



State and Local Regulation of Medical Marihuana

Michigan Municipal League
October 3, 2017
Kalamazoo, MI

1. Short History of Medical Marihuana in Michigan
2. Overview of Medical Marihuana Statutes
3. Options and Challenges for Municipalities

Scope of Presentation

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.

Medical Marihuana Timeline

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.

Medical Marihuana Timeline

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

Overview of Public Act 283 (& P.A. 546)



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. State awarded \$447,625 contract to **Franwell, Inc.** a Florida-based software company that supports agricultural industry and cold food supply chains
5. Contractor required to deliver a functioning system by 180 days after award of the contract.

Overview of Public Act 282

Public Act 281 Medical Marihuana Facilities Licensing Act or MMFLA

Creates 5 types of Medical Marihuana Facilities:

Grower

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

Overview of Public Act 281

State Licensing Process

A 5 member **Medical Marijuana Licensing Board** evaluates and reviews every application for a license.

Rick Jones (Le Roy), Chairperson

Farm Manager, Speaker of Michigan House 2000-04

Nichole Cover, (Mattawan)

Walgreen's Pharmacist, Mich. Bd. of Pharmacy Chairperson

David LaMontaine, (Monroe)

Police Officer's Assn. of Michigan Bd. Member & Business Agent

Donald Bailey, (Traverse City)

Retired Michigan State Police Sgt.

Vivian Pickard, (Bloomfield Hills)

Retired Director of Public Policy for GM; Former President of GM Foundation;

Overview of Public Act 281

State Licensing Process

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

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; City must supply proof of its ordinances within 90 days of receiving notice of a license application to the State.

Overview of Public Act 281

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*

Overview of Public Act 281

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

Overview of Public Act 281

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 or resolution affirmatively prohibiting marihuana facilities from operating in the municipality

3. Adopt an ordinance authorizing 1 or more types of marihuana facilities and 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 to help defray administrative and enforcement costs
- d. eligible to receive proportional share of 25% of State Medical Marihuana Excise Fund reserved for municipalities

Local Options/Response

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**

- 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

Local Options/Response

Municipal Response: Problematic Issues

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 marijuana commercialization?

Local Options/Response

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?)**

Local Options/Response

Processor Facility

- ❖ Extracts resin from marijuana or creates marijuana-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 marijuana from a grower

Local Options/Response

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

Local Options/Response

Safety Compliance Center Facility

- ❖ Receives marijuana 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.*)

Local Options/Response

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

Local Options/Response

City of Kalamazoo Response: Proposed Zoning Regulation of Marihuana Facilities

<u>Separation Distances</u>	<u>Marihuana</u>	<u>Alcohol</u>
Schools	1000 feet	500 feet
Playground or park	1000 feet	
Public housing authority property	1000 feet	
Licensed child care center	500 feet	
Place of worship/religious assembly	500 feet	500 feet
Pool or recreational facility	500 feet	
Halfway house, correctional facility	500 feet	
Substance abuse rehab or treatment	500 feet	
Residential zoning district	500 feet*	
Another marihuana facility	500 feet	

*Applicable only to Grower and Processor Facilities

Local Options/Response

City of Kalamazoo Response: Limitation of Marihuana Facilities

<u>Type of Facility</u>	<u>Permitted Number</u>
Grower	
All Classes	No Limit
Processor	No Limit
Secure Transporter	No Limit
Safety Compliance Center	No Limit
Provisioning Center	1 per every 10,000 City residents

Local Options/Response

Municipal Response: Census of Patients/Caregivers

County	Patients	Caregivers	Per 1000 population
Kalamazoo	4081	758	15.6
Allegan	2508	521	21.7
Barry	1169	244	19.6
Berrien	2914	660	18.9
Branch	1076	215	24.8
Calhoun	3164	664	23.5
Cass	977	189	18.9
Kent	8754	1366	13.6
Ottawa	3341	499	11.8
St. Joseph	1136	223	18.7
Van Buren	1988	428	26.4

Source: State of Michigan *Medical Marihuana Act Statistical Report for FY 2016*
Issued December 22, 2016

Local Options/Response

Municipal Response: Problematic Issues

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

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?

Exposure to Federal criminal/civil liability for City officials and employees?

Local Options/Response

Municipal Response: Problematic Issues

True Parties in 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

Local Options/Response

Municipal Response: Problematic Issues

Protected Activities: Sections 201 & 202 of MMFLA

1. Exempt from state or local criminal and civil marihuana offenses
2. Exempt from searches or inspection unless by law enforcement/LARA
3. Exempt from seizures based on a marihuana –related offense
4. Exempt from professional disciplinary actions
5. May grow, possess, process, transport, test, purchase or transfer marihuana
6. May receive compensation for products and services
 1. Under MMMA, caregiver may only receive compensation for assisting a patient in the medical use of marihuana

Local Options/Response

Municipal Response: Problematic Issues

Exposure to Federal criminal/civil liability for City officials and employees?

This is a real concern. See *Safe Streets Alliance v. Hickenlooper*, 2017 U.S. App LEXIS 10101 (10th Federal Circuit Court of Appeals)

Permitted claims by adjacent landowners properly brought claims under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) that marijuana growers operating pursuant to state and county issued licenses, by violating the federal Controlled Substances Act, caused injury to their property through noxious odor of adjacent marijuana grow operation and reduction in property value due to proximity to an unlawful enterprise under federal law.

Case involves only recreational marijuana, Colorado medical marijuana scheme not at issue in this case. RICO claims against governmental entities and officials dismissed.

Local Options/Response

Municipal Response: Next Steps

- ❖ 2018 Ballot Question to Legalize Recreational Marijuana
 - ❖ Initiative Question requires 252,523 valid signatures
- ❖ As reported by MLive on August 6, 2017, proposal would:
 - ❖ Permit possession of 2.5 ounces on one's person (Most states permit 1 oz. on person)
 - ❖ Permit additional 10 ounces in one's home
 - ❖ By some estimates, this would be enough to roll over 1000 joints
- ❖ Legal landscape may drastically change in 2 years; Stay tuned!

Local Options/Response

Municipal Response: Next Steps

- ❖ Consult your municipal attorney
- ❖ Provide information to the Planning Commission & City Council in advance
- ❖ Hold public outreach meetings regarding the proposed ordinances to receive citizen feedback
- ❖ Incorporate feedback into ordinances and finalize language
- ❖ Get out in front of the issue
- ❖ Be aware of the possibility of ordinance/charter initiatives
- ❖ Opponents may compare local regulation of marijuana akin to that of alcohol or adult businesses (MMFLA does not change MMMA re: registered caregiver-patient relationship, nor does it “legalize” marijuana, or eliminate the black market)
- ❖ Industry will frame the issue as one of altruism; it is providing much needed medicine to underserved patients

Local Options/Response

“There's always cash when we sell drugs. That's why we sell drugs.”

--Nancy Botwin (Character from the Showtime series “Weeds”)

According to a August 31, 2017 Wall Street Journal article, the wholesale value of marijuana is \$1614/lb., the retail value is \$4536/lb.

Questions?