



Recreational Marihuana Q&A



michigan municipal league

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MMMA –	Michigan Medical Marihuana Act, patient/caregiver model
MMFLA –	Medical Marihuana Facilities Licensing Act, medical facilities licensed by the State and located in municipalities that opt in
MRTMA –	Michigan Regulation and Taxation of Marihuana Act, recreational (non-medical) marihuana businesses to be licensed by the State and located in municipalities that do not opt out
LARA –	State of Michigan Department of Licensing and Regulatory Affairs, department responsible for rule making and licensing of marihuana
MRA –	Marijuana Regulatory Agency (new agency within LARA, created by Gov. Whitmer)

Answers from MML spokespeople are noted with MML before the answer; answers from MRA are noted with MRA.

Opting In/Opting Out

- Q1: If a municipality chooses to do nothing in response to the new recreational MRTMA law, how will the law affect it?
- A. MML = If you do nothing, then you are effectively "opting in" to permit recreational marihuana commercial businesses.
- Q2. What is the timeline for a municipality to opt out?
- A. MML = The state originally had until December 6, 2019 to be ready to process applications. Gov. Whitmer, however, requested the process be fast-tracked. MRA issued the emergency adult-use/recreational marihuana rules on July 3 and expects to be ready to accept applications for adult use/recreational marihuana business licenses a month early, on November 1, 2019.
- Q3. How does a municipality opt out?

A. MML = Although the statute doesn't provide language for municipalities to opt out, nor how to do it, since ordinances are mentioned in the statute you are likely better protected if you opt out by ordinance rather than resolution. Additionally, the MRTMA permits the complete prohibition of recreational commercial establishments by voter initiative.

Q4: May municipalities opt out now and opt in later? What about the reverse: opt in now and opt out later?

A. MML = Yes, you can opt out now and opt in later. You can change your mind and later revise your ordinance. Opting out after opting in is likely more problematic. The licenses are for one year only, though. A lawfully licensed and established recreational marihuana business which is not in violation of any regulation might argue that it should be permitted to continue to operate as a non-conforming use, or that prohibiting its continued operation amounts to an unconstitutional regulatory taking. However, federal courts would not likely recognize that form of "taking" in the context of marihuana due to it being an unlawful Schedule 1 substance, since one might have a recognizable "reasonable investment backed expectation" by trading in an unlawful substance.

Q5: Does a village have to opt out of both the MMFLA and MRTMA, or just recreational? We don't want either.

A: MML = The MRTMA requires an opt out. The MMFLA does not—medical marihuana facilities can only locate in your municipality if you opt in. If you don't want either, you must opt out of recreational and do nothing regarding medical.

Q6: Our municipality didn't pass an ordinance to opt out but instead passed a Resolution setting a "moratorium" on recreational marihuana businesses in our community until December 31, 2019. We wanted time to do more research, let the State establish rules, regs, etc. Are we vulnerable to allowing marihuana businesses to come in since we didn't opt out?

A. MML = While moratoria are generally not favored by courts, they are not unlawful either. It is recommended that a moratorium not last longer than one year, and a six-month term, even if extended by another 6-month term is likely preferred, so long as the community is actively working on defining the

issues and working on options as to how to best address the issues.

Q7. Our municipal attorney recommended our city pass a one-year moratorium. Some on our council are uncomfortable with that, because it is not a firm “yes” or a firm “no.” How will MRA interpret a city’s moratorium?

A. MRA = You can inform MRA that a moratorium means “no,” and we will follow that.

Q8. Can municipalities decide to allow only microbusinesses?

A. MML = The statute isn’t clear on this, but we think the answer may be a “qualified yes” since the language of the MRTMA permits a municipality to “provide for the number of marihuana establishments.” Ostensibly, a community could solely provide for a certain number or perhaps an unlimited number of micro businesses but provide that no other types of recreational marihuana establishment be permitted. However, given the less than certain and vague language of the statute, final guidance will likely come from the courts or clarifying legislation.

Q9. Does “prohibit” mean all, or can the municipality pick and choose the businesses and only choose some?

A: MML = The statute is less than clear on whether municipalities can pick and choose which type of establishments they will allow. However, there is an argument for doing so. If deciding to take this type of course of action, consult with your municipal attorney for guidance.

Q10: If a township opts out, does that mean a village within that township has opted out—and the inverse as well? If township opts in is the village allowed to opt out?

A: MML = The statute doesn’t mention counties—just cities, villages, and townships. Villages are governmental entities and pass their own ordinances separate from townships.

Q11. If a municipality opted in to MMFLA can it keep out recreational marihuana retailing centers?

A. MML = MRA will not grant a recreational license if a municipality has adopted an opt out ordinance, however, a legal challenge may be made to this position.

Q12: Could a municipality opt in to medical establishments, but out of recreational? If so, can this be in the same ordinance, or would it have to be in two separate ordinances?

A: MML = See the answer to the question above, but arguably a community can say yes to opt in to medical and no to recreational. Two separate ordinances would seem to be a better approach, but there is nothing that legally requires it, so it might be done with a single ordinance.

Interaction with other Marihuana Statutes – MMMA and MMFLA

Q13: Can caregivers grow recreational marijuana for their own use?

A: MML = Probably, yes. Being a registered caregiver does not preclude one from growing recreational marihuana for yourself. There’s an argument for growing 24 plants on the premises—12 plants could be grown for medical, and 12 plants for recreational.

Q14. Where do caretakers fall? Can they sell directly to consumers?

A. MML = Under the MMMA, the patient/caregiver Act, caregivers can be compensated for the costs associated with assisting their patients in the use of medical marihuana. Under the MMFLA, provisioning centers may only sell to registered caregivers and patients. Under the MRTMA, only a micro business or a marihuana retailer may sell marihuana; individuals cannot sell recreational marihuana—it can only be “gifted,” so long as the transfer is not advertised or promoted to the public.

Q15. What impact would opting out of medical marijuana have on caregivers using their homes for their businesses?

A. MML = The MRTMA will not affect the MMMA. The patient/caregiver model will continue, the same as it was before the recreational proposal was passed.

However, note should be taken that the Michigan Court of Appeals has ruled that municipalities may not limit caregivers to “home occupations” under local zoning ordinances.

minimize the illegal marijuana market, to efficiently meet the demand for marijuana, or to provide reasonable access to marijuana in rural areas of the State.

Effect of Opting In

Q16: If a municipality opts in is it required to have 24-7 police support?

A: MML = No. Police support is not required by this new Act.

Q17: If a municipality opts in, how will that affect eligibility for federal/State grants? If a municipality is getting federal grant money, won't the federal government deny it because the municipality allows recreational marijuana?

A: MML = You will have to look at the language of the grants—for instance, is there language on maintaining a drug free work place or anything like that? Certain municipal employees who are federally-grant funded, could be made subject to a zero-tolerance drug policy. Otherwise you are probably OK. If the grant language poses a problem, a municipality might consider whether the federal government is co-opting local and State government to carry out federal drug policy? Several communities have successfully challenged law enforcement grants that require compliance with federal immigration law by the local municipality. The issue is currently in litigation in several federal courts.

Q19. Has the \$5,000 municipal licensing fee (under the MMFLA) been challenged (if municipality is not even doing fire inspections, etc.)?

A. MML = You must be able to demonstrate that the cost of 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.

* Kalamazoo requires an upfront application fee for its medical marijuana licenses but refunds a portion of the application fee for those who didn't get a license.

Q20: Can municipalities license and regulate recreational marijuana businesses ahead of the State?

A: MML = Only in the circumstance where the State is not ready to accept applications in December 2019. Otherwise the MRTMA says that a business needs a State license first. Once a business gets a State license then it can get a municipal license (if the municipality wants to license; municipalities don't have to). It is ill-advised for a municipality to regulate before a State license is issued. Municipalities will be the regulatory agency IF, after one year, the State hasn't put in a regulatory framework. However, MRA issued emergency rules on July 3, 2019 and expects to be ready to accept applications for recreational marijuana business licenses on November 1, 2019.

Licensing

Q18: If a business has been licensed as a medical facility, must it also be licensed as a recreational facility if it applies?

A: MML = The business would have to separately qualify for a recreational license. For the first 24 months after the State begins to accept applications, applicants for a recreational retailer, processor, class B or C grower, or transporter must be licensed under the MMFLA to engage in the recreational marijuana business. For the first 24 months, MRA will only accept applications from Michigan residents for licensure as a class A grower or a microbusiness. However, after one year, MRA may accept applications from anyone, if it determines that additional licenses are needed to

Q21. What are the pros and cons of a municipality deciding to license marijuana?

A. MML = MRA will come up with administrative rules, but these rules will contain nothing about zoning (where businesses can be located) and hours of operation, for instance. So, zoning needs to be addressed at the local level, regardless. Licensing at the local level may permit greater ability to inspect and monitor recreational marijuana businesses, but the ability for law enforcement inspections under the MRTMA is not as broad as under the MMFLA. Additionally, if the municipality seeks to limit the number of licensed recreational marijuana establishments, it must employ a “competitive process

intended to select applicants who are best suited to operate in compliance with (the MRTMA) within the municipality." Unfortunately, the statute provides no other guidance as to what that process should look like so as to provide a safe harbor; as a result, this may put municipalities at risk of lawsuits from applicants who do not receive a license.

Q22. Will MRA regulate how many licenses are in one municipality, such as with liquor licenses?

A. MML = No.

Q23. Will a village with 10 empty buildings be forced to potentially allow 10 recreational marijuana businesses if they allow one?

A. MML = It depends on whether the village chooses to limit the number of establishments and how its zoning ordinance is written regarding the applicable zones where the various types of marijuana establishment are permitted to operate, along with separation distances from schools and residential zones.

Q24: Can a municipality charge an application fee along with the annual license—for example, a \$2,500 application fee? This is done in Colorado with many communities.

A: MML = The statute is silent on this. The \$5,000 fee set forth in the MRTMA is for administration (and enforcement) costs—seems like processing an application would be included in this fee. Also, keep in mind that an administrative fee must approximate the actual cost of providing the service; otherwise it is an unlawful tax. It is also not a good idea to follow another state's process since the underlying statutory authority is likely to be different from that in the Michigan law.

Q25: Are the licensing restrictions applicable for the first 24 months after the effective date of the Act, or first 24 months after MRA's rules and regulations are released?

A: MML = 24 months from the effective the date of the Act (December 6, 2019). However, MRA issued emergency rules on July 3, 2019 and stated it will begin accepting applications for recreational marijuana business licenses on November 1, 2019.

Q26: It seems this will cost villages a bit to get their lawyer/zoning official up to speed on this. Couldn't an argument be made that the \$5,000 is used to help recoup upfront costs?

A: MML = Probably. Legal services associated with administration and enforcement would be part of a legitimate argument to support the amount of the fee.

Q27. How long is license good for before it must be renewed?

A. MRA= All licenses, both on the medical and adult use side, are good for one year. MRA will then re-evaluate after a year to determine ongoing eligibility.

New License Types

Q28. Why does a consumption establishment license not require confirmation of compliance with local ordinances?

A. MRA= If there isn't a municipal ordinance in place, then MRA would issue a license for a designated consumption establishment assuming it met the other criteria at the state level. If you do have an ordinance that addresses those standards, then we will look for an attestation from the municipality ensuring compliance with local ordinances.

Q29. Do the designated consumption establishment provisions now preclude bars and other establishments currently holding "marijuana night" from continuing to do so? In addition, can a designated consumption establishment also hold a liquor license?

A. MRA= 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.

Q30. If a municipality has adopted an ordinance prohibiting recreational marijuana establishments, would this include temporary events?

A. MRA = Yes.

Q31. Why would a temporary marijuana event be exempt from the fire safety rules of Rule 34?

A. MRA = The fire safety provisions are intended primarily to address fire safety concerns at marijuana growers and processors due to special equipment and processes that occur at these establishments. This equipment is not present, and the processes are not performed, at a temporary event. A temporary event held in-building would still be subject to any municipal ordinances regarding fire safety for that building. Section 6 (2)(b) of the MRTMA states that a municipality may adopt other ordinances that regulate the time, place, and manner of operation of marijuana establishments and of the production, manufacture, sale, or display of marijuana accessories. Therefore, municipalities have the authority to adopt ordinances that includes specific provisions that specify temporary events can only held at locations municipalities determine are compliant with local ordinances related to fire safety.

Q32. Why are designated consumption establishments and temporary marijuana events excluded from the video surveillance requirements of Rule 35? Many municipalities have ordinances that require video surveillance at certain businesses, including those where alcohol is consumed. But because MRTMA provides that municipalities cannot adopt ordinances that are in conflict with the Act or Rules, locals would not be precluded from enforcing such video surveillance ordinances against businesses where marijuana is consumed?

A. MRA = **Designated Consumption Establishments:** The requirement for video surveillance in other marijuana establishments that grow, process, or sell marijuana is intended to ensure product is tracked and disposed of properly and to prevent theft and diversion. Any marijuana onsite at a designated consumption establishment is owned by the consumer and is the consumer's responsibility rather than the licensees. Therefore, we determined requiring video surveillance

was unnecessary. The use of video surveillance equipment in designated consumption establishments can be revisited during the MRA's upcoming work groups and during the public comment period for the permanent rules.

Temporary Marijuana Events: MRA anticipate that many temporary events will be held outdoors, so requiring a licensee to install video surveillance may not be practical or possible depending on the location. For temporary events where marijuana is being sold, licensees are still required to track sales in the statewide monitoring system and MRA's Enforcement Division has the authority to monitor compliance with the law and emergency rules. Therefore, the lack of video surveillance does not mean there will be no oversight at temporary events. Further, we determined that requiring a licensee holding a temporary event to install video surveillance for such a short period of time and to incur the associated costs was burdensome regardless of whether the event is held outdoors or indoors. The use of video surveillance equipment at temporary events can be revisited during the MRA's upcoming work groups and during the public comment period for the permanent rules.

Q33. Rule 62(14) provides that the agency may shut down a temporary marijuana event to protect public health and safety. Does this then preclude municipalities/local law enforcement from doing same (again, because MRTMA precludes locals from adopting/enforcing ordinances in conflict with the Act or Rules)?

A. MRA = The rule states "the agency may require the marijuana event organizer and all participants to cease operations without delay if in the opinion of the agency or law enforcement it is necessary to protect the immediate public health and safety of the people of the state. Upon notification from the agency that the event is to cease operations, the marijuana event organizer shall immediately stop the event and all participants shall be removed from the premises within the timeframe provided by the agency." Law enforcement includes local law enforcement. However, municipalities and local law enforcement should continue to work in conjunction with the MRA and Michigan State Police (MSP). If municipalities and local law enforcement have concerns and believe a temporary event should cease operations, they should notify the MRA because the rule requires the MRA to notify the organizer to stop the event and ensure participants are removed from the premises. This

would occur with assistance from MSP and potentially local law enforcement.

Zoning

Q34. 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 and just ensure that any actions you take are going to stand up to legal challenge.

Q35. Does a general law village need to hold public hearings on MRTMA? Our zoning person thinks it's a police action that doesn't need a hearing.

A. MML = Licensing is the exercise of the police power; determining where a particular business may locate is a zoning issue subject to the process set forth in the Michigan Zoning Enabling Act.

Q36. For the standard of a marihuana establishment being required to be located 1,000 feet from a school—where does that 1,000 feet measurement start?

A. MRA = That standard will have to be addressed/defined in your municipal zoning ordinance.

Q37: May the municipality increase the distance from pre-existing schools to further than 1,000 feet?

A. 1,000 feet is the limitation set forth in the MRTMA. You would likely get challenged if you increased the distance. 1,000 feet is a standard under both Michigan and federal Drug-Free School Zone laws. It should be noted that the MRTMA permits a municipality to reduce the distance requirement.

Q38. One of our 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. MRA = 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, I think is still the subject of a case that's 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, I think 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 homegrown operations.

MRA Process

Q39. How many State employees are dedicated to processing these applications?

A. MRA = MRA is continuing to build up our staff. We have an application section now that's dedicated to processing the adult use applications that is separate from the existing application section that has been working on the medical facility applications. I think we're up to about eight now.

Q40: When will MRA start issuing licenses?

A. MML = Under the MRTMA, MRA has one year from the law's effective date of December 6, 2018 to put its regulatory framework in place and begin to accept applications. Gov. Whitmer, however, requested the process be fast-tracked. MRA issued emergency rules on July 3 and expects to be ready to accept applications for adult use/recreational marihuana business licenses a month early, on November 1, 2019.

Q41. When can we expect non-emergency rules to be established?

A. MRA = The emergency rules are valid for six months; they can be extended for another six months. We're going to start working on topic-based rule sets that

apply to both the medical and the adult use sides of the market within that year. We hope to have those in place prior to that extension expiring. We'll have a permanent rules structure in place that relates to the marijuana market as a whole by approximately July of next year.

action, you get an automatic email triggered as soon as something had occurred. You may have some contact from our staff, trying to make sure we have appropriate contact information for you.

Enforcement

Q42. How is enforcement going to happen? Is it going to be in the line of an LCC [Liquor Control Commission] violation?

A. MRA = 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 to 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—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, 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 as well.

Q43. Along the same lines as above—if a violation were to occur, as determined by MRA, is there a notification requirement to the municipality to let us know it occurred?

A. MRA = We do intend to notify municipalities of the status of facilities in their jurisdiction. That's both through the application process—so issuance or denial of an application, as well as ongoing oversight and whether any action is taken. We're trying to build out automated notification functionality through our backend licensing system so that if we were to take an

Q44. How many violations are allowed before a license is revoked?

A. MRA = We look at disciplinary action on a case by case basis. There may be certain circumstances where a single violation could result in revocation depending on the nature of the violation itself. But we will look at facilities that have ongoing disciplinary concerns and may choose to take an escalated form of action if they continue to have lower level issues of non-compliance over time. That's similar to how we've looked at things within the department. For every regulated profession we look at the nature of the existence of the specific violation. And that can relate to an investigation for disciplinary action. It can also relate to an application for renewal to determine ongoing eligibility as well.

Q45. Under Rule 57(11), it appears because of the use of the word "or" marijuana establishments need not inform law enforcement of theft or other criminal activity at their business—only the agency. How are local law enforcement agencies to maintain accurate statistics about these establishments?

A. MRA = The MRA works closely with the Michigan State Police (MSP). If the MRA was notified of any criminal activity at a marijuana retailer or other marijuana establishment, we would report it to MSP because the investigation of criminal activity falls outside of the MRA's purview.

Q46: If a municipality does have a license fee of up to \$5,000, what types of expenses CAN it go toward for enforcement? (Since the new law doesn't allow for inspections like officers do routinely for liquor).

A: MML = Anything your municipal clerk, law enforcement agency, or inspections staff does to review the application, the applicant, or proposed site of the business. Then once the business is established, if you can demonstrate that that these businesses generate complaints or more calls for services so as to demonstrate the need for increased resources, then those costs ought to be included as well so as to demonstrate the need to charge up to \$5,000 as a fee.

CBD/Hemp/Medibles/Accessories

Q47. Are hemp products now legal in Michigan?

A. MML = In the 2018 lame duck session of the Legislature, several bills (PA 641, 642, and 648 of 2018) were adopted addressing hemp and hemp products which severely limited or prohibited local regulation. In mid-April, the Michigan Department of Agriculture and Rural Development (MDARD) developed an industrial hemp agriculture pilot program for hemp growers. At this time, the FDA has not approved CBD for use in food or drink or as a dietary supplement, and MDARD unequivocally states that it is currently illegal to add CBD to food, animal feed products, or drinks or dietary supplements.

Q48: How does CBD oil/products fit into all this? Is a store allowed to sell CBD oil if the municipality opts out?

A: MML = In the lame duck session of the Legislature, several bills (PA 641, 642, and 648 of 2018) were adopted addressing hemp and hemp products which severely limited or prohibited local regulation. In mid-April, the Michigan Department of Agriculture and Rural Development (MDARD) developed an industrial hemp agriculture pilot program for hemp growers. At this time, the FDA has not approved CBD for use in food or drink or as a dietary supplement, and MDARD unequivocally states that it is currently illegal to add CBD to food, animal feed products, or drinks or dietary supplements.

Q49 It is my understanding that municipal governments cannot limit marijuana related accessory businesses, i.e.: hydroponic stores, smoking supplies, etc.?

A: MML = Pipes and bongs can be used for tobacco and pipe tobacco—not specifically for marijuana. Soil and fertilizer aren't just for marijuana. The definition of "marijuana accessories" in the MRTMA states that the equipment, product, or material must be "specifically-designed" for marijuana. This language makes it very difficult for a municipality to somehow regulate or say someone violated a law because they are trading in marijuana accessories. It would have to be shown that it is exclusively designed for marijuana.

Q50. Are edibles considered food?

A. MRA = On the medical side, by statutory definition, they are *not* considered food. MDARD doesn't regulate them because marijuana or any of its derivative are not an approved food ingredient. MRA does regulate that as those products are authorized to be made specifically under the MMFLA as well as MRTMA. So that would fall completely under the sort of marijuana jurisdiction versus the food jurisdiction. I can say that we've worked closely with our partners at MDARD when it comes to adopting food safety standards. That's an area we continue to evaluate when it comes to edible products. And edible products is a pretty broad category. We apply that to anything that's consumed in a manner other than smoke inhalation—including capsules and pills, because those are still ingested and digested by the consumer. We're continuing to look at standards and existing standards for food products and adopt those. That's a place where I think you're going to see some evolution over time when it comes to the standards that we apply.

Miscellaneous

Q.51: What can a city do if a citizen calls and says his neighbor is selling marijuana out of his home?

A. MML = Not much. This would be very hard to prove. Marijuana has been decriminalized—violations are now a civil infraction.

Q52: Can home growers sell their marijuana?

A. MML = No, the recreational statute says that it may be "gifted," but not sold. Caregivers, under the MMMA, can get paid as recompense for the cost of providing the service/product.

Q53: Since people can't "sell" recreational marijuana, can they sell other things, such as t-shirts for \$75 and give a "gift" baggie of marijuana as a thank-you, like we've seen in other States?

A. MML = This is a real possibility. It is already happening in Michigan—a company is selling and delivering chocolate and the driver is giving away free pot to those that purchase chocolate. This practice will likely be challenged. It will be up for the courts to decide.

- Q54: Can you clarify if it is 12 plants per person per household or 12 plants per household?
- A. MML = 12 Plants per person over 21 in the household. That said, there may be argument to assert that it is a 12 plant per premises limit. The MRTMA at § 5.1 (b) says “provided that not more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once,” leading to the assertion of a 12 plant per premises limit. However, the introductory language to §5.1 says “the following acts by a person 21 years of age or older are not unlawful”, and then subsection (b), begins with the phrase “within the person’s residence” before stating the 12-plant limit. Like other issues with the MRTMA, this issue of the proper interpretation of the language in question will likely be decided by the courts
- Q55: Can municipalities pass odor control ordinances?
- A. MML = This will depend on whether and to what extent MRA addresses the issue. Any local regulation may not be inconsistent with State administrative rules, but a municipality could adopt a provision to require system to diffuse odors consistent with an applicable State rule or in the absence of a rule, look to see what the Stille DeRosset Construction Code allows you to do.
- Q56: Can tourists come to Michigan and purchase marihuana?
- A. MML = As long as they are 21 years of age or older.
- Q57: Can the DDA prohibit marihuana establishments in the downtown district?
- A: MML = It is not likely that a DDA can do that—the municipality has authority for zoning, etc. not the DDA. A DDA is not really empowered to regulate businesses. But ask your municipal attorney.
- Q58. Can the municipality have input or apply for those taxes pooled at the state level?
- A. MRA = The ballot initiative lays out the distribution of the 10% excise tax. It is first used to fund the operations of the department. We intend to try and offset our costs entirely through our fee structure, so that we don't have to receive any distributions from the collection of the excise tax. Next, it's used to repay

the initial funding for the program (10 million) out of the State’s general fund. The next \$20 million—is for FDA approved research studies, the use of marijuana to prevent veteran suicide and PTSD. Then it's distributed at 35% for roads, 35% for schools, 15% to counties and 15% to municipalities. The 15% for both counties and municipalities is a prorated share based on the number of licensed retailers and micro businesses within the municipality. So that's 15% of that broader pool; then you split it up based on the number of facilities that you have in your municipality.

- Q59: On the subject of the taxes going toward municipalities, schools, etc. with a cash-based business, how can we be sure there is accurate reporting of the sale prices and actual income a business may have? Couldn't they charge a steep price and only report a lesser price to avoid paying as much tax?
- A: MML = There will be a tracking system to track recreational seed to sale just like for medical marihuana.
- Q60. Can a city charge a city sales tax on the sale of the recreational marijuana?
- A. MML = No. Michigan cities are not authorized to charge sales tax.
- Q61: Has there been any input from the Michigan Building Codes Commissioner as far as ventilation requirements for odors, fire suppression requirements due to flammability concerns...can a municipality restrict an establishment based on building code issues?
- A: MML = MRA has addressed some of that in the rules for medical marihuana, so we expect similar standards will be applicable to recreational. As a municipality, you cannot be stricter than MRA rules.
- Q62. How effective is the testing of under the influence of marihuana in a motor vehicle?
- A. MML = This area is still under development. Tests can show if an individual has used marihuana, not whether he or she is presently under the influence. On March 26th, a report was issued from the Impaired Driving Safety Commission appointed by then-Governor Snyder that suggests there not be a THC limit to be considered driving impaired. The conclusion was

reached due to findings that there is no set number of nanograms of THC that causes a certain degree of impairment.

Q63. If a car is pulled over for speeding and the police find marihuana, what happens to the marihuana?

A. MML = If possible, the driver can a) turn it over to person who is 21 years of age or older; or b) secure it in the motor vehicle. If those options are not available, and it is confiscated by police officers a municipality should consider requiring the individual to seek a court order for its return. Under the federal Controlled Substances Act, there is a law enforcement exception, but it is an open question whether returning marihuana in this circumstance falls within the exception. California courts say it does, while Colorado courts say that it doesn't. This issue will likely have to be decided by Michigan courts.

Q64. Do you agree that a city-owned campground can prohibit recreational marijuana use inside their mobile homes?

A. MML = The MRTMA permits a landlord to prohibit or regulate the consumption and cultivation of marihuana on rented premises, but a landlord may not prohibit a tenant from lawfully possessing or consuming marihuana in a manner other than smoking.

Q65. Now that recreational has been decriminalized, will the medical marihuana industry go away?

A. MRA = It may be reduced some, but most likely will not go away. There are several reasons for this: medical marihuana is used by people under the age of 18 (for seizure disorders, for instance); some patients prefer to purchase it in a medical setting; and medical marihuana purchases do not have the 10 percent excise fee that recreational purchases will have. In Colorado, the number of medical patients went from 115,000 to about 85,000 after recreational marihuana was passed there.

Q66. Can we get more information on what the state recognizes to be impacted communities? Income, geographic location, non-violent offenders? Are you going to show us the standards?

A. MRA = The Social Equity Program is designed to encourage participation in the marijuana industry by people who live in the 19 Michigan communities which have been disproportionately impacted by marijuana prohibition and enforcement: Albion, Benton Harbor, Detroit, East Lansing, Ecorse, Flint, Highland Park, Hamtramck, Inkster, Kalamazoo, Mt. Morris, Mt. Pleasant, Muskegon, Muskegon Heights, Niles, Pontiac, River Rouge, Saginaw, and Ypsilanti.

Qualifying applicants whose marijuana establishments will be located in disproportionately impacted communities can benefit from a reduction of up to 60% off the application fee, the initial license fee, and future renewal fees, which will be calculated as follows for qualifying applicants:

- 25% reduction for those who have been a resident of one of the 19 disproportionately impacted communities for the past five years
- An additional 25% reduction if the individual(s) holding majority ownership have been a resident of one of the 19 disproportionately impacted communities for the past five years AND have a marijuana-related conviction.
- An additional 10% reduction if the individual(s) holding majority ownership have been a resident of one of the 19 disproportionately impacted communities for the past five years AND were registered as primary caregivers for at least two years between 2008 and 2017.

Social equity representatives will confirm eligibility for participation in this program through acceptance of several forms of documentation.

Q67. How does the smoke-free law interact with consumption?

A. MRA = The Clean Indoor Air Act specifically applies to tobacco smoking. I don't anticipate that there will be statutory changes to that. The standards that MRA has adopted for designated consumption establishments contain some specific provisions that allow smoking, mostly focused on having areas for workers to not be exposed to that and still be able to exercise some supervision over the establishment itself.