The status quo is that federal attention is diverted away from uses that are "authorized" by and operated generally in compliance with state laws—but who knows if that will last? Attorney General Jeff Sessions has made his view clear: "Good people don't smoke marijuana."

On the other hand, the industry seems to be growing at a pace that exceeds the federal government's ability (time/resources) to do much about it. The likelihood that a community (or its elected officials) that is complying with this state regulatory scheme will face federal criminal sanctions for colluding or cooperating with individuals engaged in the violation of federal laws seems small and getting smaller. That said, there are no guarantees and your clients should be made aware of that.

In October, the National League of Cities presented a very thorough webinar "Marijuana Federalism" for state municipal leagues. It was conducted by Professor Robert Mikos of Vanderbilt University Law School. Articles and books written by Professor Mikos can be found at: <https://law.vanderbilt.edu/bio/robert-mikos>; also within the resource materials available from the Municipal League, as referenced at the bottom of Page 2.

Some providers are dangling significant amounts of cash to local government officials (on top of the fees and taxes allowed by the new law) to be used at the municipality's discretion for things like police services, patrol vehicles, etc. Those sorts of monetary exchanges, which don't have the official "cover" of a state law allowing them, seem dangerous to get involved in.

## COSTS MIGHT OUTWEIGH FEES AND TAX-SHARING

A community might be required to hire additional police and/or code enforcement personnel to ensure that medical marijuana facilities are in compliance with existing laws, and to protect those facilities from theft, vandalism, and other crimes. While \$5,000 as an annual fee might seem like a significant amount of money, by the time a municipality has had an application reviewed by staff and consultants and conducted hearings (if required under an ordinance), and performed any background checks that it might want to do, the amount might not seem so generous.

Nor are most communities likely to see substantial revenue from the tax provided for in the statute. Assume for this discussion gross retail sales throughout the state of one billion dollars (\$1,000,000,000.00). The state's 3% excise tax on provisioning centers would raise \$30,000,000. Under the MMFLA, only 25% (\$7,500,000) of that would go to Michigan municipalities. That amount is split among municipalities "in proportion to the number of marijuana facilities within the municipality." Assume your city gets 1% of that revenue—that's \$75,000. For many municipalities, that amount may not justify the increased costs that result from opting in (and for many smaller communities considering one or two provisioning centers, the 1% number seems high).

## PROPERTY TAXES MAY TAKE SOME TIME TO SHOW UP

Under our state's property tax system, communities might not start seeing significant property tax revenue just because buildings are suddenly occupied. Headlee and Proposal A could dampen the economic benefits that might otherwise occur, and assessments are certainly subject to challenge.

Moreover, some kinds of uses may actually have a negative effect on a local tax base. For example, if a formerly industrial property becomes classified as "agricultural" as a result of a grow operation, the valuation might actually go down, as opposed to up.

## LOSS OF CONTROL

Once it "opts in," a community is at the mercy of the BMMR. The language of the MMFLA is unfortunately not as clear as it could be on the state's obligation to deny a license if the applicant does not meet the requirements of a local ordinance. While we know what happens if your municipality does not opt in—no license can be issued—once an ordinance is drafted to allow a particular use, the language of the statute is unfortunately fuzzy as to whether the state has to follow it. What happens if the state does not follow it? The municipality could well find itself in court seeking to enforce its ordinance.

## NUISANCE/SAFETY ISSUES

Many of these large uses do emit significant odors that some find objectionable. In addition to odors, there are noise (generators), heat, and lighting issues (either with regard to the use itself or for security). The MMFLA does allow municipalities to regulate these effects, though.

## CIVIL LIABILITY

Like any land use decision, approval of these sorts of uses can be challenged. Neighbors may claim everything from nuisance to diminution in land values.

## ENVIRONMENTAL EFFECTS UNKNOWN

There will be environmental effects from some of these uses, particularly the grow and processing operations: pesticides, fertilizers, energy consumption, water consumption, and disposal of waste products are all certain to result from these uses. As new uses, there may not be sufficient regulation at the state level, so these matters may fall to local governments to monitor, which may or may not be possible in every community.

## COMMUNITY STAKEHOLDER OPPOSITION

Some communities have reported hearing from significant community stakeholders—e.g., large employers, health care providers, community foundations, influential business leaders, etc.—who have made known their specific opposition to the presence of marihuana facilities in the community, and corresponding intentions to react in some way if they are allowed. At a minimum, these stakeholders should be invited to participate in the discussion at the outset, so that all interests are heard.

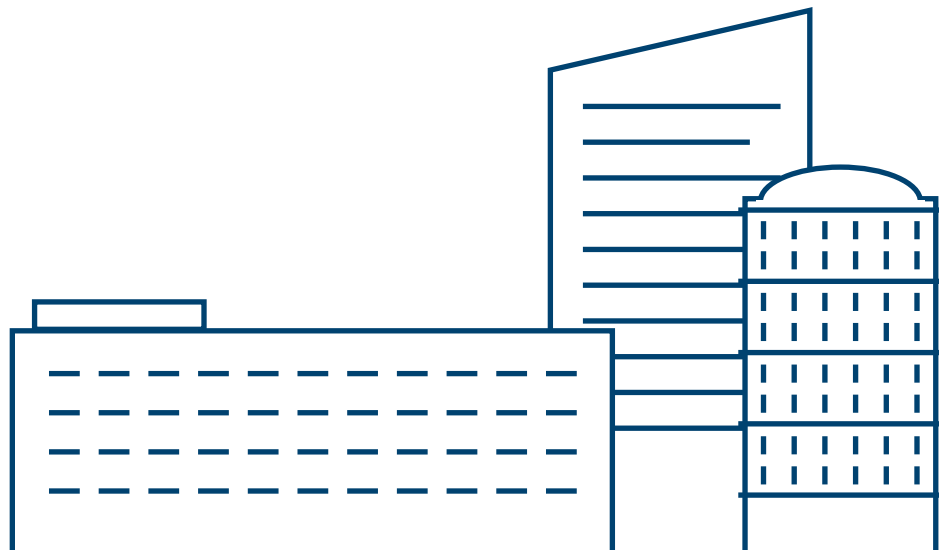
# Should you just...wait a bit?

## NO FINAL/BINDING LARA REGULATIONS YET

The MMFLA requires LARA to draft rules to govern the issuance of licenses at the state level. Those regulations are not yet complete. Emergency (or temporary) rules will be in place soon, but they are likely to be modified and updated on an on-going basis, until the full administrative rules process is completed. It might be prudent to wait to craft your municipal regulatory scheme until you better know how the state intends to regulate these facilities and review and issue its state licenses. In particular, the two-step process at the state level currently being discussed (see below) could affect the timing of local reviews and approvals, and right now the state seems uninterested in doing much more than vetting applicants and leaving the local governments to decide who gets to operate (which is the hard part).

## RECREATIONAL COMING?

There may also be a ballot question for 2018 to simply legalize even recreational marihuana. An initiative question in Michigan requires just over 250,000 valid signatures on a petition to qualify for the state-wide ballot. People inside the marihuana industry are actively working to secure those signatures. Depending on how this question is framed, any regulations that are adopted now will likely need to be revisited/revised—probably through the same public process for adopting ordinances now. Does your community want to do that twice in the span of a couple years?



# Opting In? Here Are the Kinds of Things You Should Think About in Drafting Your Local Regulatory Framework

Section 205(1) of Public Act 281 currently provides:

*A marihuana facility shall not operate in a municipality unless the municipality has adopted an ordinance that authorizes that type of facility. The municipality may adopt an ordinance to authorize 1 or more types of marihuana facilities within its boundaries and to limit the number of each type of marihuana facility.*

*The municipality may adopt other ordinances relating to marihuana facilities within its jurisdiction, including zoning regulations, but shall not impose regulations regarding the purity or pricing of marihuana or interfering or conflicting with statutory regulations for the licensing of marihuana facilities.*

## State BMMR Confirms Substantial Local Regulatory Authority

On October 26, 2017, the BMMR issued an advisory bulletin affirming the need for a local ordinance process to be in place before a state license can issue:

The Bureau intends to rely on the local municipality's authorizing ordinance to determine if an applicant is in compliance with certain provisions of the MMFLA, including:

- The types of...[facilities] permitted.
- The maximum number, if applicable of each type of...facility permitted.
- Any local zoning regulations that apply... including whether or not licensees may apply for special use permits.

See BMMR link at <http://www.michigan.gov/lara/0,4601,7-154-79571-450903--,00.html>.

As of this writing, the BMMR is only starting to flesh out its thoughts on how the state licensing process will proceed in light of the local authority. So far, it has outlined a process of "prequalification" of applicants by the state, which will involve screening individuals, as a first step, with the second step of the process coming after the municipality has approved the applicant under its local regulations. See October 12 Advisory Bulletin, "Medical Marihuana Facilities License Application Process." See link at <http://www.michigan.gov/lara/0,4601,7-154-79571-449688--,00.html>. Having to choose the successful applicants from a list of candidates approved by the state is not necessarily what many local government officials were hoping for as a process.

On October 20, 2017, the state issued a document entitled "MMFL Application Document Checklists," that confirmed that it is currently looking at a process that contemplates local review and approval before a state license is issued. See link at [michigan.gov/lara/0,4601,7-154-79571-450302--,00.html](http://michigan.gov/lara/0,4601,7-154-79571-450302--,00.html).

Note that the "checklist" document provides additional helpful information as to what the state will be reviewing in issuing individual pre-qualifications and final approvals.

The most recent bulletin issued by LARA, on November 2, 2017, addresses how the state intends to deal with existing medical marihuana facilities. It indicates that LARA will adopt some "emergency rules" for the purpose of confirming that a facility's active operation, before securing a valid license from the state, will not adversely affect that facility's right to a state license, so long as:

1. The applicant's proposed marihuana facility is in a municipality that has adopted an authorizing ordinance prior to December 15, 2017, and the municipality is pending adoption of an ordinance under Section 205 of the MMFLA; or
2. The applicant's proposed marihuana facility is in a municipality that has adopted an authorizing ordinance pursuant to Section 205 of the MMFLA prior to December 15, 2017.

[http://www.michigan.gov/documents/lara/BMMR\\_Advisory\\_Temporary\\_Operation\\_605078\\_7.pdf](http://www.michigan.gov/documents/lara/BMMR_Advisory_Temporary_Operation_605078_7.pdf)

# What Kinds of Ordinances Should You Consider?

So, other than regulating purity and pricing, or directly conflicting with the state regulations—which have yet to be adopted—we know that municipalities can regulate significant aspects of marijuana facilities within their boundaries. Most of the discussion about how to do that by both municipal attorneys and attorneys for the medical marijuana industry has focused on two separate kinds of ordinances:

- **ZONING ORDINANCE** amendments generally relating to the location of medical marijuana facilities and the development approval process.
- **CODE/POLICE POWER** ordinances relating to the number of facilities within the municipality, a licensing process that works with the state’s process, and listing responsibilities and obligations of facility operators, as well as some basic safety regulations aimed at new practices (e.g., butane extraction).

What makes the regulation of these uses at the local level difficult (or at least complicated) is as much timing as anything else—timing the issuance of a local license/approval of an application with the state’s licensing process, and timing the license approval process with the development approval process (i.e., getting zoning and building permits for a new/renovated facility under a different ordinance than the licensing requirements to operate within that facility).

In addition, there is the matter of deciding who gets the approval to operate a facility. In light of the likely approach by LARA/BMMR that there will be a “prequalification,” by the state, with the local government in charge of “picking” successful candidates, this may be the toughest choice facing a community that has decided to opt in.

## 1. Zoning ordinance

Communities can consider adopting zoning ordinance amendments to provide the following:

### TYPES OF FACILITIES TO BE ALLOWED

Under the MMFLA, a community can allow all five types of facilities or can pick and choose which to allow (e.g., allow grow operation and provisioning centers, but no compliance facility, processing centers, or transport facilities). This choice will vary by community, and should be made deliberately on the basis of community needs/desires.

### DISTRICTS WHERE ALLOWED

The MMFLA does not specify where these facilities may be located, except to state that a grow facility must be established in an area zoned for industrial or agricultural uses or that is un-zoned. Section 501(7). Obviously, determining locations will need to be done on a community-by-community basis, depending on the master plan and land use goals and objectives.

Some uses seem to sort themselves into natural categories—e.g. processing plants in industrial or manufacturing areas, grow operations in industrial/agricultural. Some communities could elect to place even dispensaries (which arguably have a commercial/retail character) in industrial/agricultural districts that, depending on the community’s zoning map or particular community characteristics, are better suited for such uses than traditional business districts on Main Street or in a strip mall.

Some communities have considered adopting an “overlay” zone for medical marijuana facilities. An overlay zone typically operates by adding an additional set of uses—and corresponding additional regulations—in certain areas of the community, without changing the underlying zoning district regulations. An overlay district could be considered if a community wants, for example, only certain industrially zoned areas in a particular part of town to be available to marijuana facilities.





## USE PERMITTED OF RIGHT? SPECIAL LAND USE

The community needs to determine whether these uses will be uses permitted as of right or only as discretionary special land uses. Arguments can be made in favor of either approach.

Some communities have made them uses as of right in order to avoid requiring their planning commissions to exercise discretion in determining who will be authorized to engage in the use. The discretionary element of a special land use exposes a municipality to a challenge or litigation where an applicant is denied the use, or where one applicant is granted approval and another is not. Special land use decisions can also invite challenge from adjacent property owners alleging an improper exercise of discretion when a use is granted over substantial objections at the required public hearing.

On the other hand, the special land use process affords the municipality the greatest opportunity to impose conditions allowed under the Michigan Zoning Enabling Act. MCL 125.3504. These could include important requirements for, say, building appearance, sign size, screening, access, etc.

The community could consider the “in between” approach of a “use permitted on special condition,” where the conditions are fully objective (based on physical characteristics, size, etc.)

## PROXIMITY AND CO-LOCATION ISSUES

Another regulatory issue to be considered as part of the zoning ordinance amendment is a distancing requirement between marijuana-based uses. Should they be clustered or dispersed? Not unlike the question that is asked with adult/sexually oriented businesses: is it better to put these uses (to the extent possible) in one general area, for easier monitoring, or to separate them so an area does not become known for that particular characteristic. The question presents practical issues as well as fairness issues (e.g., placing provisioning centers in only one part of town).

Also, does the community want to allow different kinds of facilities —e.g., a grower and a provisioning center—to co-locate at the same site? The LARA regulations may address some of these issues, but municipalities should, under Section 205 of Act 281, have the authority to regulate these basic land use issues.

LARA has advised that it intends to allow the “stacking” of Class C grow licenses (which permit up to 1500 plants per license) in a single location, but only if the municipality’s ordinance allows this to be done.

## DISTANCING REQUIREMENTS FROM OTHER USES

Municipalities might also want to consider location or spacing requirements as between medical marijuana uses and other uses. For example, the ordinance provides distancing requirements from schools, parks and playgrounds, certain types of residential districts or housing types, churches, pools and recreation facilities, rehabilitation treatment centers, correctional facilities, and the like. This is a classic sort of zoning regulation and should be carefully considered. This could also be regulated in the licensing ordinance instead.

## COORDINATING SITE PLAN/BUILDING PERMIT PROCESS WITH LICENSING PROCESS.

Most likely, the typical process for finalizing site plans and issuing building and occupancy permits as set forth in the zoning ordinance can be followed. Some buildings might be built new, on vacant sites; other uses might occupy existing buildings, with little or no site work.

Either way, the *timing* of these zoning approvals with the local and state licensing processes will need to be decided and addressed. The zoning ordinance should probably acknowledge a separate process under the licensing ordinance, and make some appropriate conditions requiring that approval.

## OTHER PROVISIONS

The ordinance should contain the other usual elements:

- A statement of purpose/intent—which, as explained further below, should refer to the applicable state laws as the basis for inclusion of these uses.
- A definitions section that matches the terms from the state laws.
- A section dealing with nonconforming sites/uses. This may be particularly relevant if there are currently some marijuana-based facilities operating in the community, which the community may or may not want to assist in continuing under the new regulatory scheme.
- Provisions relating to application review fees (for planners, engineers, landscape architects, etc.).



## 2. Police Power/Code of Ordinances amendment to deal with licensing facilities at the local level

Again, the most difficult aspect of crafting a licensing ordinance for most communities will be timing the local license approval with the state's licensing process and the zoning/building occupancy approval process. If the state BMMR continues down its current path of "pre-qualification" and then waiting for municipal approval, there will likely need to be some sort of "conditional" aspect to the local license—i.e., it becomes effective only upon securing the state license and all zoning/land use approvals.

A related complication arises when the local regulatory scheme limits the number of a type of use. The first concern is how those applicants are chosen (special land use? first come, first served? random?). Problems can also result if a conditional license is granted, but then conditions are not in fact met. Should the ordinance have provisions to deal with choosing an alternative applicant?

Among the things a municipality will want to consider in its licensing/general regulatory ordinance:

### PURPOSE AND INTENT CLAUSE

If nothing else, in addition to describing the general goals and objectives as relates to the particular facilities and licensing applicants regulated, a community might want to consider some explanation that the ordinance is being enacted specifically pursuant to an invitation in the state law, and with the recognition that the state law may be at odds with the federal regulatory scheme relating to marijuana. The clause should also include a recognition that if the legislative body does not act, then someone else might act in its stead (through the initiative process, assuming it is applicable).

### DEFINITIONS

These need to match up with the state law, particularly as to the uses allowed. Additional definitions may be needed depending on the nature of local regulations.

### LIMITATIONS ON THE NUMBER OF FACILITIES ALLOWED IN THE COMMUNITY, BY TYPE

Act 281 does not describe how a community arrives at a limitation, just that it can. Limitation criteria can be found by way of population (e.g., x number of dispensaries per y number of residents in the community) or by area and location. Some explanation during the process (or in the purpose section) would be appropriate.

It should also address successor uses. Once the limit is reached, will no further applications be accepted? Or will they be held in order received if/when license becomes available again?

In addition, where the number of facilities is limited, the community might want to consider imposing a time frame in which the use must be established and a certificate of occupancy issued (e.g., 6 to 9 months), with an obligation to surrender the license if the use is not established. This would limit the possibility of issuing a license to someone who wants to obtain a license but not use it (for purposes of limiting the market, or precluding a use) or, if a community allows license transfers, as an investment to transfer to another entity.

### LOCATION CRITERIA

This should be cross-referenced to the zoning ordinance (assuming there is one); or the location criteria can be established in the licensing ordinance itself.

### FEES

The MMFLA allows "not more than" \$5,000 per licensed facility as an annual non-refundable fee. However, because the purpose is stated as helping to defray actual costs of enforcement/oversight, a community should take care to justify the fee based upon what the community expects the actual costs to be.

### REQUIRED INFORMATION

The community can get as specific as it wants. Information required can include:

- Personal information about the applicant.
- Information about the applicant's professional experience.
- Proof of ownership or other occupancy rights for the property at issue.
- Information about the facility and operations plan.
- Proof of interest in land.
- Proof of adequate insurance (describe).



## CRITERIA FOR ISSUING OR DENYING THE LICENSE

- Who issues the license: The city/village/township clerk? Some other officer or body?
- What is the process? Should there be a hearing? Public input allowed?
- Standards for issuing:
  - First come, first served?
  - Lottery/pick from hat?
  - Evaluation on the basis of discretionary criteria?

This is the step with the most “exposure” to the municipality as noted above. The more subjective the process is or seems, the greater the likelihood of challenge.

- Do existing facilities get priority?

## STANDARDS FOR DENYING

These could incorporate the state laws, and could include additional limitations if appropriate.

- Conditioned on all other appeals—state licenses, zoning/site plan review, occupancy permits. This contemplates a record documenting the “provisional” or “conditional” approval and specific requirements for a “final” approval.
- Denial at state level revokes local approval.

## OCCUPANCY PERMITS

The practice of allowing occupancy before all aspects of the building and use are finalized, by issuing a “temporary certificate of occupancy,” or TCO, is typical in many communities. Doing so with these uses—which will likely be limited in number, and are essentially a “new” use with which we are not yet completely familiar—seems unnecessary. Consideration should be given to withholding occupancy rights until a final certificate of occupancy can be issued. Note that ADA compliance will be required for provisioning centers.

## APPEAL OF DENIAL OF A LICENSE

As a police power (as opposed to zoning) ordinance, the Zoning Board of Appeals may not be an ideal appellate board; however, many township boards and city councils might not relish the thought of having to be the deciding body. While the ZBA would need to be informed of its slightly different reviewing role, it is one that they are generally used to. Alternatives could also include a separate body or commission to hear appeals.

## SALE OR TRANSFER OF A LICENSE

Given the nature of the review process and the approvals given, the best practice would likely be to indicate that the license is personal to the applicant—no transfers allowed. The license should be clearly made “personal” to the applicant.

## RENEWAL

The annual fee assumes a renewal of businesses that remain in compliance with the local ordinances.

## REVOCACTION (BY LOCAL ORDINANCE)

Revocation of a license should be a permissible result in the event of things like failure to comply with the licensing ordinance or any other ordinance of the City; change in ownership; change in operational plan; conviction of certain crimes; etc. Similar to a licensing revocation for liquor license.

## “PERFORMANCE STANDARDS” RELATING TO THINGS LIKE:

- Noise
- Odor
- Heat
- Light
- Continued compliance with all other ordinances, including zoning ordinance.

While a local code of ordinances might already contain some general standards in these areas, medical marijuana uses have unique aspects that merit particular attention. There are resources available to communities to confirm the ability of these facilities to mitigate—with appropriate capital investments—many of these adverse effects.

## ENVIRONMENTAL CONCERNS

Information about the environmental effects of these sorts of uses is limited at this point. But municipalities should at least be aware of the likely use of fertilizer and pesticides with regard to a grow operation in particular, and the ordinance could at least provide for basic standards for storage and use in accordance with other laws and regulations. Water and energy consumption may be significant with these uses as well. Both the grow operations and the processing centers raise waste disposal concerns. These areas are all fair game under the limits set forth in Section 205(1) of the MMFLA, and the community should require information on all these aspects of all permitted uses before setting its regulations.

## SECURITY/PRIVACY

Fencing. Lighting. Access controls. Video surveillance. All these should be addressed in the ordinance or as part of any approval. Due consideration for the effects of these on neighboring properties should be taken into account in crafting regulations and approvals, and perhaps in determining permitted locations under the zoning ordinance.

## SIGNAGE

Signage for these uses could be offensive to some. While commercial signage is subject to greater regulation than non-commercial speech, there are obvious limitations, particularly under the Reed v Gilbert case. This is an important aspect of any of these uses, and the community will need to carefully research its options and closely draft its sign regulations.

## INSPECTION PROVISIONS

These provisions should be comprehensive and rigorous. Consideration should be given to those including:

- A statement that the premises are subject to inspection during business hours for purposes of determining compliance with state and local laws, without a search warrant.
- An acknowledgement that the application of a facility license constitutes consent to routine inspections of the premises and examination of surveillance and security camera recordings for purposes of protecting the public safety.
- Significant penalty provision for failure to comply.

## ADDITIONAL REQUIREMENTS ON THE BASIS OF THE SPECIFIC TYPE OF FACILITY

- For example, the community may want to regulate hours of operation or the physical appearance of buildings.

- List of specific prohibited acts by use (e.g., no consumption on premises at provisioning centers; requirement for all activities to occur indoors).
- Consider limitations on use of butane, propane, and other flammable products and require compliance with state and local laws for such products.

## VIOLATIONS AND PENALTIES SECTION

- Civil infraction, not misdemeanor.
- Each day a separate offense.

## INDEMNIFICATION

Given the nature of this use, the applicant/licensee could be required to indicate that it will hold the local municipality and its officials harmless, and indemnify them against claims related to the use.

## RIGHT TO FARM CONSIDERATIONS

There is a question whether the Right to Farm Act, MCL 286.473, et seq., will apply to grow operations. While it is good to have the law in mind, it seems unlikely at this time, since to date no Generally Accepted Agricultural and Management Practice (GAAMP) regulation has been issued for medical marijuana.





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