

## Medical Marihuana Facilities Licensing Act Q&A

### Introduction

On September 21, 2016 Governor Snyder signed a package of bills (2016 PA 281-283) that significantly expands the types of medical marihuana facilities permitted under state law, and establishes a licensing scheme similar to the scheme for liquor licenses. Notably, these bills do not require a state license to operate as a primary caregiver under the Michigan Medical Marihuana Act, nor do they allow municipalities to prohibit operation as a primary caregiver. The existing regulatory scheme regarding primary caregivers remains in effect.

**Q.** Why are you spelling marijuana as “marihuana”?

**A.** The word was originally spelled with an “h” in the Michigan Medical Marihuana Act. In addition, that is how the word is spelled in federal law and the new Medical Marihuana Facilities Licensing Act. The League uses the “h” when referring to medical marihuana.

**Q.** Has marijuana been legalized?

**A.** No, marijuana has not been legalized. It is still an illegal drug under federal and state law. The Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, allows qualified patients and registered caregivers identified with those patients to use marijuana for specified medical conditions. That law did not legalize marijuana, but it prohibits prosecuting or penalizing qualified patients and registered caregivers who use marihuana for medical purposes as long as they comply with the MMMA. Subsequent court opinions clarified that only those persons who were qualified patients and registered caregivers (and persons who met the requirements of Section 8 of the MMMA, even if not registered with the state) could exchange or use medical marihuana. A third party—a person providing or selling marihuana to a qualified patient who is not that person’s registered caregiver—does not have the protection from prosecution under the MMMA. Any arrangement outside of the patient-caregiver relationship, including “dispensaries,” does not comply with the MMMA and is illegal.

**Q.** What is legal today?

**A.** Only a patient-caregiver relationship conducted in compliance with the Michigan Medical Marihuana Act is legal today. Note that the MMMA was recently amended by PA 283 of 2016 to include certain marihuana-infused products, or “edibles,” and to clarify what plants and parts of plants are allowed within the limits imposed by the Act.

**Q.** If marihuana dispensaries are currently illegal, how come we see them all over?

**A.** Because the local jurisdiction has chosen not to enforce state or federal laws that make marihuana illegal outside of the patient-caregiver relationship protected by the MMMA. In most cases, the municipality has “decriminalized” certain uses of marihuana and/or chosen to not utilize enforcement resources for small amounts or certain levels of activity. But that is a forbearance, not legalization.

**Q.** Didn’t Michigan just pass a law making marihuana dispensaries legal?

**A.** Yes, the Medical Marihuana Facilities Licensing Act (MMFLA), Public Act 281 of 2016, but it does not take effect until December 20, 2016. And, the MMFLA includes an additional delay in implementation of 360 days to enable the Michigan Department of Licensing and Regulatory Affairs (LARA) to establish the licensing system required by the Act.

**A person cannot apply to the state for a license of any kind under the MMFLA until December 15, 2017. And, no one can apply to the state for a license of any kind under the MMFLA unless the municipality has adopted an ordinance authorizing that type of facility.**

So, even after December 15, 2017, any marijuana provisioning center or other activity involving marijuana that does not comply with the Michigan Medical Marijuana Act *will still be illegal*, unless the municipality has adopted an ordinance that authorizes that type of facility under the Medical Marijuana Facilities Licensing Act. (Note that the word “dispensary” has been commonly used to refer to a variety of medical marijuana activities, but the new laws do not refer to “dispensaries.” Under the MMFLA, “provisioning centers” are what many people would describe as a “dispensary.”)

**Q.** What if an applicant comes to our council meeting now and demands that we adopt an ordinance or approve the applicant’s license?

**A.** If a municipality is approached by an applicant stating that the council must adopt an ordinance, then that applicant has misunderstood the law.

**A municipality cannot be required to adopt an ordinance to allow facilities authorized under the MMFLA—now, or at any time.**

If a municipality is approached by an applicant demanding it consider the application, or stating that the council must authorize the applicant’s facility, note these points:

- Before December 15, 2017, no municipality can be required to consider an application. Even if a city, village, or township adopts an ordinance to allow the facilities authorized by the MMFLA, the state’s licensing system is not in place, and no applications will be considered by LARA until December 15, 2017.
- After December 15, 2017, if a municipality has not adopted an ordinance allowing any of the facilities authorized by the MMFLA, then the municipality is not required to consider any applications for MMFLA licenses, because no licenses will be approved by LARA for a facility in a municipality that has not passed an opt-in ordinance.
- After December 15, 2017, if a municipality has adopted an ordinance allowing any of the facilities authorized by the MMFLA, and the application involves one of the type(s) of facilities that the city, village, or township allows in its ordinance, and the cap on the number of that type of facility imposed by the municipality’s ordinance has not been reached, then the municipality will be asked to provide information to LARA as part of the licensing approval process.

**Q.** What do we need to do if we do NOT want any of the facilities authorized under the MMFLA in our city, village, or township?

**A.** Do nothing. You do not need to adopt an ordinance to prohibit the types of facilities authorized under the MMFLA. They are already prohibited by state and federal law.

You do not have to consider any application for any facilities currently because no application will be considered by the state until December 15, 2017. And even after that date, if your municipality has not adopted an ordinance allowing that type of facility, that application will not be considered by the state.

\*Note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

**Q.** What do we need to do if we DO want any of the facilities authorized under the MMFLA?

**A.** Any time before December 15, 2017, a municipality that wants to allow medical marijuana facilities to operate within its boundaries could adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Act. **Adopting such an ordinance before December 15, 2017 does NOT make a facility lawful!** December 15, 2017 is the earliest an applicant may submit an application to the Medical Marijuana Licensing Board (MMLB) for consideration.

**Any time after December 15, 2017**, a municipality that wants to allow medical marijuana facilities to operate within its boundaries would adopt an ordinance allowing one or more of the specific types of facilities authorized by the MMFLA. The ordinance should specify which type(s) of facilities—and how many of each type—the municipality is choosing to allow. If a municipality “opts in” with an ordinance that does not specify a cap on the type(s) or number of each, applications for any of the types and any number of a type within the municipality will be considered by LARA.

But a license from the state is still required before a specific facility is authorized to legally operate under the MMFLA. The council's adoption of the ordinance allowing medical marihuana facilities does not automatically make all facilities lawful. Also note that, because dispensaries and other marihuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marihuana has been decriminalized locally), existing dispensaries or other marihuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. Why would a municipality consider allowing one or more of the types of facilities authorized under the MMFLA?

A. Some communities accept medical marihuana use for compassionate reasons, and believe that the new Facilities Licensing Act will better facilitate the spirit and actual practice of the patient-caregiver relationship authorized by the statewide initiative that created the Medical Marihuana Act in 2008.

Other communities may be responding to a real demand or broad support locally for providing medical marihuana facilities and business opportunities. And, it may be a revenue source.

- **Annual administrative fee:** Once a municipality adopts an ordinance allowing one or more of the types of facilities authorized by the Medical Marihuana Facilities Licensing Act, the municipality may in that ordinance require "an annual, nonrefundable fee of not more than \$5,000 on a licensee to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality." ("Nonrefundable"—as in not returned if the license is revoked or not renewed.)
- **Property tax revenues:** These facilities are businesses and may actually be quite profitable. And, in some communities, medical marihuana facilities will utilize commercial properties that are currently vacant or even off the tax roll due to foreclosure.
- **State shared revenues, as appropriated:** A state tax will be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail receipts, which will go to the state Medical Marihuana Excise Fund. The money in the fund will be allocated, upon appropriation, to the state, counties, and municipalities in which a marihuana facility is located, with "25 percent to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality."

Based on the Michigan Township Association's "New Medical Marijuana Laws Q&A," by Catherine Mullhaupt, MTA Staff Attorney, 10/31/16