

the review

May / June 2020

the official magazine of the  michigan municipal league



MARIJUANA

MAKING THE RIGHT CHOICE
FOR YOUR COMMUNITY

the review

The official magazine of the Michigan Municipal League

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Photo by David Green of the *State Line Observer*



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the review

The official magazine of the Michigan Municipal League

Volume 93, Number 3

We love where you live.

The Michigan Municipal League is dedicated to making Michigan's communities better by thoughtfully innovating programs, energetically connecting ideas and people, actively serving members with resources and services, and passionately inspiring positive change for Michigan's greatest centers of potential: its communities.

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We Live in Rapidly Changing Times

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

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

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

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

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

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

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



Daniel P. Gilmartin
League Executive Director and CEO
734.669.6302; dpg@mml.org





A worker at Morenci Brothers Holding Company in the industrial park tends to young cannabis plants.



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

MARIJUANA: BUSINESS

By Kim Cekola

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

Southern Municipalities

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



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



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

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

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

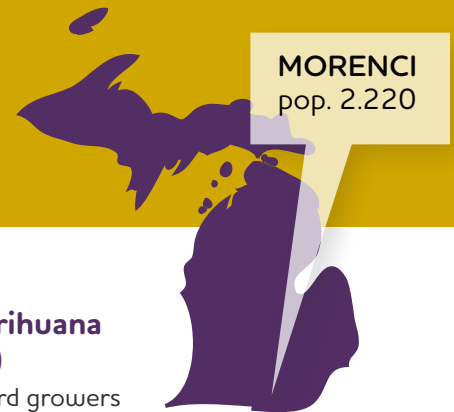
However, in Decatur the situation is different. “We see a lot of out-of-state visitors in the summer. So, it stands to reason that some of those people could be customers of those facilities,” said Village Manager Matthew Newton. “In conjunction, we felt that being close to the border could offer our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



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



NOT MORALITY



MARIJUANA FINANCIALS – MORENCI

Medical Marihuana License Fee Revenue

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

Tax Revenue Generated

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

Property Sales

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

Utility Sales

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

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

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

Medical Marihuana Facilities Licensing Act of 2016 (MMFLA)

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

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

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

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

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

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

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

Advice to Municipalities

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

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

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

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

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SPLIT DECISION

Medical – YES

Recreational – NO



By Ken Hibl

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

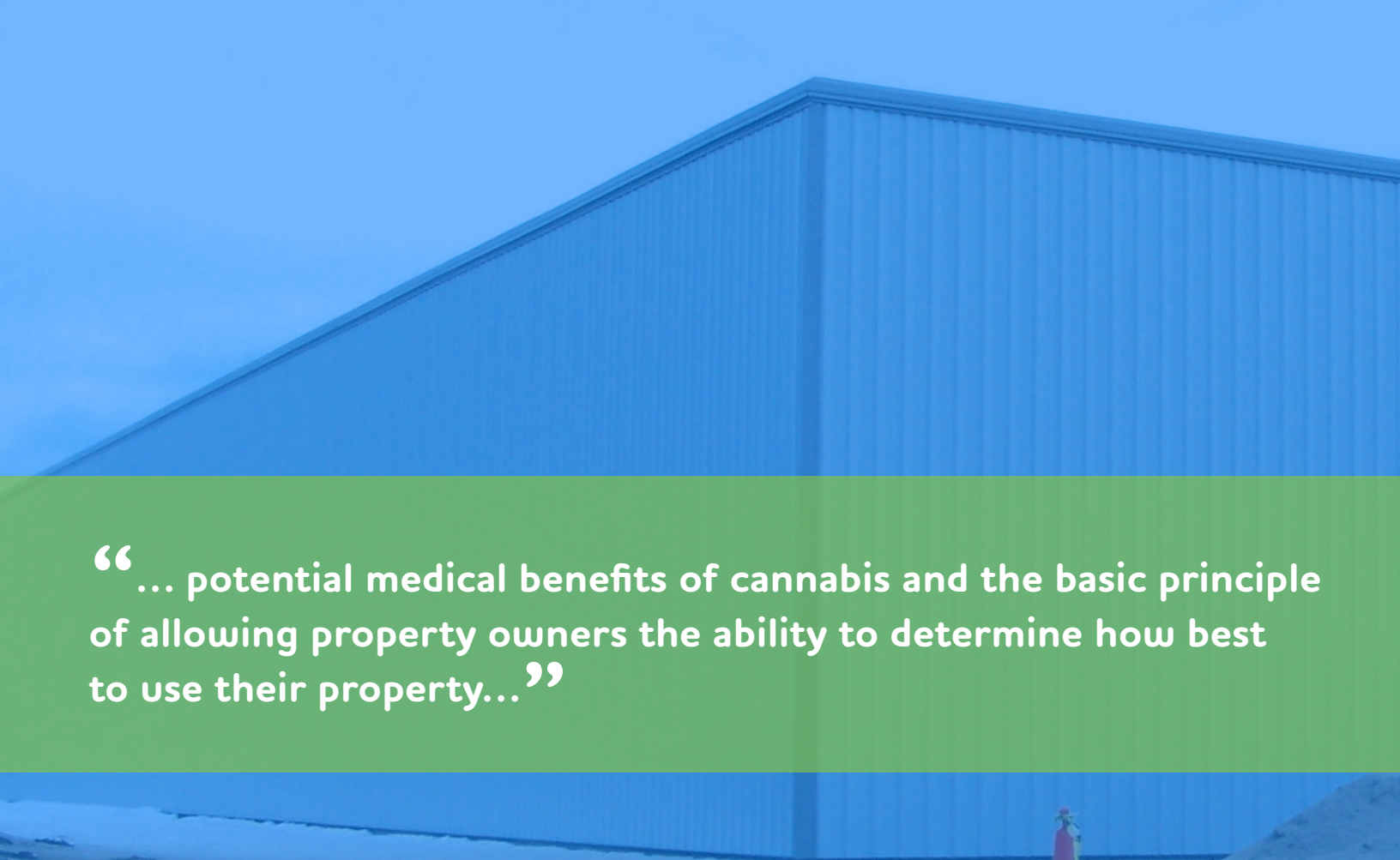
The City of Clare's current positions on medical and recreational marijuana are somewhat unique. In 2011, the city decided to opt-in on the topic of medical marijuana. Seven years later, after the majority of Michigan's electorate supported the legalization of recreational marijuana in the state, Clare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

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

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

Medical Marijuana Gets a Thumbs Up

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



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

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

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


Building Construction is Underway

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

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

Recreational Marijuana Gets a Thumbs Down

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

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

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



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MARIJUANA ON THE BALLOT



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

Initiatives and Referendums of Marijuana Ordinances

By Laura J. Genovich

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

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

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

Initiatives and Referendums

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

The MRTMA permits electors to initiate a marijuana ordinance:

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



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

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

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

Case Studies

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

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

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

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


Issues & Challenges

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

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

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

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

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

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



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FIRE AND LIFE SAFETY IN MICHIGAN'S MARIJUANA FACILITIES

By Adam A. Dailide

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

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

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

Industrial Occupancy

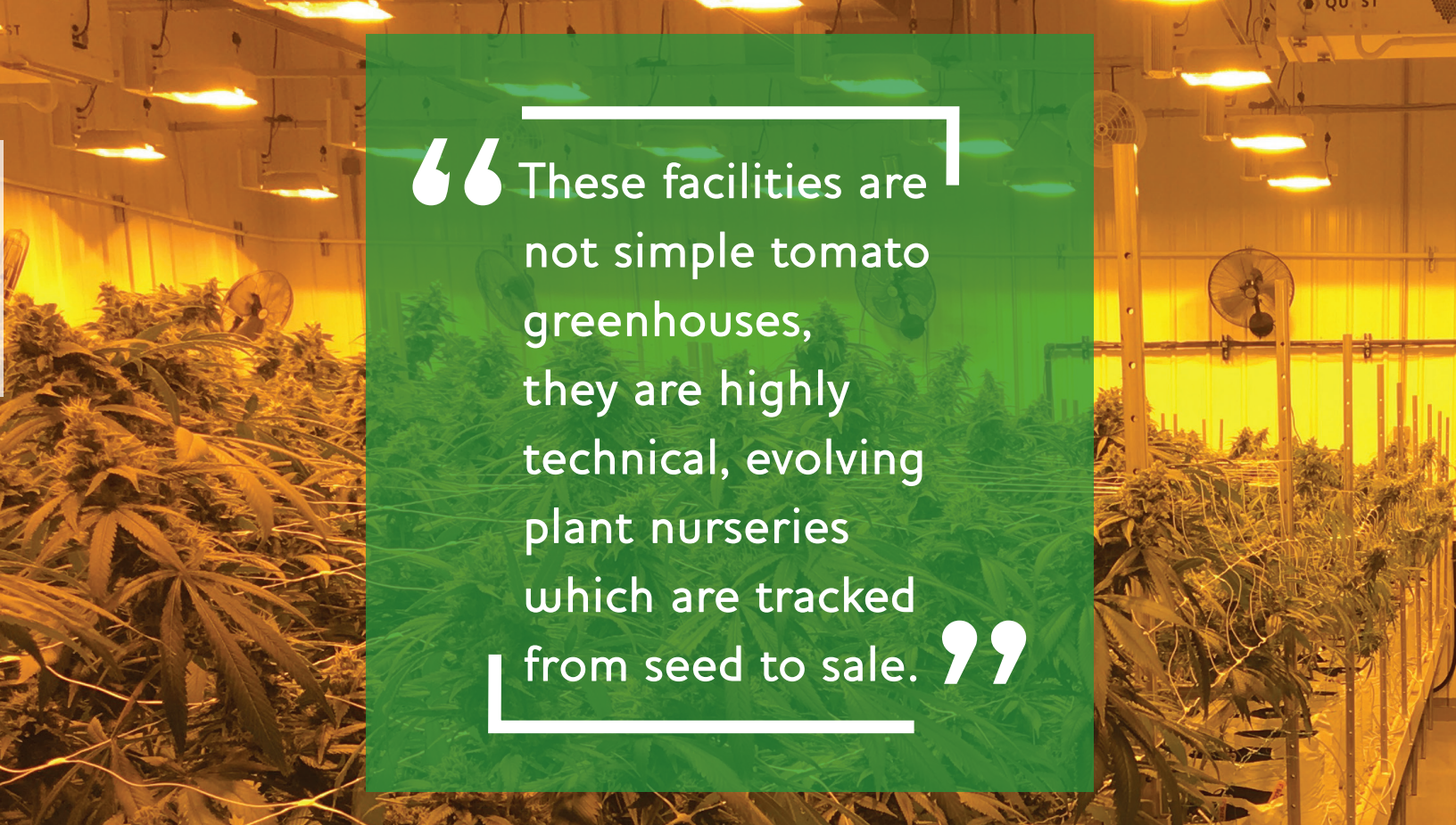
The Bureau of Fire Services looks specifically at the fire and life safety issues with these facilities and their operation. These facilities have uses and methods that are specific to

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

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

Potential Concerns


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



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

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

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

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

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



LEGALIZED MARIJUANA

WHAT IT MEANS FOR PUBLIC EMPLOYERS

By Steven P. Joppich

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

Specific Employer-Employee Provisions in the MMMA & MRTMA

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

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

Applicability of Other State and Federal Laws

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

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

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

(a) DOT Regulations

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

(b) Drug-Free Workplace Act

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

(c) Americans with Disabilities Act

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

(d) Title VII and ELCRA

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

Applicable Case Law

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

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

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


What can we learn from these cases?

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



What should public employers do?

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

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

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



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IS MARIJUANA SOCIAL EQUITY A PIPE DREAM?

By Clyde J. Robinson

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

Disproportionately Impacted Communities

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

Impact of Michigan Constitution and Federal Fourteenth Amendment

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

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

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

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

LARA’s Social Equity Plan

The way the Marijuana Regulatory Agency has implemented MRTMA

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

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

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

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

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

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

Local Social Equity Plans

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

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


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

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

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

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

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

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

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



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How Legalizing Recreational Marijuana Impacts Home Values

By Luke Babich



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

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

Three pivotal questions guided our research

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

Key Insights

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

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

Recreational Dispensaries Lead to Higher Local Home Values

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

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

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


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

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

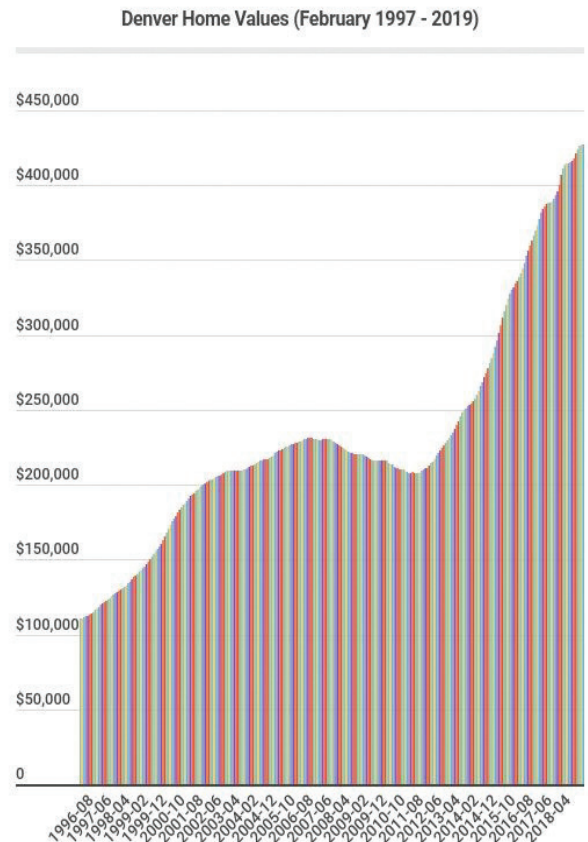
around Colorado. Cities in Colorado with dispensaries have higher than average property value growth compared to the national average.

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

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

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

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



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



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Marijuana in Michigan A Municipal Retrospective

By Clyde J. Robinson

The MMMA: Palliative or Placebo?

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

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

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

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

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

The MMFLA: The Legislature (Finally) Steps In

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

The MRTMA: Legalizing Recreational Marijuana

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

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MUNICIPALITIES WILL
LIKELY FACE MANY
OF THE SAME LEGAL
ISSUES IN THE ATTEMPT
TO ZONE AND LICENSE
ADULT USE MARIJUANA
ESTABLISHMENTS THAT
WERE PRESENTED BY
THE IMPLEMENTATION
OF THE MEDICAL
MARIJUANA STATUTES.

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


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

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

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





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

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



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

Industrial Hemp

ANOTHER SIDE TO MARIJUANA

By Gina Alessandri

FACT SHEET: Industrial Hemp

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

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

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

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

Federal Legislation

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

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

State Legislation and Hemp Pilot Program

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

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

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

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

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

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

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

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



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

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

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

FACTS:

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

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

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

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

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

QUESTION:

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

ANSWER:

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

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

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PINCANNA

Marijuana as a Budget Booster

By Rick Haglund

New retail provisioning center in Kalkaska.

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

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

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

Reaping the Rewards

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

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

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

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

Future of Benefits to Municipalities

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

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

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

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


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

The Stigma May Fade

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

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

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

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

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



Real Leaf Solutions active grow facility in Kalkaska.



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



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Opting-in to Economic Opportunity

By Gerard Valesano



CRYSTAL FALLS
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Crystal Falls courthouse.

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

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

Crafting an Opt-in Ordinance

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

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

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

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



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


Preparing for an Influx of Business

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

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

Looking Forward to Big Economic Benefits

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

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

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



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THE LAB REPORT

Ideas, initiatives, and activities from the League's Policy Research Labs

Hamtramck Home Run

By Shanna Draheim



Hamtramck Stadium will be getting a facelift.

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

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

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

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

Engaging the Community

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

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



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




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

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


Improving Community Life

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

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

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

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


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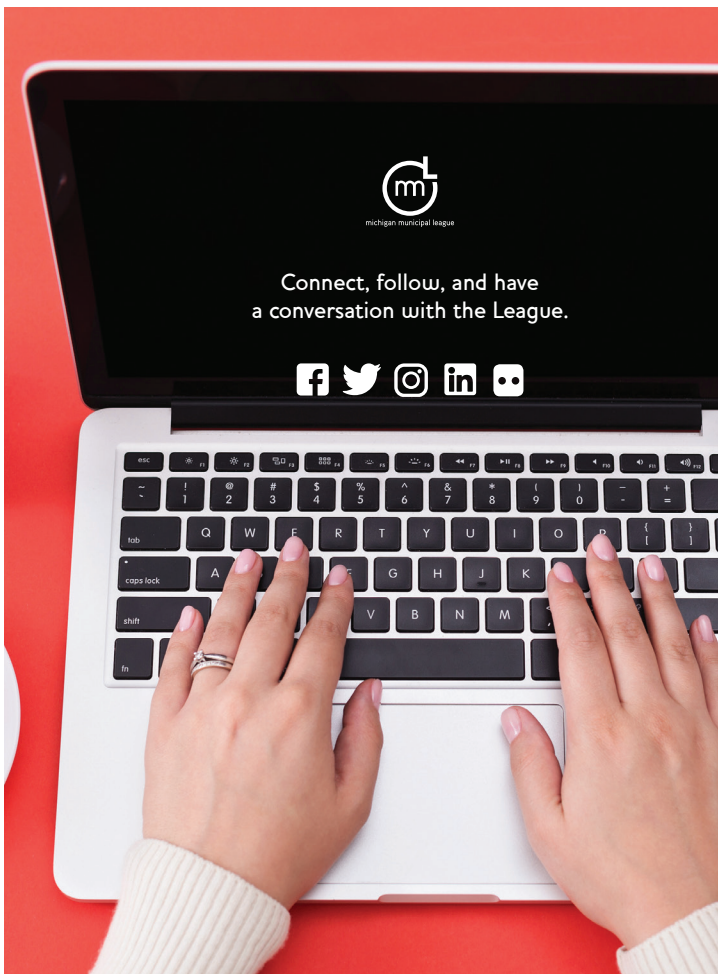
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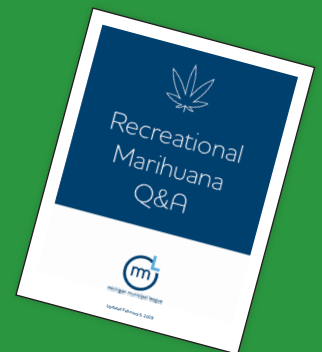
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Recreational Marijuana Q&A

Questions and answers from League training seminars and webinar.



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

*answers from the Marijuana Regulatory Agency (MRA)

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

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

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

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

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

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

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

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

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

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

Marijuana Resources



michigan municipal league



By Kim Cekola

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

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

Michigan Municipal League Original Resources

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

1. Medical Marijuana Facilities—Opt In/Opt Out

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

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


Municipal Samples

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

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

State of Michigan

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

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

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2020 COMMUNITY EXCELLENCE AWARD COMPETITION ON HOLD

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

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

Stay healthy!