

Committee of the Whole Work Session of November 30, 2017.

9:00 a.m. Call to Order.

Roll Call.

Introduction.

1. Presentation Document for Committee of the Whole Meeting

A. Short History of Medical Marihuana in Michigan

B. Overview of Medical Marihuana Statutes

C. Options and Challenges for Municipalities

D. Components of Draft Ordinance

E. Ordinance Timeline

F. Questions and Answers

G. Public Comments

H. Next Steps

I. Adjournment

City of Portage

Council Committee of the Whole - Agenda

November 30, 2017

1. Short History of Medical Marihuana in Michigan
2. Overview of Medical Marihuana Statutes
3. Options and Challenges for Municipalities
4. Components of draft ordinance
5. Ordinance timeline
6. Q&A
7. Public Comments
8. Next steps

November 2008: Michigan voters approve Michigan Medical Marihuana Act. Act fails to reference dispensaries or commercial sale of medical marihuana to qualifying patients or caregivers.

February 2013: Michigan Supreme Court decides People v. McQueen, which largely makes commercial sale of medical marihuana legally untenable, creating legal uncertainty surrounding commercial dispensary operations.

February 2014: Michigan Supreme Court in Ter Beek v. Wyoming strikes down ordinance prohibiting any use contrary to federal or state law as being pre-empted by Michigan Medical Marihuana Act.

December 2016: Michigan Court of appeals in People v. Latz strikes down the statute setting forth the offense of illegal transportation of marihuana as preempted by the Michigan Medical Marihuana Act. Because the statute was not part of the MMMA, the defendant, who was in compliance with the MMMA, could not be prosecuted for violating the statute.

September 2016: Adoption by Legislature of three bills addressing the commercialization of medical marihuana and medibles (edible marijuana-infused products) signed into law by Governor.

Public Act 281: Medical Marihuana Facilities Licensing Act

Public Act 282: Marihuana Tracking Act

Public Act 283: Amended MMMA to recognize and provide for “marihuana-infused products”; defines “usable marihuana equivalencies”; prohibits butane resin extraction refining process in residential areas

Taken together the statutes outline a “seed-to-sale” regulatory scheme for the commercialization of medical marihuana and permits consumption of marihuana by consumption other than by smoke inhalation.

Acts took effect December 20, 2016, but application for state-issued operating licenses for the various types of marihuana facilities begins December 15, 2017.

November 2018: recreational marihuana?

Public Act 283 amended Michigan Medical Marihuana Act by:

1. Adding definitions:

“Marihuana-infused product” (aka “medibles”)

substances intended for human use or consumption other than by smoking.

“Usable marihuana equivalent”

1 oz. of usable marihuana =

16 oz. of marihuana-infused product in solid form

7 grams of marihuana-infused product in gaseous form

36 fl. oz. of marihuana-infused product in liquid form

2. Prohibits butane extraction of plant resin inside or within curtilage of a residential structure

**** Public Act 546 (effective April 10, 2017) amended MMMA to:**

Permit a landlord to insert language in a written lease prohibiting smoking or cultivation of marihuana on the leased premises

Public Act 282 Marihuana Tracking Act

1. Requires the establishment of a state-wide marihuana monitoring system to be accessed by licensees and law enforcement officials
2. Monitors “seed-to-sale” transfers through inventory control and tracking
3. Department of Licensing and Regulatory Affairs (LARA) bid the contract to establish, operate and maintain the monitoring system
4. According to LARA the system is in place and ready to go.
5. Will be available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for the following:
 - a. Verifying registry identification cards.
 - b. Tracking marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.
 - c. Verifying in a commercially reasonable time that a transfer will not exceed the limit that the registered qualifying patient or registered primary caregiver is authorized to receive under section 4 of the MMMA.

Public Act 281 Medical Marihuana Facilities Licensing Act or MMFLA

1. Creates the **Medical Marihuana Licensing Board** within LARA to implement the Act, including the licensing process, and give the Board jurisdiction over the operation of all marihuana facilities.
2. Creates 5 types of Medical Marihuana Facilities:
 - **Grower:** cultivates, dries, trims or cures, and packages marihuana
Class A – 500 plants, Class B – 1000 plants, Class C – 1500 plants
 - **Processor:** extracts resin from plant /creates marihuana-infused products
 - **Secure Transporter:** transports marihuana & cash between facilities; may also store marihuana
 - **Safety Compliance Facility:** tests samples of marihuana for contaminants and its active ingredients
 - **Provisioning Center:** sells marihuana/marihuana infused products only to registered patients and caregivers

Grower Facility

Three classes: Class A (500 plants) /Class B (1000 plants)/Class C (1500 plants)

- ❖ Cultivates, dries, trims or cures and packages marihuana for sale to a processor or provisioning center; may sell seeds and plants to another grower
- ❖ May not have an interest in a secure transporter or testing center
- ❖ *Until 12/31/2021 must employ a formerly registered caregiver with at least 2 years experience*
- ❖ *May not be a current registered caregiver nor employ a currently registered caregiver*
- ❖ May only operate in an industrial or agricultural zone or unzoned land
- ❖ On September 28, 2017 LARA issued Advisory Bulletin authorizing “multiple (stacked) class C grow licenses” **(Must locals go along?)**

Processor Facility

- ❖ Extracts resin from marihuana or creates marihuana-infused products for sale in packaged form to a provisioning center
- ❖ *Until 12/31/2021 must employ a former caregiver*
- ❖ *May not be a registered caregiver nor employ a currently registered caregiver*
- ❖ Not eligible to hold a secure transporter or safety compliance (testing center) license
- ❖ Must make use of statewide monitoring system
- ❖ Must purchase marihuana from a grower

Safety Compliance Center Facility

- ❖ Receives marihuana from a facility or caregiver and tests it for contaminants, tetrahydrocannabinol (THC) and other cannabinoids
- ❖ Must use statewide monitoring system
- ❖ Lab space cannot be accessible to general public
- ❖ May test samples of up to 2.5 oz. brought in registered patients and caregivers
- ❖ Must employ at least 1 staff member with advanced degree in a medical or laboratory science (*State clarification of standard likely.*)

Provisioning Center Facility

- ❖ Purchases marihuana from grower or processor
- ❖ Sells, supplies or provides marihuana to patients and caregivers after inquiry
- ❖ Must use secure transporter
- ❖ May only sell tested and labeled marihuana
- ❖ Must use statewide monitoring system
- ❖ May not permit sale, consumption or use of alcohol or tobacco on premises (But MMFLA permits “tinctures” which are alcohol-based extracts)
- ❖ Physician not allowed to conduct exams or issue certifications on premises

Secure Transporter Facility

- ❖ Stores and transports marihuana and money between facilities for a fee
- ❖ May not transport to a patient or caregiver
- ❖ May not have an interest in any other type of facility
- ❖ *Can't be a registered patient or caregiver*
- ❖ Drivers must have chauffeur's license and in past 5 years, not have been convicted of any felony or a controlled substance misdemeanor
- ❖ Each vehicle must employ a 2-person crew and not bear markings that it carries marihuana
- ❖ ATF does not condone possession of firearms & marihuana

State Licensing Process

Medical Marihuana Licensing Board

The Board will have general responsibility for implementing the Act, including the following duties:

1. Granting or denying each application for a State operating license within a reasonable time
2. Deciding on all license applications in reasonable order
3. Implementing and collecting the application fee, the regulatory assessment, and the tax on provisioning centers
4. Providing for the levy and collection of fines for a violation of the Act

The Board may not set rules establishing a limit on the number or type of marihuana facility licenses that may be granted.

State Licensing Process

Places administration of Act with Department of Licensing and Regulatory Affairs (LARA), which has created a Bureau of Medical Marihuana Regulation (BMMR)

LARA, in consultation with the Board, is required to put in place rules and emergency rules as necessary to implement, administer, and enforce the Act.

The rules must ensure the safety, security, and integrity of the operation of the marihuana facilities, and include, but not limited to, the following rules:

- a. Set appropriate standards for marihuana facilities and associated equipment
- b. Set maximum THC levels for marihuana and marihuana-infused products sold or transferred through provisioning centers
- c. Restrictions on edible marihuana-infused products sold or transferred through provisioning centers
- d. Waste product disposal and storage by facilities

State-issued facility operating licenses are good for 1 year and can be renewed.

Applicant must be able to show that facility is permitted in local municipality; municipality must supply proof of its ordinances within 90 days of receiving notice of a license application to the State.

State Licensing Process

Applicants for State License must:

1. Not have a controlled-substance felony within past 10 years
2. Not have a controlled-substance misdemeanor within past 5 years
3. Not be an elected official or governmental employee
4. Be a Michigan resident for 2 years, until 6/30/2018

Nature of License:

1. Revocable privilege, not property right
2. Subject to examination at any time by law enforcement
3. Must do background checks on prospective employees

Revenue

1. Nonrefundable State application fee
2. State regulatory assessment (not imposed on safety compliance centers)
3. *3% tax on retail sales at provisioning centers*
4. Capitalization requirements.

Pre-Qualification

1. BMMR will determine applicant is qualified by performing background check, reviewing capitalization...
2. Applicant finds a location and obtains local authorization
3. Applicant applies to state for facilities license

State Licensing Process

True Parties of Interest: Section 404 of MMFLA:

1. Proprietorships: proprietor & spouse
2. Partnerships: partners & spouses
3. Private Corporations: officers, stockholders & spouses
4. Public Corporations: officers & spouses
5. Nonprofit Corporation: individuals and entities with membership or shareholder rights & spouses
6. Excludes: Lessors/Landlords unless they control or manages business and employees who receive not more than 25% bonus

State Licensing Process

Protected Activities

A person granted a state operating license who is operating within the scope of the license, and the licensee's agents, will not be subject to:

1. state or local criminal and civil marihuana offenses
2. searches or inspection unless by law enforcement/LARA
3. Seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense
4. license or other sanctions by a business, occupational, or professional licensing board or bureau based on a marihuana-related offense

A person granted a state operating license who is operating within the scope of the license, and the licensee's agents may grow, possess, process, transport, test, purchase or transfer marihuana may receive compensation for products and services

Under MMMA, caregiver may only receive compensation for assisting a patient in the medical use of marihuana

Speculative State/City Revenue Projections

	Scenario 1	Scenario 2
Gross Retail Sales	\$650,000,000	\$1,000,000,000
3% Excise Tax	\$19,500,000	\$30,000,000
25% Michigan Cities	\$4,875,000	\$7,500,000
1% Share	\$48,750	\$75,000

Local Options under the MMFLA:

1. Do Nothing / Wait & See

No action precludes any type of marihuana facility from getting a State-issued license to operate in the local municipality since a local ordinance authorizing marihuana facilities is required

2. Adopt an ordinance authorizing 1 or more types of marihuana facilities and limit/not limit the number of each type:

- a. may not regulate purity or pricing
- b. may not interfere or conflict with state regulations
- c. may establish an annual nonrefundable fee of up to \$5000 based on actual administrative and enforcement costs
- d. eligible to receive proportional share of 25% of State Medical Marihuana Excise Fund reserved for municipalities if provisioning centers are allowed
- e. no deadline to enact ordinance

Municipal Response: Preparation of ordinances

- 1. Adopt or Amend any applicable ordinance provisions to bring language up to date due to changes in MMMA to address butane refining/infused products by registered caregivers/patients**
- 2. Amend Zoning Code to define where various types of marihuana facilities may lawfully locate if permitting medical marihuana facilities**

May be the bare minimum for an authorizing ordinance

- 3. Amend General Code**

- a. To permit and perhaps limit number of marihuana facilities in the City
- b. To create a licensing process complementary to that of the State
- c. Set forth the responsibilities and obligations of medical marihuana facility operators
- d. A marihuana facility and all articles of property in that facility are subject to examination at any time by a local police agency or the department of state police. MCL 333.27208.

Municipal Response: 2017 Community Survey Results

Support for provisioning centers

	<u>Mail</u>	<u>Web</u>
Not at all	43.1%	32.5%
Yes, at a level to serve City of Portage:	39.1%	44.6%
Yes, at a level to serve Portage and others	17.8%	22.9%

Support for growing, processing, testing and transportation

	<u>Mail</u>	<u>Web</u>
Not at all	46.4%	36.0%
Yes, at a level to serve City of Portage:	35.1%	39.3%
Yes, at a level to serve Portage and others	18.5%	24.7%

Municipal Response: Census of Patients/Caregivers

County

Patients

Municipal Response: Issues to consider

- Should all types of facilities be permitted?
- Where should the various types of permitted facilities be located? (Growers limited to industrial, agricultural or unzoned areas)
- Should they be clustered or dispersed? (Distances from other protected uses?)
LARA issue Advisory Bulletin on September 21, 2017 indicating intent to permit grower/processor/provisioning centers at the same location. Requires separate licenses and separate entrances/exits. *Local municipalities may prohibit co-location, however.*
- How proactive should the municipality be in vetting licensees?
- If permitted, location by right or by special use? (Don't invite legal challenges!)
- **You are not alone:** How have communities in Michigan and other states addressed these and other issues associated with medical marihuana commercialization?

Municipal Response: Issues to consider

- Medical Marihuana businesses traffic in a Schedule 1 substance and can be heavily cash-oriented, thereby making facilities an attractive crime target
- Large amounts of growing/stored marihuana can have an unpleasant odor
- Processing can involve use of flammable materials to extract resin from plant
- Grow facilities can use substantial amounts of electricity
- Issues associated with waste disposal; safety, accessibility
- Firearms and security pose questions under federal ATF rules
- Should the City determine who gets a license? And if so, how?
- Other public health, safety, & welfare issues? What needs to be in your ordinance?

Municipal Response: Components of draft ordinance

- ❖ Amend Chapter 14, Businesses – requires a business permit for medical marihuana facilities
- ❖ Amend Chapter 42, Zoning - provides land use provisions for medical marihuana facilities; updates existing ordinance provisions
- ❖ Chapters 14 and 42 – provide complimentary, cross referenced provisions
 - Business permits are issued by City Administration – City Clerk, Public Safety, Community Development and City Manager
 - Applicants required to be pre-qualified
 - Zoning ordinance review and approval accomplished administratively by Community Development, dependent on “provisional business permit” issuance
 - After issuance of provisional permit by city, applicant must receive facility license from State prior to opening/operating a medical marihuana facility

Municipal Response: Components of draft ordinance

❖ Ordinance may allow:

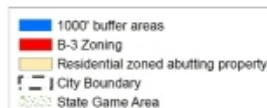
- Class A growers (up to 500 plants)
- Processors
- Provisioning centers

❖ Rational for number and type of facilities:

- Spacing of facilities from schools, parks, recreational uses, churches and similar uses (relationship to Drug Free School zone restrictions)
- Number of facilities in relation to city population (1/10,000 persons)
- Diversification options for local bedding plant businesses
- Incremental approach to ensure minimal impact on adjacent uses and overall community impacts, including community identity

Municipal Response: Components of draft ordinance

<u>Separation Distances</u>	<u>Medical Marihuana Facility</u>
Schools	1,000 feet
Playground or park	1,000 feet
Public housing authority property	1,000 feet
Child care center	1,000 feet
Religious institution	1,000 feet
Recreational facility	1,000 feet
Library	1,000 feet
Substance abuse rehab or treatment	1,000 feet
Another marihuana facility	1,500 feet
Residential zoning district	Not adjacent to

[illegible]

1 inch = 3,200 feet
Date: 11/29/2017

Proposed Medical Marihuana Provisioning Centers Distance Provisions for B-3

PROPOSED LOCATION	ADDRESS	CITY	PROPOSED LOCATION	ADDRESS	CITY
1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA
B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING
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CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY
STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA
1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA	1000' BUFFER AREA
B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING	B-3 ZONING
RESIDENTIAL ZONED ADJACENT PROPERTY	RESIDENTIAL ZONED ADJACENT PROPERTY	RESIDENTIAL ZONED ADJACENT PROPERTY	RESIDENTIAL ZONED ADJACENT PROPERTY	RESIDENTIAL ZONED ADJACENT PROPERTY	RESIDENTIAL ZONED ADJACENT PROPERTY
CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY	CITY BOUNDARY
STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA	STATE GAME AREA

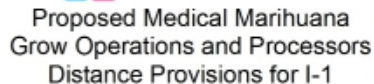
13 Potential Locations

- 1000' buffer areas
- B-3 Zoning
- Residential zoned abutting property
- City Boundary
- State Game Area



1 inch = 3,200 feet

Date: 11/29/2017

[illegible]

-  Stryker Property - Exclude
 Pfizer Property - Exclude
 1000' buffer aress (pvt rec, pub rec, day care, schools, churches)
 Residential zoned abutting property
 I-1 or I-2 Zoning
 City Boundary
 State Game Area
-  1 inch = 3,200 feet
 Date: 11/29/2017

Date: 11/29/2017

Municipal Response: Components of draft ordinance

- ❖ Chapter 14, Businesses –
 - ❖ Includes requirements for application for business permit
 - ❖ Specifies applicant must be prequalified by State
 - ❖ Includes standards to determine an application is complete
 - ❖ Includes standards for approval of application
 - ❖ Outlines time line between issuance of a provisional business permit by the city and obtaining a license from the State
 - ❖ Provides standards for suspending or revoking a business permit
 - ❖ Provides that annual business permit from city must be obtained

Consideration of lottery in the event the number of complete applications received exceeds the number of facilities permitted...or other options

Municipal Response: Components of draft ordinance

- ❖ Chapter 14, Businesses – Application must include:
 - Applicants name, address, employment, etc. to conduct a background check
 - Operations, worker safety, security, marketing, inventory and record keeping plans;
 - Site plan, floor plan, HVAC and air quality plan, waste water and plant disposal plan
 - Cultivation and processing plan, mold/mildew/pest prevention plan
 - Hazardous chemical plan

- ❖ Chapter 14, Businesses – Standards to approve application include:
 - Applicant may not have been found guilty of felony or misdemeanor or in violation of city ordinance or similar ordinance in another community
 - Applicant may not be on the State Medical Marihuana Board or an elected official
 - Applicant provided satisfactory and complete information as required
 - Applicant provided proof of securing property in a location that meets the zoning
 - Applicant has provided proof of required insurance
 - Applicant does not have a conflicting interest in another medical marihuana business

Municipal Response: Components of draft ordinance

❖ Chapter 42, Zoning –

- Provides spacing standards as noted above
- Permits provisioning centers in B-3, General Business districts
- Permits growers and processors in I-1 and I-2 industrial districts
- Allows co-location of growers, processors and provisioning centers in industrial districts
 - ✓ provisioning centers in industrial districts only when co-located
- Specifies facilities may not be located in greenhouses or similar buildings
- Except for co-located facilities, specifies facilities be located in a single tenant building, or have a separate entrance and HVAC systems for the portion of the building occupied by the facilities
- Specifies all activities must occur indoors
- Specifies maximum building size of 10,000 square feet for each type of facility
- Prohibits drive-through facilities

Municipal Response: Potential time line for draft ordinance adoption

- ❖ November 30, 2017: Council COW – introduction and overview
- ❖ December 5, 2017: Council resolution of intent to adopt authorizing ordinance
- ❖ December 19, 2017: Council COW – review of draft ordinances
- ❖ December 21, 2017: Planning Commission workshop – introduction, overview and review of zoning ordinance
- ❖ January 4, 2018: Planning Commission public hearing on zoning ordinance
- ❖ January 9, 2018: Council 1st reading of draft ordinances – Chapter 14, Businesses and Chapter 42, Zoning
- ❖ February 6, 2018: Council public hearing on draft ordinance
- ❖ Mid-February 2018: Open window for applications (LARA Pre-qualified candidates only)

- ❖ Questions and Answers
- ❖ Public Comments
- ❖ Next Steps – wrap up