CITY OF OWOSSO
PLANNING COMMISSION
Regular Meeting
Monday, December 10, 2018 at 6:30 p.m.
Council Chambers – Owosso City Hall
301 W. Main Street, Owosso, MI 48867

AGENDA

AMENDED 12-4-18

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA – December 10, 2018

Staff requests New Business agenda item #6 be discussed prior to agenda item #2

APPROVAL OF MINUTES – November 26, 2018

OLD BUSINESS

1. Review of Proposed Amendments to Chapter 26 – Sign Ordinance - Postpone
2. Review of Proposed Amendments to Chapter 38 – Zoning Ordinance buffer zone requirements for medical marihuana businesses Sec 38-197, Sec 38-217, Sec 38-242, Sec 38-267, Sec 38-292 and provide edits and/or schedule a public hearing for January meeting
3. Review of Proposed Amendments to Chapter 38 – Zoning Ordinance industrial outdoor storage screening Sec. 38-292, Sec. 38-312, Sec. 38-393 and 38-389 and provide edits and/or schedule a public hearing for January meeting
4. Review of Proposed Amendments to Chapter 38 – Zoning Ordinance amateur radio antenna regulations Sec. 97-379 and provide edits and/or schedule a public hearing for January meeting

NEW BUSINESS

5. Master Plan Community Profile Review – distributed at meeting
6. Planning Commission discussion and possible recommendation to City Council on a Recreational Marijuana Facility Moratorium – this agenda item was motioned by City Council

OTHER BOARD BUSINESS

PUBLIC COMMENTS AND COMMUNICATIONS

ADJOURNMENT

Next regular meeting will be on Monday, January 28, 2018, if any requests are received.

Commissioners, please call Tanya at 989-725-0540 if you will be unable to attend this meeting

The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and recordings 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

MINUTES
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
MONDAY, NOVEMBER 26, 2018 – 6:30 P.M.

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

PLEDGE OF ALLEGIANCE: Recited

ROLL CALL: City Clerk Amy K. Kirkland

MEMBERS PRESENT: Chairman Wascher, Secretary Janae Fear, Commissioners Adams, Jenkins, Kirkland, Lafferty, Law and Taylor

MEMBERS ABSENT: Vice-Chair Livingston

OTHERS PRESENT: Assistant City Manager Amy Cyphert, City Attorney Scott Gould

APPROVAL OF AGENDA:
MOTION BY COMMISSIONER FEAR, SUPPORTED BY COMMISSIONER TAYLOR TO APPROVE THE AGENDA FOR NOVEMBER 26, 2018.

YEAS ALL. MOTION CARRIED.

APPROVAL OF MINUTES:
MOTION BY COMMISSIONER TAYLOR, SUPPORTED BY COMMISSIONER FEAR TO APPROVE THE MINUTES FOR THE OCTOBER 22, 2018 MEETING.

YEAS ALL. MOTION CARRIED.

OLD BUSINESS:

1. **Review of Proposed Amendments to Chapter 26 – Sign Ordinance and provide edits and/or schedule a public hearing for January meeting**

   Ms. Cyphert presented the board with a "red-lined" version of the Sign Ordinance to show the changes as directed from the board at the last meeting. Also, notes and questions were added for the commission.

   The following was discussed regarding the proposed changes to the Sign Ordinance:
   - Is the list of exempt signs too long? Section 26-17 lists out all the exempt signs and a permit is not required for these types of signs. Temporary signs do not need permits, but this makes them hard to regulate/track for the 60 day time period they are allowed. The board may want to remove some type of signs from the exempt list.
   - There is not enough time between this meeting and December's meeting to schedule a public hearing. The commission will have the opportunity to discuss changes at the December meeting, and then possibly hold the public hearing at the January meeting.
   - Discussion regarding temporary signs, permits for and how many times in a year a permit could be pulled for a temporary sign.
   - Council wants to permit flutter flags. Does the commission want to allow

festoons/streamers on a permanent basis?

- A downtown building owner had approached Ms. Cyphert regarding allowing advertising on the side of the building. Commission agrees that the ordinance should continue to prohibit such "billboards."
- Suggested making the ground sign size 40 square feet instead of the 80 square feet.
- Suggested making the billboards 100 square feet instead of the 200 square feet.

Ms. Cyphert will present the revisions at the December meeting

2. **Review of Proposed Amendments to Chapter 38 – Zoning Ordinance buffer zone requirements for medical marihuana businesses Sec. 38-197, Sec. 38-217, Sec. 38-242, Sec. 38-267, Sec. 38-292 and provide edits and/or schedule a public hearing for January meeting**

Ms. Cyphert clarified the buffer zones and the changes to the residential measurements in the draft ordinance and created an intersection using set-backs for vacant properties. The other addition is to keep the provisioning centers at least 100 feet from another provisioning center. Also, the language for provisional centers in industrials areas didn't contain any of the same language as the other districts; Ms. Cyphert made the change to the ordinance.

Discussion about buffer zones in the industrial district occurred since there currently are none set. The commission will review the zoning map at the next meeting.

3. **Review of Proposed Amendments to Chapter 38 - Zoning Ordinance industrial outdoor storage screening Sec. 38-292, Sec. 38-312, Sec. 38-393 and 38-389 and provide edits and/or schedule a public hearing for January meeting**

The proposed changes require exterior storage to have fences one foot above the items stored. Ms. Cyphert stated this has to do with industrial properties that are adjacent to residential areas.

Additional review of the ordinance amendments will occur at the December meeting.

NEW BUSINESS:

4. **Review of Proposed Amendments to Chapter 38 – Zoning Ordinance amateur radio antenna regulations Sec. 97-379 and provide edits and/or schedule a public hearing for January meeting**

Ms. Cyphert stated we can govern amateur radio antennas but we cannot prohibit them per the Zoning Enabling Act. Recently received a call from a resident that wanted to install an antenna. Currently, our ordinance does not include regulations for antennas. The proposed ordinance specifically allows them and regulates them. This should have been included after the Zoning Enabling Act was enacted. The proposed ordinance also requires the antennas follow building code and would be reviewed by the building official.

Additional review of the ordinance amendments will occur at the December meeting.

OTHER BOARD BUSINESS:

5. **Appointment of a Fourth Planning Commissioner to the Mater Plan-Sub-committee**

Ms. Cyphert stated the consultants are on target and we should receive the draft community profile in December. Focus groups are projected to occur in February.

The consultants were contacted to have them include the addition of a train depot to the community for the proposed line from Ann Arbor to Traverse City.

The Committee will probably meet a couple more times during the process.

Commissioner Adams stated he would be willing to serve.

PUBLIC COMMENTS AND COMMUNICATIONS:

Commission Law stated that Rick Morris organized a meet and greet for December 5th at 6:30 p.m. for Westown businesses.

Commissioner Fear has heard of lame duck legislation that is being talked about regarding tree and vegetation removal ordinance. Many communities regulate the removal of trees to prevent clear-cutting an area. These are used by communities that have large tracts of land that are vacant and could be developed. There are concerns that the proposed legislation would pre-empt local control. This type of ordinance is not something the City currently has.

ADJOURNMENT:

MOTION BY COMMISSION TAYLOR, SUPPORTED BY COMMISSIONER ADAMS TO ADJOURN AT 8:05 P.M. UNTIL THE NEXT MEETING ON DECEMBER 10, 2018.
YEAS ALL, MOTION CARRIED.

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Janae L. Fear, Secretary

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

CITY OF OWOSSO PLANNING COMMISSION STAFF REPORT

DATE: December 4, 2018

TO: Planning Commissioners

FROM: Amy Cyphert, Assistant City Manager & Community Development Director

SUBJECT: Planning Commission discussion and possible recommendation to City Council on a Recreational Marijuana Establishments and Licensing Moratorium

Background

At the City Council meeting of December 3rd, the City Manager presented and recommended a moratorium for Recreational Marijuana Establishments. During the discussion, City Council motioned to remand the subject to Planning Commission for their recommendation.

On December 6, 2018, recreational marijuana becomes legal to use, grow, and possess for any Michigan resident who is least 21 years or older. However, the Michigan Department of Licensing and Regulatory Affairs (LARA) has until December 6, 2019 to come up with rules and an application process regulating recreational marijuana establishments.

Staff Recommendation

City Staff recommends the adoption a moratorium on recreational marijuana establishments and local applications until LARA releases its regulations and application process guidelines.

Below are the reasons City Staff recommends and supports the moratorium:

1. The passing of a moratorium on recreational marijuana establishments no way places a moratorium on the usage of recreational marijuana. Recreational marijuana becomes legal to use, grow, and possess for any Michigan resident who is 21 years or older on December 6th.

2. Moratoriums were widely used by communities after the passing of Proposal 1 – Michigan Medical Marijuana Act. They allowed the State and communities time to establish rules and requirements.
3. A moratorium allows the Planning Commission and City Council time to amend the existing medical marijuana ordinance, hold the lottery and get medical marijuana provisioning centers operational.
4. We have yet to see the affects that medical marihuana facilities will have on the City and City's law enforcement.
5. Creating a recreational marijuana establishment ordinance before LARA establishes rules would not be an efficient way of authoring an ordinance. LARA's rules may result in revisions or a complete rewrite of said ordinance due to premature creation. - You would be expending time and money similar to the amendments being done currently for medical marijuana.
6. Waiting and doing nothing would be a worst idea for Owosso because if LARA releases their rules early, Owosso will automatically opt in with no controls in place. By the time, the city scrambles to get something in place after an automatic opt-in we could have situations of vested property rights in place regarding recreational marijuana establishments and nothing to solve the problem but a long and costly route through the court system with an uncertain result.
7. Proposal 1 Medical Marihuana was supported and went into effect in December of 2008. There were multiple revisions and court cases that altered the medical marihuana act from 2008 to 2015. The Medical Marihuana Facilities Licensing Act (MMFLA) of 2016 provided further guidance on dispensaries and clarified the legality of edible products in Michigan. The new law allowed licensed dispensaries to operate in communities that chose to allow them as well as licensing for growers, processers, testing facilities, and transporters. – These changes resulted in the City of Owosso having to amend the ordinance twice with a third time occurring currently.

Commission Action

Recommend that City Council adopt a moratorium on recreational marijuana establishments and local applications until after LARA has established the state regulations/application process and the City has adopted ordinance amendments to regulate recreational marijuana establishments.

Attachments:

December 3rd City Council documents related to the moratorium

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ (989) 725-0599 ▪ FAX (989) 723-8854

DATE: 12.3.18
TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: RECREATIONAL MARIJUANA ESTABLISHMENTS MORATORIUM

BACKGROUND

On December 6, 2018 recreational marijuana becomes legal to use, grow, and possess for any Michigander at least 21 years old. However, the Michigan Department of Licensing and Regulatory Affairs has until December 6, 2019 to come up with rules and an application process regulating recreational marijuana establishments. In that time, Owosso needs to decide if it wants to opt out. Doing nothing will mean that the city will opt in automatically.

RECOMMENDATION

The best course of action would be to adopt a temporary moratorium on recreational marijuana establishments and local applications until LARA releases its regulations and application process. There are 3 reasons why this is the best course of action:

1. We aren't yet done with medical marijuana at the city-level. Planning commission is currently taking another look at buffer zones and language around the medical marijuana facility ordinance. Let's get that wrapped up first before we tackle a potential recreational marijuana ordinance process.
2. Passing a recreational marijuana establishment ordinance before LARA comes up with rules could be premature and require major revisions or a complete rewrite of our own ordinance after those rules are released.
3. Simply waiting while doing nothing could be the worst idea for Owosso because if LARA releases their rules early, Owosso will automatically opt in with no moratorium, no local zoning or administrative direction, and no application process in place. By the time the city scrambled to get something in place after an automatic opt-in, we could already have situations of vested property rights in place regarding recreational marijuana establishments and nothing to solve the problem but a long and costly route through the court system with an uncertain result.

Recreational Marijuana in Owosso

Overview of Proposal 1, options for Owosso, and recommendations

Proposal 1 passed.

- Statewide vote result: Yes – 56% No – 44%
- Owosso vote result: Yes – 58% No – 42%
  - Passed in every precinct for election day voters but failed in every precinct's Absentee vote.

What happens now?

- Law does not go into effect until 10 days after vote result is certified by State Board of Canvassers
  - Certified Monday, November 26.
  - Law takes effect December 6, 2018

What is allowed starting Dec 6?

- Anyone over age 21 can purchase, use, and grow marijuana.
  - Grow: up to 12 plants
  - Possess in the home: 10 oz.
  - Possess on person: 2.5 oz.
  - Anyone over 21 can transfer without remuneration up to 2.5 oz. to another person over 21 as long as the transfer is not advertised to the public

What is NOT allowed starting Dec 6

- Smoke in public (Albeit a bit murky. This is addressed in the Dickinson Wright Report)
- Driving under the influence.
  - However, there is no established test (like PBT with alcohol) or an established amount of THC that is considered over the limit. The Governor's Impaired Driving Safety Commission has until March, 2019 to establish how much THC is too much for driving purposes. Until that committee report, Owosso PD will consider impaired any amount of THC in the blood.
- Protection from employer action regarding marijuana use
- Possess any amount in schools or lands owned by the federal government.
  - Some universities have already prohibited MJ because they receive federal dollars
- Sell what you grow at home.
  - Sales of MJ product requires state licensing and testing before it hits the market

Still illegal under Federal Law

- Michigan's 2 US Attorneys issued a joint statement.
  - "we will continue to approach the investigation and prosecution of marijuana crimes as we do with any other crime."
- The statement goes on to acknowledge that federal prosecutors in Michigan have not focused much on marijuana users or low-level offenders and that won't change now that Prop 1 has passed.
  - They say that they are more focused on combating the opioid epidemic, not marijuana related issues.

About state licensing of recreational MJ…

- Separate from Medical marijuana licensing
- Could be 1 to 2 years before Michigan Dept of Licensing and Regulatory Affairs (LARA) develops regulations and opens the application process
  - "Hopefully we will be able to get adult use market up and running within a year" -Shelly Edgerton, Director of LARA-
  - "All indications point to our ability to have adult-use license applications available before the statutory deadline of Dec 6, 2019" -David Harns, LARA spokesperson-
  - This means that Cities have until Dec 6, 2019 or whenever LARA releases their rules within the next year to decide whether to opt out or not.
- To make things more complicated, the law states that LARA can only accept applications from Michigan residents or current MEDICAL marijuana license holders for 2 years BUT the department may accept applications from out-of-state applicants after 1 year if it determines that more licenses are needed to reduce the illegal market for marijuana.

Differences between medical and recreational process involving cities

Medical	Recreational

• "Opt-in" process
  ▫ Cities have to opt in
  ▫ Doing nothing means they opt out
	• "Opt-out" process
	  ▫ Cities have to opt out.
	  ▫ Doing nothing means they opt in.

The Dickinson Wright Report

- In late October, 2018, the city manager of Grand Haven reached out via the city managers' listserve to coordinate a central legal opinion for any city that was interested.
  - 60 communities signed on including Owosso
- This report includes:
  - An analysis of municipal governance issues regarding Prop 1
  - Sample opt-out ordinances
  - Recreational marijuana and employment issues

DW Report – city government and recreational marijuana

- Recreational MJ and Medical MJ are governed by completely separate state laws
- Medical MJ regulations do not impact Recreational MJ regulations with ONE EXCEPTION:
  - A municipality may not prohibit a recreational MJ establishment from sharing space with a medical MJ facility
  - This is only relevant to those cities that would be allowing both types of facilities
- Cities may only prohibit or regulate marijuana BUSINESSES but not individual use or cultivation. That part of the law is applicable statewide.

A Municipality MAY…

- Completely prohibit recreational facilities
- Allow but limit the number of recreational facilities
- Establish a competitive process for applications if only a certain number of facilities are allowed
- Provide reasonable restrictions on facilities
  - Can include civil infractions up to $500 for facilities that violate the local ordinance
- Limit location of facilities through the zoning ordinance
  - Recreational MJ law does state that any facility must be 1000 feet from schools – unless the municipality chooses to reduce that distance through its own ordinance

A Municipality MAY…

- Prohibit use in public places
  - While the law already says this, it does not specifically prohibit use in public places and considering the challenge of limiting public places to people 21 years or older, it is recommended that cities adopt its own ordinance specifically prohibiting this behavior in its public places
- Allow use in designated areas at designated times
  - For example: during a community event or festival but only if that area is off limits to people under 21.

A Municipality CANNOT…

- Prohibit individual cultivation or possession
- Prohibit sale of marijuana accessories
- Prohibit individual use on private property
- Prohibit transportation of marijuana

Last note on Dickinson Wright Report

- Cities can change their mind:
  - Opting out can be repealed or amended later
- Voters can petition to opt out if city won't
  - Can only vote to prohibit or limit the number of establishments
- There is a risk in waiting to opt out
  - LARA can promulgate rules much sooner than one year
  - After 365 days with no rules from LARA, a city that has not opted out and has created no regulation of its own (zoning, licensing, etc.) suddenly and automatically allows these facilities on day 366. After that, in either of the above scenarios, it makes it legally difficult to opt out because there can be a claim of 'vested property rights' by any interested applicant who has submitted.

RECOMMENDATION/OPTIONS

- **Adopt Ordinance prohibiting use in public places**
  - All city owned property
- Either opt out within 1-2 months OR have rules in place regarding number and/or types of facilities, zoning restrictions, and application processes/fees within 4-5 months.
  - However, this will be done without the LARA rules in place. If any of those rules run counter to our ordinance, it will have to be reworked. That could cause problems if any facilities are established in that time after ordinance adoption but before LARA rules are released.

RECOMMENDATIONS/OPTIONS

- **Pass a recreational marijuana facility moratorium until LARA releases its rules for such facilities within the next 365 days. Then revisit.**
  - It will prevent a necessity to revisit any ordinance passed before LARA promulgates their rules that may run contrary to what the ordinance allows.
  - Passing a moratorium is temporary. In one year, LARA will have their rules and we will have the same council in place. The city can revisit the issue then.
  - Opting in now creates a situation where we have to base our local ordinance language on pure suppositions about what LARA will do any time up to a year from now.
  - We are still trying to get medical marijuana facilities ordinance over the finish line. Let's get that done first and then concentrate on recreational.

DICKINSON WRIGHT PLLC

M E M O R A N D U M

To: Marihuana Consortium Members

From: Dickinson Wright Municipal Group

Date: November 7, 2018

Thank you for joining the consortium of municipalities seeking general advice regarding marihuana matters, particularly in light of the approved recreational marihuana proposition on the November 6, 2018, ballot in Michigan.

I. Analysis of Municipal Governance Issues

Attached is a detailed discussion of Proposal 2018-1 and the issues it will raise now that it has been approved by the voters.

II. Opt-Out Ordinances

Attached are two sample ordinances. One is a general opt out ordinance, prohibiting marihuana establishments as defined under the Michigan Regulation and Taxation of Marihuana Act (the "Act"). The other is a zoning ordinance that repeats the prohibition of marihuana facilities.

We recommend that a municipality wishing to opt out do so by adopting both ordinances. The general opt out ordinance can be adopted quickly, so that a municipality is on record as having opted out. The zoning ordinance will take longer to adopt, given that it must be the subject of a planning commission public hearing before it can be considered for adoption. The purpose of the zoning ordinance is to protect a municipality from being attacked for adopting only the general opt out ordinance and thus arguably regulating land uses without completing the zoning process.

These two ordinances should be adopted and in place before the state has finished its regulations for marihuana establishments under the Act, or in any event within the next 12 months. The state has a year to prepare those regulations, but it is not obligated to take that long.

These are, of course, initial draft ordinances meant to be broadly accessible and broadly useful. We have added some qualifying language in each, not to detract from the strength of the prohibition, but as support that these ordinances are adopted within the authority and limitations of state law. There is some bracketed language in each ordinance that will be useful for a municipality that allows medical marihuana facilities, to distinguish between those and recreational establishments; this language could be simplified or deleted for a municipality that does not allow medical marihuana facilities.

We added "sale" to "consumption" in the public place prohibition of the general opt-out ordinance. This is certainly optional. The indirect "no authority for…" language in section 4 of the Act provides only that the Act does not authorize the "consumption" of marihuana in public

places. On the other hand, section 6 of the Act allows a municipality to adopt other ordinances that are not unreasonably impracticable.

The general opt-out ordinance includes bracketed language in the section prohibiting sale and consumption. There is an exception for certain municipality-approved events, if a municipality wants that exception.

The zoning ordinance is straight-forward. We added some non-nonconforming-use language. The language is somewhat self-serving, but we believe it is worth including. We also provided that marihuana establishments may not be allowed as home occupations.

III. Marihuana and Employment Issues.

Relative to marihuana and employment issues, we have attached the following:

- Marihuana Issues in Employment Law;
- Client ALERT regarding the termination of an employee for using medical marihuana;
- Notice to Employers and Claimants Concerning Medical Marihuana from the Michigan Unemployment Insurance Agency; and
- Sample Drug and Controlled-Substance Free Workplace Policy.

IV. Regulation Rather than Prohibition

Some municipalities may wish to regulate rather than prohibit marihuana establishments under the Act. We ask that any such municipalities contact us. The regulation of marihuana establishments could take many forms, and we believe a preliminary discussion would be helpful.

RAB:psc

DICKINSON WRIGHT PLLC

Recreational Marihuana Michigan Proposal 2018-1 – Initiated Legislation
Analysis of Municipal Governance Issues

I. Recreational Marihuana and Medical Marihuana Governed by Separate Laws. Recreational marihuana and medical marihuana are governed by separate state laws. Recreational marihuana will be governed by the Michigan Regulation and Taxation of Marihuana Act, 2018 Initiated Law 1 ("MRTMA"), and medical marihuana facilities are governed by the Medical Marihuana Facilities Licensing Act, 2016 PA 281 ("MMFLA").

A. Medical Opt In vs. Recreational Opt Out. A municipality must affirmatively opt in to allow for medical marihuana facilities under the MMFLA. In contrast, a municipality that desires to prohibit recreational marihuana establishments must affirmatively opt out under the MRTMA. A municipality that does not completely opt out under the MRTMA may adopt ordinances to limit the number of recreational marihuana establishments. The default under the MRTMA is to allow, in any municipality that does not affirmatively opt out of otherwise regulate, recreational marihuana establishments that are licensed by the state and, if required, by the municipality.[1]

B. Municipal Medical Marihuana Regulations Do Not Impact Recreational Marihuana Regulations. (1) A municipality that has opted in to medical marihuana may completely prohibit (opt out of) recreational marihuana; or (2) a municipality that has not opted in to medical marihuana may allow and regulate some recreational marihuana; or (3) a municipality may adopt regulations to allow for both; or (4) a municipality may decline to opt in to medical marihuana and completely opt out of recreational marihuana, thus not allowing either type of business within the municipality. If local ordinances are adopted with respect to either, such ordinances must be separate and in accordance with the applicable state law.

C. One Exception to No Overlap Between Laws. There is no overlap between the MRTMA and MMFLA, with one exception: Section 6(5) of the MRTMA provides that a municipality may not prohibit a recreational marihuana establishment from sharing space with a medical marihuana facility. This is relevant only to those municipalities that allow the existence of some recreational marihuana establishments (i.e., that do not completely opt out); a municipality that adopts an ordinance completely prohibiting recreational marihuana establishments is not required to allow any such establishments solely because the municipality allows medical marihuana facilities.

II. Local Authority and Responsibility as to Recreational Marihuana. A municipality may prohibit or regulate marihuana businesses (defined as "establishments" in the MRTMA, and including, but not limited to, retail businesses, growers and processors), but a municipality cannot prohibit individual use of marihuana by people 21 years of age and older, subject to certain potential restrictions on place as discussed below.

[1] The MRTMA allows municipalities to require recreational marihuana establishments to obtain local licenses, as long as the local licensing requirements do not conflict with the MRTMA or with any rules promulgated by the State with respect to the MRTMA.

A. A Municipality MAY:

1. Completely prohibit. A municipality may completely prohibit, by ordinance, the existence of recreational marihuana establishments.

2. Limit the Number. Instead of completely prohibiting, a municipality may adopt an ordinance allowing the existence of recreational marihuana establishments, and provide limits on the number of establishments within the municipality.

3. Establish Competitive Process for Applicants. If a municipality allows a certain number of establishments, and a greater number of applicants for state licenses wish to locate in that municipality, the MRTMA requires the municipality to decide by a competitive process which applicants are best suited to comply with the MRTMA.

4. Provide Reasonable Restrictions on Establishments. If recreational marihuana establishments are allowed, a municipality may provide reasonable time, place and manner restrictions with respect to such establishments, and provide restrictions on signage. A municipality may also provide for a civil infraction and penalty of not more than $500 for a violation of an ordinance by a recreational marihuana establishment. Note: the MRTMA is, notably, silent with respect to violations of individual use restrictions (e.g., in public places.)

5. Limit Locations Through Zoning Ordinance. As a follow up to 4, above, a municipality may adopt reasonable zoning regulations to limit the location of recreational marihuana establishments, *except that* a municipality that otherwise allows recreational marihuana establishments cannot prohibit different types of establishments (e.g., a processor and a retailer) from operating at a single location, and cannot prohibit a recreational marihuana establishment from sharing a location with a medical marihuana facility, as long as both types of businesses are allowed to exist in the municipality. Zoning regulations can be adopted to provide additional buffers on school and other properties, e.g., to require marihuana establishments (if not completely prohibited) be located at least 1,000 feet from schools, child care centers, public parks, libraries or other types of properties. These types of regulations have been established in municipalities with respect to medical marihuana facilities, though separate regulations should be written for recreational marihuana establishments.

6. Prohibit Use in Public Places. A municipality may prohibit the use of marihuana in public places. Section 4(1)(e) of the legislation provides that the law does not authorize consuming marihuana in a public place. As that language does not specifically prohibit use in public places and considering the challenge of limiting public places to people 21 years of age or older, it is recommended that a municipality that desires to prohibit the use of marihuana in public places adopt an ordinance specifically prohibiting that behavior.

7. Allow Use in Designated Areas. Notwithstanding the authority in 4 above, a municipality may allow the use of marihuana in designated areas and at designated times, for example at special events – as long as any such area is off limits to people under 21 years of age.

B. A Municipality CANNOT:

1. Prohibit Individual Cultivation or Possession. A municipality cannot prohibit individual cultivation or possession (up to 2.5 ounces) of marihuana by people 21 years of age and older.

2. Prohibit Sale of Marihuana Accessories.

3. Prohibit Individual Use on Private Property. A municipality cannot prohibit use by a person 21 years of age and older within that person's property, and cannot prohibit use of marihuana on private property where the owner, occupier or manager has not prohibited its use – and that is not accessible to people under 21 years of age. For example, a business that sells marihuana accessories, as discussed in 2, above, but is not licensed to sell marihuana, would, as long as the business is restricted to people 21 years of age and older, be able to allow people to bring and use personal supplies of marihuana. Under the MRTMA, the municipality in which such a business located would not be able to prohibit such use.[2]

4. Prohibit Transportation of Marihuana. A municipality cannot prohibit the transport of marihuana through the municipality – regardless of whether the municipality completely prohibits or allows other recreational marihuana establishments from locating in the municipality.

III. Effective Date of Recreational Marihuana Law and Local Timelines.

A. Law Effective 10 Days After Certification of Vote. The MRTMA will become effective 10 days after the vote approving the November 6, 2018, Ballot Proposal 1 is certified.[3]

B. Recreational Marihuana Establishment Licensing Within 1 Year. The MRTMA is effective 10 days after the vote is certified, which will then allow individuals 21 years and older to grow, possess and use (within certain limits, as discussed below) marihuana. Recreational marihuana establishments, however, will need to be licensed to legally operate. Under the MRTMA, the Michigan Department of Licensing and Regulatory Affairs ("LARA") has 1 year from the effective date of the law to establish and promulgate rules, including a process to accept license applications, and to begin accepting license applications. There will, therefore, be some time of approximately one year, though perhaps sooner, between the effective date of the legislation and the legal opening of any marihuana establishments.[4]

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[2] The legislation does not specifically prohibit use in public places, nor does it define public (or private) places. A municipality may, as discussed in this memo, prohibit use in governmentally owned or operated places (e.g., public parks), but a municipality's authority to prohibit use in privately owned but publicly accessible places (e.g., restaurants, theaters) is less clear. The owners and operators of such places can ban marihuana use, but it is not clear under the legislation that local governments can. By way of analogy, Michigan's smoking ban, 2009 PA 188, bans the smoking of, specifically, "tobacco product" and defines public places broadly, to include, among other places, any place that is a place of employment, unless otherwise exempt under 2009 PA 188 (e.g., a cigar bar, but not a restaurant.)

[3] This is in accordance with the Michigan Constitution, Article II, Section 9, which provides for an effective date of any voter-initiated law 10 days after the date of the official declaration of the vote.

[4] Under Section 16 of the MRTMA, if LARA does not promulgate rules within 1 year of the effective date of the law, a potential establishment may apply directly to a municipality to operate within that municipality. The municipality must then issue the license unless the applicant is not in compliance with an ordinance or rule adopted pursuant to the

C. No Local Deadlines – But Local Voter Initiative Right, Authority to Change Decision, Property Rights Risks. The MRTMA provides no stated timeline or deadline for a municipality to adopt an ordinance to completely prohibit recreational marihuana establishments or to adopt other ordinances regulating recreational marihuana. That said, municipalities will want to be aware of the following options and risks:

1. Local Voter Right to Petition to Opt Out or Limit Number. Section 6(1) of the MRTMA provides that individuals may petition to initiate an ordinance to (a) provide for the number of recreational marihuana establishments within a municipality or (b) completely prohibit recreational marihuana establishments within the municipality.[5] This authority is separate from the authority for a local governing body to prohibit or regulate recreational marihuana, with no limitations on timing of any such petitions; in other words, voters may, in effect, override the decision of a local governing body. Voters may petition only to prohibit or to limit the number of establishments; voters may not petition to establish other regulations regarding recreational marihuana.

2. Municipality May Change Opt Out Decision. Subject to local ordinance and procedures, a municipality may adopt an ordinance prohibiting recreational marihuana establishments at any time, and may amend or repeal an ordinance prohibiting recreational marihuana establishments to allow for and regulate such establishments at any time. In other words, a municipality may, generally, change its mind with respect to allowing recreational marihuana establishments. Note the risk in 3, below, however.

3. Risk in Waiting to Opt Out. A municipality that does not adopt an ordinance prohibiting establishments on or soon after the effective date of the MRTMA and desires to opt out later, particularly after applications for licenses have begun to be accepted, runs the risk that recreational marihuana establishments will have vested property rights, or at least an argument for vested property rights that will cost the municipality time and money in court. Note also that, while municipalities must "opt in" to medical marihuana facilities, and therefore have an argument against such facilities claiming nonconforming use when operating in violation of a zoning provision adopted after medical marihuana facilities were authorized, recreational marihuana establishments are, by default, allowed in any municipality that does not prohibit them. Recreational marihuana establishments must be licensed to operate legally, but the question of vested property rights may arise, again, claiming a municipality's time and resources regardless of the eventual outcome.

MRTMA. If, for example, a municipality has adopted an ordinance completely prohibiting recreational marihuana establishments, the applicant would be in violation of such ordinance, and the municipality would not have to issue the license. If a municipality allows establishments, but an applicant has applied to operate an establishment in a location where recreational marihuana establishments are prohibited under an adopted local zoning ordinance, or the applicant would otherwise violate a municipal ordinance or rule adopted in accordance with the MRTMA, the municipality would not be required to issue the license. The municipality also would not be required to issue more licenses than its ordinance allows, if the municipality has limited the number of establishments. In short, an applicant for an establishment license will face the same local restrictions whether rules are or are not promulgated by LARA.

[5] The petition must be signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor at the last gubernatorial election. The ordinance is then submitted to the voters at the next regular election date.

Complete prohibition for licensing purposes and use in public places: additions to (1) chapter on businesses, licensing or as relevant and (2) chapter on public places

[CITY][VILLAGE][TOWNSHIP] OF _____
_____ COUNTY, MICHIGAN

[Council][M][m]ember[Trustee] _____, supported by [Council][M][m]ember[Trustee] _____, moved the adoption of the following ordinance:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE [CITY][VILLAGE][TOWNSHIP] OF _____ BY ADDING A NEW SECTION WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION ___ OF CHAPTER __ OF SAID CODE AND BY ADDING A NEW SECTION WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION __ OF CHAPTER __ OF SAID CODE

THE [CITY][VILLAGE][TOWNSHIP] OF _____ ORDAINS:

Section 1. Addition of Section ___ to Chapter __. Section ___, "Prohibition of Marihuana Establishments," is added to Chapter __, "[Businesses][Licensing]," of the Code of Ordinances of the [City][Village][Township] of _____ to read as follows:

SECTION ___ PROHIBITION OF MARIHUANA ESTABLISHMENTS

(A) Pursuant to the provisions of Section 6.1 of the Michigan Regulation and Taxation of Marihuana Act (the "Act"), marihuana establishments, as defined by the Act, are completely prohibited within the boundaries of the [City][Village][Township].

(B) Any applicant for a state or local license to establish a marihuana establishment, as defined by the Act, within the boundaries of the [City][Village][Township] shall be deemed to be not in compliance with this Ordinance or with the Code of Ordinances amended by this Ordinance.

(D) This section does not supersede rights and obligations with respect to the transportation of marihuana through the [City][Village][Township] to the extent provided by the Act, and does not supersede rights and obligations under Michigan law [and Section __ of Chapter __ of this Code of Ordinances with

respect to the establishment and licensing of medical marihuana facilities under the Michigan Medical Marihuana Act, the Medical Marihuana Licensing Act, 2016 PA 281, or any other law of the State of Michigan] allowing for or regulating marihuana for medical use.

Section 2. Addition of Section __ to Chapter __. Section __, "Prohibition on Sale and Consumption of Marihuana in Public Places," is added to Chapter __, "[Streets and Public Places]," of the Code of Ordinance of the [City][Village][Township] of _____ to read as follows:

SECTION ___ PROHIBITION ON SALE AND CONSUMPTION OF MARIHUANA IN PUBLIC PLACES

(A) In conformance with Sections 4.1(e) and 6.2(b) of the Act, [except as otherwise provided in this section,]the sale or consumption of marihuana in any form and the sale or display of marihuana accessories, as defined by the Act, is prohibited in any public places within the boundaries of the [City][Village][Township].

(B) [Notwithstanding the limitations set forth in subsection (A) hereof, marihuana may be consumed where approval is granted for the consumption of marihuana at a [City][Village][Township]-approved festival or activity in areas designated by the [City][Village][Township] for such festival or activity and that are not accessible to persons under 21 years of age.]

([C]) Any person who violates any of the provisions of this section shall be responsible for a municipal civil infraction punishable by a civil fine of $500, plus court-imposed costs.

([D]) This section does not supersede rights and obligations with respect to the transfer and consumption of marihuana on private property to the extent authorized by the person who owns, occupies or operates such property, as provided in and authorized by the Act, and does not supersede rights and obligations with respect to the use of marihuana for medical purposes as provided by any law of the State of Michigan allowing for or regulating marihuana for medical use.

[Section 3. Conflict and Repeal. All ordinances or parts of ordinances in conflict with this ordinance are repealed.]

Section [4]. Effective Date. The adoption of this ordinance is hereby declared an emergency effecting the public peace, health and safety and this ordinance shall, therefore, be effective immediately upon its adoption.

Section [5]. Publication. After its adoption, this ordinance or a summary thereof, as permitted by law, shall be published by the [City][Village][Township] Clerk in _____, a newspaper of general circulation in the [City][Village][Township].

ORDINANCE DECLARED ADOPTED.

Dated: _____, 2018

_____
_____, [Mayor][President]
[Supervisor]

_____
_____, _____ Clerk

CERTIFICATION

I, the undersigned duly appointed [City][Village][Township] Clerk of the [City][Village][Township] of _____, _____ County, Michigan, do hereby certify that the above ordinance, or a summary thereof, was published in _____, a newspaper of general circulation in the [City][Village][Township] on _____, 2018, and that such ordinance was entered with the Ordinance Book of the [City][Village][Township] on _____, 2018.

Dated: _____, 2018

_____
_____, _____ Clerk

Zoning complete prohibition: if medical marihuana facilities are allowed, may want to add this section to that part of the zoning ordinance

[CITY][VILLAGE][TOWNSHIP] OF _____
_____ COUNTY, MICHIGAN

[Council][M][m]ember[Trustee] _____, supported by [Council][M][m]ember[Trustee] _____, moved the adoption of the following ordinance:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE [CITY][VILLAGE][TOWNSHIP] OF _____ BY ADDING A NEW SECTION WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION ___ OF CHAPTER __ OF SAID CODE

THE [CITY][VILLAGE][TOWNSHIP] OF _____ ORDAINS:

Section 1. Addition of Section ___ to Chapter __. Section ___, "Prohibition of [Recreational] Marihuana Establishments," is added to Chapter __, "Zoning," of the Code of Ordinances of the [City][Village][Township] of _____ to read as follows:

SECTION ___ PROHIBITION OF [RECREATIONAL]MARIHUANA ESTABLISHMENTS

(A) Marihuana establishments, as authorized by and defined in the Michigan Regulation and Taxation of Marihuana Act (the "Act"), are prohibited in all zoning districts[, and shall not be permitted as home occupations under Section __ of this Chapter].

(B) No use that constitutes or purports to be a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter or any other type of marihuana related business authorized by the Act, that was engaged in prior to the enactment of this Ordinance, shall be deemed to have been a legally established use under the provisions of the [City][Village][Township] Code of Ordinances; that use shall not be entitled to claim legal nonconforming status.

(C) Violations of this section are subject to the violations and penalties pursuant to Section __ of this Chapter[and [if provided for separately] may be abated as nuisances pursuant to Section __].

(D) This section does not supersede rights and obligations with respect to the transportation of marihuana by marihuana secure transporters through the [City][Village][Township] to the extent

provided by the Act, and does not supersede rights and the regulations under Section __ of this Chapter __ with respect to medical marihuana facilities established pursuant to the Michigan Medical Marihuana Act.

[Section 2. Conflict and Repeal. All ordinances or parts of ordinances in conflict with this ordinance are repealed.]

Section [3]. Effective Date. The adoption of this ordinance is hereby declared an emergency effecting the public peace, health and safety and this ordinance shall, therefore, be effective [immediately upon its adoption].

Section [4]. Publication. After its adoption, this ordinance or a summary thereof, as permitted by law, shall be published by the [City][Village][Township] Clerk in _____, a newspaper of general circulation in the [City][Village][Township].

ORDINANCE DECLARED ADOPTED.

Dated: _____, 2018

_____
_____, [Mayor][President]
[Supervisor]

_____
_____, _____ Clerk

CERTIFICATION

I, the undersigned duly appointed [City][Village][Township] Clerk of the [City][Village][Township] of _____, _____ County, Michigan, do hereby certify that the above ordinance, or a summary thereof, was published in _____, a newspaper of general circulation in the [City][Village][Township] on _____, 2018, and that such ordinance was entered with the Ordinance Book of the [City][Village][Township] on _____, 2018.

Dated: _____, 2018

_____
_____, _____ Clerk

MARIHUANA ISSUES IN EMPLOYMENT LAW

1. Can Employees Use Marihuana?

Introduction of state legislation allowing the use of marihuana for medical or recreational purposes has created mass confusion for employers. The intersection of new marihuana legislation and existing employment laws is an evolving field. New cases are issued frequently interpreting marihuana legislation relative to a myriad of employment issues including the Americans with Disabilities Act, unemployment qualification laws, workers' compensation qualification laws, and general employment hiring, firing, and disciplinary issues. This quick guidance sheet is intended to provide a high-level overview of the current state of the law relative to these intersections. Since this field evolves quickly, you should contact an attorney before taking employment actions or implementing policies relative to employee marihuana use of any kind.

In our own practice, we have observed two prevailing problems from our employer-clients given the current state of the law: (1) that testing employees for marihuana is problematic given that so many employees are testing positive for marihuana use; and (2) drug tests cannot reliably determine whether an employee is under the influence of marihuana.

Highlights

- Employers may still test employees for marihuana, and may terminate an employee's employment, even if the employee uses marihuana on "off duty" time, no evidence of impairment on the job exists, and the employee has a valid prescription to use marihuana.

- Employers must continue to comply fully with any federal laws which require them to perform drug tests, such as those found in the Department of Transportation regulations.

- Employees should not be able to prevail in a lawsuit against the employer if they are terminated for marihuana use, even if the marihuana was used while the employee was off duty and with a valid prescription.

- However, employees who are not actively using drugs (for example, recovering addicts) may be entitled to an accommodation under the ADA or leave under the FMLA for their recovery under certain circumstances.

- In Michigan, an employee terminated for medical marihuana use under a valid prescription is not disqualified from unemployment benefits.

- Employees may be ineligible for workers' compensation benefits if marihuana use is the proximate cause of the injury, regardless of whether there is a valid prescription.

- Employees may be ineligible for workers' compensation benefits if their injury or occupational disease is caused (in part or whole) by the use of prescribed marihuana.

Overview of Existing Legislation as to Employers

The Michigan Medical Marihuana Act ("MMMA," MCL 333.26421 *et seq.*), contains provisions specific to employment law. The MMMA provides that "[a] qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau for the medical use of marihuana in accordance with this act," contingent on certain qualifications enumerated in the act.

However, the law makes clear that employers are not required "to accommodate the ingestion of marihuana in any work place or any employee working while under the influence of marihuana." MCL 333.26427(e)(2). Under the MMMA people are not allowed to (1) undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice, (2) possess or engage in the medical use of marijuana on any school, school bus, or correctional facility, (3) smoke marijuana in any public place, or (4) operate, navigate, or be in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana. MCL 333.26427(b).

The Sixth Circuit Court of Appeals, which includes Michigan, held in *Casias v Wal-Mart Stores, Inc*, 764 F Supp 2d 914 (WD Mich 2011), *aff'd*, 695 F3d 428 (6th Cir 2012), that regardless of state law, private employers have no duty to accommodate the use of medical marijuana by employees. Certainly, that would seem to be all the more true for an employee engaged in the recreational use of marihuana.

Despite these employer friendly baseline rules, the lines are blurred when considering the interaction of marihuana under various federal and state employment protective states.

2. Medical Marihuana and the Americans with Disabilities Act ("ADA")

- Medical marihuana may be legal under state law, but it remains illegal under the federal Controlled Substances Act.

- The ADA does not require employers to accommodate medical marihuana use by employees.

- But, the ADA has a provision that permits illegal drug substances which are covered by ADA protections if "taken under supervision by licensed health care professional, or other uses authorized by the Controlled Substances Act or other provision of Federal law."

- Some courts outside of Michigan have held that employers may need to permit employees' off-duty medical marijuana use as a reasonable accommodation under the ADA.

- This area is developing rapidly and the state of the law is somewhat uncertain and subject to change.

- Uncertainty remains at the state level where state disability discrimination laws differ from the ADA.

- Employers must remain up-to-date on with marihuana laws.

- Recreational use of marihuana should not have an impact upon or be impacted by the ADA.

3. Best Method to Test for Marihuana Use

- With respect to testing for marihuana use, labs can take samples from hair, urine, swabs/saliva, or blood. In general, liquid testing of saliva is held out to be the most effective method for testing of the presence of marihuana.

- Unlike alcohol testing, there is no test or level of marihuana in a person's system that can definitely determine whether, and when, a person was or is under the influence of marihuana.

- The lack of definite and reliable testing leads to enforcement issues and points toward a more broad prohibition on the use of marihuana for certain classes of employees, particularly in safety positions.

- The MMMA does not define "under the influence."

    - Fact finding will be necessary to establish circumstantial evidence concerning marihuana use.

4. Unemployment Issues

- A person is not disqualified from receiving unemployment benefits if that person tests positive for marihuana while holding a valid registry identification card issued under the MMMA.

- However, a claimant will be disqualified from receiving unemployment benefits if:

    - The claimant ingested the marihuana at the workplace which also resulted in the positive drug test;

    - Claimant's termination from employment is based on the fact that claimant was under the influence of marihuana while working; or

    - Claimant is unable to demonstrate that he or she is a qualifying patient with an issued registry identification card under the MMMA. This last means of disqualification is certainly subject to change as recreational use of marihuana is allowed by law.

5. Workers' Compensation

- If use of marihuana is determined to be the cause of an accident or injury, according to post-incident testing and circumstantial evidence, the employee will not be eligible for workers' compensation benefits.

- If use was not a factor in the hazard or injury, an employee's possession of a valid prescription card should not per se disqualify the employee from workers' compensation benefits. This will particularly be the likely result as recreational use of marihuana is allowed by law.

SAMPLE DRUG AND CONTROLLED-SUBSTANCE FREE WORKPLACE POLICY

It is the policy of the Employer to create a drug and controlled-substance free workplace in keeping with the spirit and intent of the Drug-Free Workplace Act of 1988. The use of controlled substances is inconsistent with the behavior expected of employees, subjects all employees and visitors to our facilities to unacceptable safety risks, and undermines the Employer's ability to operate effectively and efficiently. In this connection, the unlawful manufacture, distribution, dispensation, possession, sale, or use of a controlled substance in the workplace or while engaged in Employer business off the Employer's premises is strictly prohibited. Such conduct is also prohibited during nonworking time to the extent that, in the opinion of the Employee, it impairs an employee's ability to perform on the job, or threatens the reputation or integrity of the Employer. To help enforce this policy, the Employer may require employees to submit to a drug test upon the observance of behavior which creates a reasonable suspicion, in the Employer's judgment, that the employee is in violation of this policy. Employees may also be asked to submit to a drug/controlled substance test following an on-the-job accident or an incident in which safety precautions may have been violated or, for covered, employees, as required by the Department of Transportation.

Employees convicted of controlled-substance-related violations in the workplace, including pleas of nolo contendere (i.e., no contest), must inform the Employer within five days of such conviction or plea.

Employees who have been issued a prescription for medical marihuana are not excused from complying with this policy. All federal Schedule I drugs are illegal under this policy as are all non-prescription drugs. A positive test result for marihuana will not be excused even if the employee presents a valid medical marihuana card. Neither will the legality of recreational marihuana have any impact upon an employee's obligation to comply with this policy.

Employees who violate any aspect of this policy may be subject to disciplinary action up to and including termination. At its discretion, the Employer may require employees who violate this policy to successfully complete a drug abuse assistance or rehabilitation program as a condition of continued employment. Failure or refusal of an employee to cooperate fully, sign a consent/release form or any other required document for testing, or submit in full to any inspection or drug test as provided will be treated as a positive drug test result and is independent grounds for discharge. Substituting or adulterating any body substance or specimen submitted for testing, or falsely representing that the body substance or specimen is the employee's own sample, likewise will be grounds for discharge.

LABOR & EMPLOYMENT

SIXTH CIRCUIT UPHOLDS WAL-MART'S TERMINATION OF EMPLOYEE FOR USING MEDICAL MARIHUANA

by: Christina K. McDonald
October 3, 2012

In a case of significant importance, on September 19, 2012, the United States Court of Appeals for the Sixth Circuit held that a private employer may fire an employee for testing positive for medical marihuana in violation of the employer's drug use policy under the Michigan Medical Marihuana Act ("MMMA"). The court's holding in *Casias v. Wal-Mart Stores, Inc.*, sets the precedent that users of medical marihuana are not a protected class in the private sector and that the MMMA only protects users of medical marihuana from state action, such as arrest and prosecution, for legal use of the drug.

Joseph Casias worked as a Wal-Mart employee in Battle Creek, Michigan for a little over five years when he was terminated for violating the company's drug use policy. Mr. Casias suffers from sinus cancer and an inoperable brain tumor and endured ongoing pain as a result of his condition. Mr. Casias' oncologist recommended that he try medical marijuana to treat the pain associated with his medical condition, so Mr. Casias obtained a medical marihuana registry card from the Michigan Department of Community Health under the MMMA, which was enacted in 2008.

Mr. Casias complied with the state laws governing the use of medical marihuana and never used marihuana at work nor did he come to work while under the influence of the drug. During his employment, Mr. Casias took a drug test in accordance with Wal-Mart's drug use policy, and he tested positive for the use of marihuana. Wal-Mart did not honor Mr. Casias' medical marihuana registry card and terminated his employment because the use of marihuana violated the company's drug use policy. Mr. Casias sued Wal-Mart for wrongful termination.

The federal District Court for the Western District of Michigan held that Wal-Mart's decision to fire Mr. Casias was lawful because the MMMA only provides medical marihuana users with protection from state action, and not from private action. The court held that "[w]hatever protection the MMMA does provide users of medical marijuana, it does not reach to private employment." Casias v Wal-Mart Stores, Inc., 764 F. Supp. 2d 914, 926 (W.D. Mich. 2011)(internal citation omitted).

In affirming the district court's decision, the Sixth Circuit specifically held that the MMMA "does not impose restrictions on private employers, such as Wal-Mart." The court noted that similar medical marihuana laws in other states do not regulate private employment actions either. Finally, the court held that Wal-Mart's decision to terminate Mr. Casias' employment was not against public policy.

The full text of the court's opinion is available at http://www.ca6.uscourts.gov/opinions.pdf/12a0343p-06.pdf (last accessed September 28, 2012). Clients should consult with an attorney before taking any action against an employee for use or suspected use of medical marihuana.

FOR MORE INFORMATION CONTACT:

Christina K. McDonald, is an associate in Dickinson Wright's Grand Rapids office. She counsels companies in employment matters and practices in the area of commercial litigation, including employment litigation. Ms. McDonald can be reached at 616.336.1039 or cmcdonald@dickinsonwright.com.

Michigan
Unemployment Insurance Agency
Department of Talent and Economic Development | Talent Investment Agency

Notice to Employers and Claimants Concerning Medical Marijuana

Recently, the Michigan Supreme Court declined to hear cases challenging an earlier Michigan Court of Appeals ruling regarding the Unemployment Insurance Agency (UIA). As a result, the Court of Appeals decision is now final, and will not disqualify a person from receiving unemployment benefits if that person tests positive for marijuana while holding a valid registry identification card issued under the Michigan Medical Marijuana Act. As a result of this legal development, the Agency must take steps to comply with the Court of Appeals decision.

Now, and solely in the context of unemployment benefits, claimants will be disqualified from receiving unemployment benefits if the claimant's: (1) positive drug test for marijuana was caused by the ingestion of marijuana at the workplace; (2) discharge is based on the fact that the claimant was under the influence of marijuana at the workplace; or (3) inability to demonstrate that he or she is a qualifying patient who has been issued and possesses a registry identification card under the Michigan Medical Marijuana Act.

Claimants Should Know: When the use of medical marijuana is asserted to avoid a disqualification, UIA staff will request a copy of your valid registry identification card.

Employers Should Know: The term "under the influence" is not defined in the Michigan Medical Marijuana Act. Accordingly, fact finding will seek material facts which demonstrate that an individual's use of medical marijuana put the safety of persons or property at risk.

Consistent with any other issued (re)determinations, the Agency will continue to provide all parties protest and appeal rights of its (re)determinations where any party disagreeing with the Agency's (re)determination may protest or appeal the decision as warranted.

For more information, please call:

Employers: Office of Employer Ombudsman at 1-855-4UIAOEO (1-855-484-2636)

Claimants: UIA Customer Service Hotline at 1-866-500-0017

SECTION 1. ADDITION – CHAPTER 16.5. That the Code of Ordinances of the City of Owosso, Michigan, is hereby amended by adding a chapter, to be numbered Chapter 16.5, Medical Marihuana Facilities Licensing - Police Power Ordinance, which shall read as follows:

Sec. 16.5-7. - Penalties and Enforcement.

(a) Any person who violates any of the provisions of this ordinance shall be responsible for a 90-day misdemeanor. Each day a violation of this Ordinance continues to exist constitutes a separate violation. A violator of this Ordinance shall also be subject to such additional sanctions, remedies and judicial orders as are authorized under Michigan law.

(b) A violation of this Ordinance is deemed to be a nuisance per se. In addition to any other remedy available by law, the city of Owosso may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance.

(c) This Ordinance shall be enforced and administered by the city official as may be designated from time to time by resolution of the city council.

(d) A license issued under this chapter may be suspended or revoked for any of the following violations:

(1) Any person required to be named on the permit application is convicted of or found responsible for violating any provision of this chapter;

(2) A permit application contains any misrepresentation or omission of any material fact, or false or misleading information, or the applicant has provided the city with any other false or misleading information related to the facility;

(3) Any person required to be named on the permit application is convicted of a crime which, if it had occurred prior to submittal of the application, could have been cause for denial of the permit application;

(4) Marihuana is dispensed on the business premises in violation of this chapter or any other applicable state or local law, rule or regulation;

(5) The facility is operated or is operating in violation of the specifications of the permit application, any conditions of approval by the city or any other applicable state or local law, rule or regulation.

(6) The city, the county, or any other governmental entity with jurisdiction, has closed the facility temporarily or permanently or has issued any sanction for failure to comply with health and safety provisions of this chapter or other applicable state or local laws related to public health and safety.

(7) The facility is determined by the city to have become a public nuisance.

(8) The facility's state operating license has been suspended or revoked.

(e) Possession, sale or consumption of any form of alcohol is strictly prohibited in any licensed medical marihuana facilities.

AMENDMENT 38

Sec. 38-197. - Principal uses permitted. (B-1, Local Business District)

In a B-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

(11) A marihuana provisioning center as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power Ordinance, Chapter 16.5.

a. Provisioning centers shall be subject to the following standards:

6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act. ~~as follows: The distance between the school building and the contemplated location must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the contemplated location and from the part of the contemplated location nearest to the school building.~~

i. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

ii. A provisioning center may not be located within 100 feet of a residentially zoned ~~property.~~structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

iii. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

iv. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the nearest part of each provisioning center to the other provisioning center.

Sec. 38-217. - Principal uses permitted. (B-2, Planned Shopping Center District)

In a B-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

(4) A marihuana provisioning center as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance.

a. Provisioning centers shall be subject to the following standards:

6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act. ~~as follows: The distance between the school building and the contemplated location must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the contemplated location and from the part of the contemplated location nearest to the school building.~~

i. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

ii. A provisioning center may not be located within 100 feet of a residentially zoned ~~property~~ structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

iii. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

iv. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the nearest part of each provisioning center to the other provisioning center.

Sec. 38-242. - Principal uses permitted. (B-3, Central Business District)

In a B-3 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

(9) A marihuana provisioning center as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance.

a. Provisioning centers shall be subject to the following standards:

6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act. ~~as follows: The distance between the school building and the contemplated location must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the contemplated location and from the part of the contemplated location nearest to the school building.~~

i. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

ii. A provisioning center may not be located within 100 feet of a residentially zoned ~~property~~ structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

iii. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

iv. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the nearest part of each provisioning center to the other provisioning center.

Sec. 38-267. - Principal uses permitted. (B-4, General Business District)

In a B-4 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

(10) A marihuana provisioning center as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance.

a. Provisioning centers shall be subject to the following standards:

6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act. ~~as follows.: The distance between the school building and the contemplated location must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the contemplated location and from the part of the contemplated location nearest to the school building.~~

i. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

ii. A provisioning center may not be located within 100 feet of a residentially zoned ~~property~~ structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

iii. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

iv. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from

the nearest part of each provisioning centers to the other provisioning center.

Sec. 38-292. - Principal uses permitted. (I-1, Light Industrial District)

In an I-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

~~(11) A marihuana provisioning center, grower, processor, safety compliance facility or secure transporter as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance.~~

~~a. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the city of Owosso. In the event that a court with jurisdiction declares some or this entire article invalid, then the city of Owosso may suspend the acceptance of applications for Medical Marihuana Facilities Licenses pending the resolution of the legal issue in question.~~

~~b. The use or facility must be at all times in compliance with all other applicable laws and ordinances of the city of Owosso and State of Michigan.~~

~~c. The city of Owosso may suspend or revoke a Medical Marihuana Facilities License based on the finding that the provisions of the Medical Marihuana Facilities Licensing Act, all other applicable provisions of this zoning ordinance, the city of Owosso's police power authorizing ordinance, or the approved site plan are not met.~~

~~d. A marihuana facility, or activities associated with the licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.~~

~~e. Signage requirements for marihuana facilities, unless otherwise specified, are as provided in Chapter 26 – Signs of the *Owosso Code of Ordinances*.~~

(11) A marihuana provisioning center as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance.

a. Provisioning centers shall be subject to the following standards:

1. Hours. A provisioning center may only sell to consumers or allow consumers to be present in the building space occupied by the provisioning center between the hours of 8:00 a.m. and 9:00 p.m.

2. Indoor Activities. All activities of a provisioning center, including all transfers of marihuana, shall be conducted within the structure and out of public view. A provisioning center shall not have a walk-up window or drive-thru window service.

3. Other Activities. Marihuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the provisioning center.

4. Nonconforming Uses. A provisioning center may not locate in a building in which a nonconforming retail use has been established in any district.

5. Physical Appearance. The exterior appearance of the structure shall remain compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as

to prevent blight or deterioration or substantial diminishment or impairment of property values within the immediate area.

6. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act as follows:

   i. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

   ii. A provisioning center may not be located within 100 feet of a residentially zoned structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

   iii. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

   iv. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the nearest part of each provisioning centers to the other provisioning center.

7. Odor. As used in this subsection, building means the building, or portion thereof, used for a provisioning center.

   i. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

   ii. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

   iii. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.

iv. Negative air pressure shall be maintained inside the building.

v. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.

vi. An alternative odor control system is permitted if the special use applicant submits and the municipality accepts a report by a mechanical engineer licensed in the State of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.

(12) Marihuana growers~~,~~ , processor, safety compliance facility or secure transporter as authorized by the city of Owosso's Medical Marihuana Facilities Licensing - Police Power authorizing ordinance ~~and marihuana processors~~ shall be subject to the following standards:

a. Minimum Yard Depth/Distance from Lot Lines. Minimum yard depth/distance from lot lines shall adhere to measurement requirements as listed in Article XVI. –Schedule of Regulations for each zoning designation as listed.

b. Indoor Growing and Processing. In the I-1 light industrial district, marihuana growing shall be located entirely within a fully enclosed, secure, indoor facility or greenhouse with rigid walls, a roof, and doors. Marihuana processing shall be located entirely within one or more completely enclosed buildings.

c. Maximum Building Floor Space. The following maximum building floor space shall apply in the I-1 light industrial district:

1. If only a portion of a building is authorized for use in marihuana growing or processing, a partition wall at least seven feet in height, or a height as required by the applicable building codes, whichever is greater, shall separate the marihuana growing or processing space from the remainder of the building. A partition wall must include a door, capable of being closed and locked, for ingress and egress between the marihuana growing or processing space and the remainder of the building.

d. Lighting. Lighting shall be regulated as follows:

1. Light cast by light fixtures inside any building used for marihuana growing or marihuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.

2. Outdoor marihuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.

e. Odor. As used in this subsection, building means the building, or portion thereof, used for marihuana growing or marihuana processing.

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.

4. Negative air pressure shall be maintained inside the building.

5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

6. An alternative odor control system is permitted if the applicant submits and the municipality accepts a report by a mechanical engineer licensed in the state of Michigan demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The municipality may hire an outside expert to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.

f. Security Cameras. Security cameras must be used and shall be directed to record only the subject property and may not be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the state of Michigan. Recordings shall be kept for 90 days.

g. Buffer Zones. A provisioning center may not be located within the distance specified from the uses below as determined by the city of Owosso. Distance shall be measured as stipulated in the Michigan Liquor Control Act as follows:

1. A provisioning center may not be located within 200 feet of the real property comprising or used by a public or private elementary, vocational, or secondary school. The distance between the school building and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the school building nearest to the provisioning center and from the part of the provisioning center nearest to the school building.

2. A provisioning center may not be located within 100 feet of a residentially zoned structure. The distance between the residential zoned structure and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the residentially zoned structure nearest to the provisioning center and from the part of the provisioning center nearest to the residentially zoned structure.

3. A provisioning center may not be located within 100 feet of a vacant residentially zoned parcel. The distance between the residential zoned vacant parcel and the provisioning center must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the intersection of the minimum front or rear yard and side yard setback requirement nearest to the provisioning center and from the part of the provisioning center nearest to the intersection of the minimum front or rear yard and side yard setback requirement.

~~f.~~4. No parcel containing a medical marijuana provisioning center shall be located within 100 feet of a parcel on which another medical marijuana provisioning center is located. The distance between two medical marijuana provisioning centers must be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the nearest part of each provisioning centers to the other provisioning center.

Agenda Item #2

ARTICLE XIII. - I-1 LIGHT INDUSTRIAL DISTRICTS

Sec. 38-292. - Principal uses permitted.

In an I-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

(1) Any use charged with the principal function of basic research, design and pilot or experimental product development when conducted within a completely enclosed building;

(2) Any of the following uses when the manufacturing, compounding or processing is conducted wholly within a completely enclosed building. That portion of the land used for open storage facilities for materials or equipment ~~used in the manufacturing, compounding, or processing shall be totally obscured by a wall on those sides abutting any residential, office or business districts, and on any front yard abutting a public thoroughfare except as otherwise provided in~~ shall meet the requirements of section 38-389~~section 38-289~~ or section 38-393. ~~In I-1 districts, the extent of such a wall may be determined by the planning commission on the basis of usage. Such a wall shall not be less than four (4) feet six (6) inches in height and may, depending upon land usage, be required to be eight (8) feet in height, and shall be subject further to the requirements of article XVII, general provisions. A chain link fence, with intense evergreen shrub planting, shall be considered an obscuring wall. The height shall be determined in the same manner as the wall height as above set forth.~~

   a. Warehousing and wholesale establishments, and trucking facilities;
   b. The manufacture, compounding, processing, packaging or treatment of such products such as, but not limited to, bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware and cutlery, tool, die, gauge and machine shops;
   c. The manufacture, compounding, assembling, or treatment of articles or merchandise from previously prepared materials: bone, canvas, cellophane, cloth, cork, elastomers, feathers, felt, fibre [fiber], fur, glass, hair, horn, leather, paper, plastics, rubber, precious or semi-precious metals or stones, sheet metal, shell, textiles, tobacco, wax, wire, wood and yarns;
   d. The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas;
   e. Manufacture of musical instruments, toys, novelties and metal or rubber stamps, or other molded rubber products;
   f. Manufacture or assembly of electrical appliances, electronic instruments and devices, radios and phonographs;
   g. Laboratories—Experimental, film or testing;

h. Manufacturing and repair of electric or neon signs, light sheet metal products, including heating and ventilating equipment, cornices, eaves and the like;
i. Central dry cleaning plants or laundries provided that such plants shall not deal directly with consumer at retail;
j. All public utilities, including buildings, necessary structures, storage yards and other related uses.

(3) Warehouses, storage and transfer and electric and gas service buildings and yards; public utility buildings, telephone exchange buildings, electrical transformer stations and substations, and gas regulator stations; water supply and sewage disposal plants; water and gas tank holders; railroad transfer and storage tracks; railroad rights-of-way; freight terminals;

(4) Storage facilities for building materials, sand, gravel, stone, lumber, storage of contractor's equipment and supplies, provided such is enclosed within a building or within a~~n obscuring~~ solid wall or fence that meets the requirements of section 38-389 or section 38-393.~~on those sides abutting all residential, office, or business districts, and on any yard abutting a public thoroughfare. In any "I-1" district, the extent of such fence or wall may be determined by the planning commission on the basis of usage. Such fence or wall shall not be less than five (5) feet in height, and may, depending on land usage, be required to be eight (8) feet in height. A chain link type fence, with heavy evergreen shrubbery inside of said fence, shall be considered to be an obscuring fence;~~

(5) Municipal uses such as water treatment plants, and reservoirs, sewage treatment plants, and all other municipal buildings and uses, including outdoor storage;

(6) Commercial kennels;

(7) Greenhouses;

(8) Other uses of a similar and no more objectionable character to the above uses;

(9) Accessory buildings and uses customarily incident to any of the above permitted uses;

(10) Residential structures existing as of January 1, 2012.

(11) A marihuana provisioning center, grower, processor, safety compliance facility or secure transporter as authorized by the city's medical marihuana facilities licensing — police power authorizing ordinance.

a. Any uses or activities found by the state or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the city. In the event that a court with jurisdiction declares some or this entire article invalid, then the city may suspend the acceptance of applications for medical marihuana facilities licenses pending the resolution of the legal issue in question.
b. The use or facility must be at all times in compliance with all other applicable laws and ordinances of the city and state.
c. The city may suspend or revoke a medical marihuana facilities license based on the finding that the provisions of the Medical Marihuana Facilities

Licensing Act, all other applicable provisions of this zoning ordinance, the city's police power authorizing ordinance, or the approved site plan are not met.

d. A marihuana facility, or activities associated with the licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this chapter.
e. Signage requirements for marihuana facilities, unless otherwise specified, are as provided in chapter 26 — signs.

(12) Marihuana growers and marihuana processors shall be subject to the following standards:

a. *Minimum yard depth/distance from lot lines.* Minimum yard depth/distance from lot lines shall adhere to measurement requirements as listed in article XVI — schedule of regulations for each zoning designation as listed.
b. *Indoor growing and processing.* In the I-1 light industrial district, marihuana growing shall be located entirely within a fully enclosed, secure, indoor facility or greenhouse with rigid walls, a roof, and doors. Marihuana processing shall be located entirely within one (1) or more completely enclosed buildings.
c. *Maximum building floor space.* The following maximum building floor space shall apply in the I-1 light industrial district:
    1. If only a portion of a building is authorized for use in marihuana growing or processing, a partition wall at least seven (7) feet in height, or a height as required by the applicable building codes, whichever is greater, shall separate the marihuana growing or processing space from the remainder of the building. A partition wall must include a door, capable of being closed and locked, for ingress and egress between the marihuana growing or processing space and the remainder of the building.
d. *Lighting.* Lighting shall be regulated as follows:
    1. Light cast by light fixtures inside any building used for marihuana growing or marihuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
    2. Outdoor marihuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
e. *Odor.* As used in this subsection, building means the building, or portion thereof, used for marihuana growing or marihuana processing.
    1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
    2. The filtration system shall consist of one (1) or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three (3). The filter(s) shall be rated for the applicable CFM.

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

f. *Security cameras.* Security cameras must be used and shall be directed to record only the subject property and may not be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the state. Recordings shall be kept for ninety (90) days.

(Code 1977, § 5.58; Ord. No. 499, 2-16-93; Ord. No. 721, § 5, 4-18-11; Ord. No. 729, § 1, 2-6-12; Ord. No. 793, § 7, 7-2-18)

ARTICLE XIV. - I-2 GENERAL INDUSTRIAL DISTRICTS

Sec. 38-312. - Principal uses permitted.

In an I-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

(1) Any principal use first permitted in an I-1 district;
(2) Onsite heating and electric power generating plants using conventional fuels or renewable resources;
(3) Gasoline or petroleum storage;
(4) Railroad yards;
(5) Any of the following production or manufacturing uses (not including storage of finished products) provided that they are located not less than eight hundred (800) feet distant from any residential district and not less than three hundred (300) feet distant from any other district:
    a. Junkyards, provided such are entirely enclosed within a building or ~~within an eight (8) foot obscuring wall~~ the site meets Sec. 38-389 wall requirements and provided further that one property line abuts a railroad right-of-way.
(6) Foundry operations within a closed building;
(7) Any other use which shall be determined by the council after recommendation from the planning commission, to be of the same general character as the above permitted uses in this section. The council may impose any required setbacks and/or performance standards so as to ensure public health, safety and general welfare;
(8) Accessory buildings and uses customarily incident to any of the above permitted uses.

Additional uses allowed by special use permit:

(1) Grain elevators;
(2) Any of the following production or manufacturing uses (not including storage of finished products) provided that they are located not less than eight hundred (800) feet distant from any residential district and not less than three hundred (300) feet distant from any other district:
    a. Incineration of garbage or refuse when conducted within an approved and enclosed incinerator plant;
    b. Blast furnace, steel furnace, blooming or rolling mill;
    c. Manufacture of corrosive acid or alkali, cement, lime, gypsum or plaster of Paris;
    d. Petroleum or other inflammable liquids, production or refining;
    e. Smelting of copper, iron or zinc ore.

(Code 1977, § 5.63; Ord. No. 768, § 1, 6-15-15)

Sec. 38-389. - Walls.

(a) For those use districts and uses listed below, there shall be provided and maintained on those sides abutting or adjacent to a residential district, or a single-family detached residential use, an obscuring wall as required below, except otherwise required in subsection (d):

Use Requirements

(1) P-1 Vehicular parking district—Four (4) foot six (6) inch high wall. Off-street parking area (other than P-1 districts) four (4) foot six (6) inch high wall.
(2) B-1, B-2, B-3, B-4, and OS-1 districts—Four (4) foot, six (6) inch high wall.
(3) I-1 and I-2 districts—Open storage areas, loading or unloading areas, service areas—Four (4) foot, six (6) inch to eight (8) foot high wall ~~or fence~~. Wall ~~H~~height shall be one (1) foot above the height of the open storage items, piles, etc. ~~provide the most complete obscuring possible.~~ See subsection (d) of this section.
(4) Auto wash. Drive-in restaurants—Six (6) foot high wall.
(5) Utility buildings, stations and/or substations—Six (6) foot high wall.

(b) Required walls shall be located on the lot line except where underground utilities interfere and except in instances where this chapter requires conformance with front yard setback lines in abutting residential districts. Upon review of the site plan, the board of appeals or planning commission may approve an alternate location for the wall or may waive the wall requirement if in specific cases it would not serve the purposes of screening the area effectively. Required walls may, upon approval of the board of appeals, be located on the opposite side of an alley right-of-way from a nonresidential zone that abuts a residential zone when mutually agreeable to affected property owners. The continuity of the required wall on a given block will be a major consideration of the board of appeals in reviewing such request.

(c) Such walls and screening barrier shall have no openings for vehicular traffic or other purposes, except as otherwise provided in this chapter and except such openings as may be approved by the police chief and the building inspector. All walls herein required shall be constructed of materials approved by the building inspector to be durable, weather resistant, rust proof and easily maintained. ~~Masonry walls may be constructed with openings which do not in any square section (height and width) exceed twenty (20) percent of the surface. Where walls are so pierced, the openings shall be so spaced as to maintain the obscuring character required, and shall not reduce the minimum height requirement. The arrangement of the openings shall be reviewed and approved by the building inspector.~~

~~(d) The requirement for an obscuring wall between off-street parking areas, outdoor storage areas, and any abutting residential district, or single family detached residential use, shall not be required when such areas are located more than two hundred (200) feet distant from such abutting residential district.~~

~~(e)~~(d) The ~~board of appeals or~~ planning commission may waive or modify the foregoing requirements where cause can be shown that no good purpose

would be served, provided that in no instance shall a required wall be permitted to be less than four (4) feet six (6) inches in height, except where section 38-388 applies. In certain consideration of request to waive wall requirements between nonresidential and residential districts, or single-family detached residential use, the planning commission shall determine ~~or the board shall refer the request to the planning commission to determine~~ whether or not the residential district or single-family detached residential use, is considered to be an area in transition and will become nonresidential in the future. In such cases as the planning commission determines the residential district or single-family detached residential use, to be a future nonresidential area, ~~the board or~~ commission may temporarily waive wall requirements for an initial period not to exceed twelve (12) months. Granting of subsequent waivers shall be permitted, provided that the planning commission shall make a determination as hereinbefore described, for each subsequent waiver prior to the granting of such waiver.

(Code 1977, § 5.89; Ord. No. 440, § 1, 1-6-86)

Sec. 38-393. - Fences and hedges.

(a) A fence is defined as any partition, structure or gate that is erected as a dividing marker, barrier or enclosure (excluding hedges as defined below).

(b) A hedge is defined as any bush, shrub or any living green screen of any nature that serves as a dividing marker, barrier or enclosure.

(c) Regulations applicable to R-1, R-2, RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, C-OS, and P-1.

(1) A fence shall not exceed six (6) feet in height in the rear or side lot of any parcel;

(2) Front yard fences or hedges must be less than fifty (50) percent solid, impervious, or of an obscuring nature above a height of thirty (30) inches above the curb or centerline of the street, and not exceed four (4) feet in total height;

(3) Fences and hedges in front yards that function as exterior side yards must follow front yard restrictions unless the fence or hedge is installed or planted at least nineteen (19) feet back from the right-of-way line or follows the building line of the nearest legal structure. All such fences and hedges must meet clear vision requirements for streets, driveways, and sidewalks.

(4) No fence or hedge shall extend across property lines;

(5) The finished side of any fence shall face away from the property on which the fence is located;

(6) No portion of any fence shall be constructed with or contain barbed wire, electric current or charge of electricity, glass, spikes or other sharp protruding objects;

(7) Fences must be maintained so as not to endanger life or property. Any fence which, through lack of maintenance or type of construction which will obstruct vision so to create a hazard to vehicular traffic or pedestrians upon the public streets and/or sidewalks shall be deemed a nuisance;

(8) Fences shall not be constructed, in whole or in part, with any of the following materials:

a. Junk or other debris.
b. Scrap building materials or metals.
c. Organic materials known to be poisonous or hazardous to human or animal life.
d. Other materials which may be deemed unsafe to person or property by the zoning administrator or building official.

(9) No hedge shall be constructed with noxious weeds or grasses, as defined by PA 359 of 1941, being MCL 247.62.

(10) Screening walls are required as prescribed in section 38-389.

(d) Regulations applicable to industrial districts.

(1) Fences~~, walls and screens~~ are permitted in the required front, side and rear lots provided they do not exceed six (6) feet in the front yard and eight (8) feet in the side and rear lots. To preserve open space and aesthetic character in the front yard, fences higher than four (4) feet must be setback two (2) feet for each additional foot above four (4) feet and all front yard fences must be black vinyl chain link or decorative in nature.

(2) Industrial district uses with open storage areas, loading or unloading areas, service areas shall provide and maintain on those sides abutting or adjacent to a residential district, or a single-family detached residential use, a solid fence not to exceed eight (8) foot high. The fence height shall be one (1) foot above the height of the open storage items, piles, etc. A solid gate shall also be provided to screen the open storage from the right of way.

~~(1)~~(3) Except as provided below, barbed wire strands and noncoated or decorative chain link are permitted on fences six (6) feet or higher on industrial parcels with the barbed wire tilted in toward the fenced parcel. Barbed wire is not permitted in the front yard except for those located on McMillan Ave, Industrial Drive, South Street, and Aiken Road.

~~(2)~~(4) On any corner lot, no fence, wall or screen, whether structural or botanical, shall be more than thirty (30) inches above the curb or the centerline of the street pavement, or within twenty-five (25) feet of the intersection of the two (2) right-of-way lines, so as to interfere with motorists' vision across the corner.

~~(3)~~(5) Screening walls are required as prescribed in section 38-389.

(e) The zoning administrator or building official may require removal, reconstruction, or repair of any fence or wall which, in their judgment is dilapidated, unsafe, or a threat to the health, safety and welfare of the residents of the City of Owosso.

(f) A permit shall be required for new fence construction, with a fee to be prescribed by resolution of the council.

(Ord. No. 745, §§ 1, 3, 8-19-13)

Editor's note— Ord. No. 745, §§ 1, 3, adopted Aug. 19, 2013, repealed § 38-393, and enacted a new § 38-393 as herein set out. Former § 38-393 pertained to fences, walls, or screens, and derived from the 1977 Code, §§ 8.202—8.207; Ord. No. 436, § 1(5.92(a)), adopted Sept. 16, 1985; Ord. No. 524, § 1, adopted March 20, 1995; and Ord. No. 626, § 1, adopted March 17, 2003.

Cross reference— Corner clearance, § 38-388.

Agenda Item #3

Sec. 38-379. - Accessory buildings.

Accessory buildings, except as otherwise permitted in this chapter, shall be subject to the following regulations:

(11) Amateur Radio Services regulations are as follows:

a. This section is intended to:

1. Provide for the reasonable accommodation of Amateur Radio Support Structures in the City per the Michigan Zoning Enabling Act.
2. Constitute minimum practicable regulation to accomplish the City's legitimate purposes consistent with state and federal laws including Federal Communication Commission regulations pertaining to Amateur Radio Services, as noted in PRB-1 (1985), as amended and reconsidered. Legitimate purposes include, but are not limited to, preserving the public health, safety, and general welfare of the City and its residents.

b. As used in this section, the following terms shall have the indicated meanings:

Amateur Radio Service: A federally licensed radio-communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest particularly with respect to providing emergency communications. (As per Code of Federal Regulations, Title 47, Part 97).

Amateur Radio Antenna: Any combination of materials or equipment used exclusively for the purpose of sending and/or receiving electromagnetic waves for Amateur Radio Services.

Amateur Radio Antenna Support Structure: Any structure, such as a mast, pole, tower or any combination thereof, whether ground or roof mounted, freestanding or guyed, used exclusively for supporting Amateur Radio Antenna(e).

Ground Mounted Amateur Radio Antenna Support Structure: Amateur Radio Antenna Support Structures that are not fixed to any building or accessory structure.

Roof Mounted Amateur Radio Antenna Support Structure: Amateur Radio Antenna Support Structures that are fixed to any building or accessory structure.

Overall Height: The total height of the Amateur Radio Antenna Support Structure as measured from mean grade to the highest point of the Antenna Support Structure. For Roof Mounted Antenna Support Structures, the mean grade is measured from the established grade adjoining the exterior walls of the structure upon which the antenna or support structure is affixed. For Ground Mounted Antenna Support Structures, the mean grade is measured at the established grade adjoining such antenna and/or support structure.

c. Amateur Radio Antenna and Amateur Radio Antenna Support Structures are permitted by right, with a zoning permit, in all zoning districts subject to the following regulations:

1. No Amateur Radio Antenna Support Structure shall be taller than 60 feet in height.

2. No Roof Mounted Amateur Radio Antenna Support Structure shall be fixed to the side of a structure that faces a public street(s).
3. Ground Mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall not be allowed in the front yard or a side yard facing a street.
4. Ground Mounted Radio Antenna and Amateur Radio Support Structures shall have a minimum setback equal to one-third (1/3) its height to any property line.
5. No more than one (1) Amateur Radio Antenna Support Structures shall be permitted on a single lot or parcel of land.
6. No Amateur Radio Antenna and Amateur Radio Support Structure shall be used for co-location of commercial antennas.
7. Climbable Ground Mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be completely enclosed by a fence at least 5 feet tall and no taller than 6 feet tall or shall have appropriate anti-climb devices attached up to a height of five (5) feet or more.
8. Submittal of manufacturer's specifications for construction, assembly and erection and a certification from the owner and/or licensee that such specifications have been followed in erecting the subject. In the event of unavailable manufacturing specfitications, certification by a licensed professional engineer must be filed with the City confirming the structural stability and soundness of the antenna and/or support structure.

d. If any of the standards contained in section c. above cannot be met or maintained, a site plan approval shall be required by the Planning Commission. In considering whether or not a site plan shall be approved, the Planning Commission shall consider the following standards:
   1. Structural Ability and Soundness: The applicant shall demonstrate structural stability and soundness of the proposed Amateur Radio Support Structure. This can be achieved through either of the following:
      i. Providing a copy of the manufacturer's specification on assembly, construction and erection, and a certification that such a specification has been followed.
      ii. A certification by a licensed professional engineer confirming the structural stability and soundness of the proposed Amateur Radio Support Structures.
   2. Location: The proposed Amateur Radio Support Structures shall be so located and installed as to be safe and to create minimum impact to the surrounding properties.
   3. Height: The applicant shall demonstrate the need for the proposed Amateur Radio Support Structure to exceed 60 feet in height. This can be accomplished by providing information regarding the topography of the subject property or other information that would affect the operation of the Amateur Radio Service.
e. All Amateur Radio Antenna and Amateur Radio Antenna Support Structure shall meet all applicable State Building Code requirements.
f. In the event, the any part of the Amateur Radio Antenna and Amateur Radio Antenna Support Support Structure fall into disrepair, doesn't meet the requirements of this section, doesn't meet any other State or Federal Law or is no longer in use, the property owner shall be responsible for the removal, maintenance or replacement of the Amateur Radio Antenna and Amateur Radio Antenna Support Structure.