

City of Pleasant Ridge
23925 Woodward Avenue
Pleasant Ridge, Michigan 48069

**City Commission Meeting
January 15, 2019
Agenda**

Honorable Mayor, City Commissioners and Residents: This shall serve as your official notification of the Public Hearing and Regular Meeting of the Pleasant Ridge City Commission to be held Tuesday, January 15, 2019, 7:30 P.M., in the City Commission Chambers, 23925 Woodward Avenue, Pleasant Ridge, Michigan 48069. The following items are on the Agenda for your consideration:

PUBLIC HEARING AND REGULAR CITY COMMISSION MEETING–7:30 P.M.

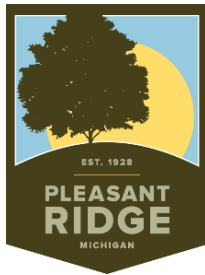
- 1. Meeting Called to Order.**
- 2. Pledge of Allegiance.**
- 3. Roll Call.**
- 4. PUBLIC DISCUSSION – items not on the Agenda.**
- 5. Governmental Reports.**
- 6. City Commission Liaison Reports.**
 - **Commissioner Wahl – Recreation Commission**
 - **Commissioner Krzysiak – Ferndale Public Schools**
 - **Commissioner Perry – Planning/DDA**
 - **Commissioner Scott – Historical Commission**
- 7. Consent Agenda.**

All items listed on the Consent Agenda are considered to be routine by the City Commission, will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of these items unless a City Commissioner or visitor so requests, in which event, the item will be removed from the consent agenda and considered as the last item of business.

 - a. Minutes of the Regular City Commission Meeting held Tuesday, December 11, 2018
 - b. Monthly Disbursement Report.
 - c. Resolution in honor of the birthday of Dr. Martin Luther King, Jr.
 - d. Proclamation recognizing January as Volunteer Blood Donor Month.
 - e. Budget Amendment A-2019-001.
- 8. Overview of Proposal 18-1, the Michigan Regulation and Taxation of Marihuana Act.**
- 9. Ordinance to amend Chapter 82, Zoning, of the Pleasant Ridge City Code, Section 82-197(b)(9)(c) Automobile Service Stations and Oil Change Establishments – Hours of Operation:**
 - a. **Public Hearing** – Solicitation of public comments on an Ordinance to amend Chapter 82, Zoning, of the Pleasant Ridge City Code, Section 82-197(b)(9)(c) Automobile Service Stations and Oil Change Establishments – Hours of Operation.

- b. Ordinance to amend Chapter 82, Zoning, of the Pleasant Ridge City Code, Section 82-197(b)(9)(c) Automobile Service Stations and Oil Change Establishments – Hours of Operation.
- 10. **Traffic Calming Manual and Program Introduction.**
- 11. **City Manager's Report.**
- 12. **Other Business.**
- 13. **Adjournment.**

In the spirit of compliance with the Americans with Disabilities Act, individuals with a disability should feel free to contact the City at least seventy-two (72) hours in advance of the meeting, if requesting accommodations.



City of Pleasant Ridge
 23925 Woodward Avenue
 Pleasant Ridge, Michigan 48069

**Regular City Commission Meeting
 December 11, 2018**

Having been duly publicized, Deputy Mayor Perry called the meeting to order at 7:30 p.m.

Present: Commissioners Krzysiak, Scott, Wahl, Mayor Metzger
 Also Present: City Manager Breuckman, City Clerk Drealan, City Attorney Need
 Absent: Commissioner Perry

Public Discussion

Ted Zachary, 68 Devonshire, discussed how to join the Environmental Action Committee. He encouraged everyone to recycle during the holidays.

Pleasant Ridge Panthers Soccer Team Recognition

Assistant City Manager Pietrzak acknowledged that the team finished the season undefeated with a record of 9-0-1. They also won the end of season tournament. He introduced Coach John Blase who thanked the parents. He discussed the success of the team's season and presented the Mayor with a team jersey. Pietrzak discussed changes in soccer rules and congratulated all involved.

Centennial Homes Presentation

Mr. John Wright, Historical Commission, noted that eight homes were built in the city in 1918. The homes that were recognized are 79 Kensington, 81 Kensington, 19 Norwich, 13 Oakland Park, 15 Oakland Park, 35 Oakland Park, 14 Ridge Road and 8 Woodside Park. A Pewabic tile was presented to each homeowner.

Annual Audit for Fiscal Year 2018

Mr. Aron Stevens from Stevens, Kirinovic. and Tucker PC, presented the annual audit. He thanked Plante Moran for their cooperation and assistance. He indicated that he was presenting a "clean" opinion, which is the represents the highest level of compliance. He noted that there has been an upward trend in total revenues and expenditures as well as the fund balance. Revenues exceeded expenditures in four of the last five years. The fund balance at the end of the audit period was \$776,182 which represents approximately 26% of expenditures. The Government Finance Officers Association recommends having a fund balance of at least 17% of expenditures. Approximately 69% of the revenues come from property taxes. Public safety represents 46% of the expenditures followed by general government at 24%. Commissioner Krzysiak discussed the success with improving the city's fund balance. There was discussion that the water and sewer fund has a fairly healthy balance as well. Additionally, there was discussion regarding the status of the pension and health care liabilities.

18-3393

Motion by Commissioner Wahl, second by Commissioner Scott, to receive and file the FY 2018 annual audit as presented.

Adopted: Yeas: Commissioners Wahl, Scott, Krzysiak, Mayor Metzger
 Nays: None

Governmental Reports

Chief Kevin Nowak, Pleasant Ridge Police Department, noted that there have only been a couple of package thefts. Officers are following delivery trucks when possible. Two unlocked cars with the key fobs in the cars were stolen in early December. Both cars were recovered within twelve hours. He recommended that residents lock their cars and garages. He asked that residents be kind to their neighbors when removing snow from their property. There was discussion regarding Fire Chief Sullivan's health and recovery.

City Commission Liaison Reports

Commissioner Scott reported on the Historical Commission. The last meeting was November 27th. The Commission is working on plans for the 2019 Home and Garden Tour. No date is set but the tour will likely be the third week in September. The police station was decorated with historic ornaments and items and may be opened again for viewing before the end of the year. The next meeting is planned for January 9th.

Commissioner Wahl reported on the Recreation Commission. The deadline for letters to Santa is December 13th. The holiday hours for the wellness center will not affect those with fobs to get into the center. The next meeting is scheduled for January 30th, 2019. Pietrzak stated that the renovations to the big rec room are nearing completion. The room is being used while construction continues.

Commissioner Krzysiak reported on Ferndale Public Schools. Zoe Butters reported that Ferndale High School had 28 new inductees to the National Honor Society. The volleyball team went to the district championships. Sydney Embry reported that Student Council at University High School conducted a food drive for the homeless. She also noted that the Pipeline Club discusses issues and goals for students after they graduate. They also held an anti-bullying day. The Superintendent's Excellence Award was presented to Latavia Jackson and Katrice Leonard. The Eagle of the Month award was presented to Dave Roberts, the maintenance supervisor. The CASA program was also recognized. 370 students participated this year. The CASA Japanese class will be travelling to Japan next year. This summer is the 35th anniversary of CASA. Alumni are asked to return on April 26 and 27 to celebrate. The school system presented its audit. Its fund balance is healthy and enrollment has stabilized. The next School Board meeting is December 17th.

Commissioner Scott reported on the Planning Commission/DDA. The last meeting was December 10th. There was discussion regarding the approval of the liquor license at the gas station which was forwarded to the full City Commission. Special recognition was given to Martha Schlesinger who has completed eight years on the Planning Commission.

Consent Agenda

18-3394

Motion by Commissioner Wahl, second by Commissioner Scott, to approve the consent agenda as presented.

Adopted: Yeas: Commissioners Wahl, Scott, Krzysiak, Mayor Metzger
 Nays: None

Annual Meeting Schedules

18-3395

Motion by Commissioner Krzysiak, second by Commissioner Wahl, to approve the 2019 annual meeting schedules as presented.

Adopted: Yeas: Commissioners Krzysiak, Wahl, Scott, Mayor Metzger
 Nays: None

Historical Commission Appointments

Lisa Wetzen, Nick Kokotovich, Samantha Chapman, were recommended to serve full terms and Jaclyn Huffman was recommended to serve a partial term, all ending December 31, 2021.

18-3396

Motion by Commissioner Krzysiak, second by Commissioner Scott, to approve the appointments to the Historical Commission as presented.

Adopted: Yeas: Commissioners Krzysiak, Scott, Wahl, Mayor Metzger
 Nays: None

Planning Commission/DDA Appointments

Patricia Corrigan, Tom Treuter and Alex Bellak were recommended to serve full two-year terms.

18-3397

Motion by Commissioner Krzysiak, second by Commissioner Wahl, to approve the consent agenda as presented.

Adopted: Yeas: Commissioners Krzysiak, Wahl, Scott, Mayor Metzger
 Nays: None

Recreation Commission Appointments

Esther Winer, Sufi (Jay) Ahmad, Barbara Rozman-Stokes were recommended for full terms and Al Kaczkowski was recommended for a partial term.

18-3398

Motion by Commissioner Krzysiak, second by Commissioner Scott, to approve the consent agenda as presented.

Adopted: Yeas: Commissioners Krzysiak, Scott, Wahl, Mayor Metzger
 Nays: None

Resolution Regarding Proposal 18-1, Michigan Regulation and Taxation of Marihuana Act

Mayor Metzger discussed the fact that communities will have to decide whether to opt in or out of the state's proposed regulations. City Manager Breuckman indicated that the proposed resolution would recommend opting out for now. This would allow the matter to be better clarified before the city makes any lasting decisions. The state has one year to finalize the regulations. Breuckman and City Attorney Need will research the matter further. City Attorney Need acknowledged that the state's regulations are still being formulated and are currently very vague.

City Manager's Report

Breuckman noted that some end of year projects were being wrapped up. Leaf pick up is complete and was very successful. There was discussion regarding preparing for sidewalk replacement work next summer. Work will begin on the east side in 2019 and continue with the west side in 2020. The city engineer has been placing pink dots at locations that need replacement. The city will cover the cost of replacement. Home owners who want to replace more than the city recommends can do so at the city's bid pricing. Consumers Energy will be replacing a number of gas leads throughout the city during 2019. Consumers will be repairing some sidewalks as a result of their work. The city will complete their sidewalk repairs after Consumers is done. Pietrzak noted that snow removal season is beginning. A major salt shortage is anticipated in January and salt may only be placed at intersections during part of the season. The salt is dyed brown; sand has not been added. There has not been any city sidewalk snow removal for ten years.

Other Business

Krzysiak indicated that there may be a change in the date for the Book Club to the third Wednesday. He discussed concerns regarding the lame duck session in Lansing. He encouraged anyone who was also concerned to contact the governor's office at governorsoffice@michigan.gov or call 517-373-3400. Scott indicated that focus needs to be placed on state government as well as at the federal level.

With no further business or discussion, Mayor Metzger adjourned the meeting at 8:42 p.m.

Mayor Kurt Metzger

Amy M. Drealan, City Clerk

/dleg

December 2018

ACCOUNTS PAYABLE

PAYROLL LIABILITIES	\$	8,761.68
ACCOUNTS PAYABLE	\$	192,029.79
TAX LIABILITIES	\$	254,561.84
TOTAL	\$	200,791.47

PAYROLL

December 5, 2018	\$	44,193.76
December 19, 2018	\$	38,181.02
TOTAL	\$	82,374.78

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
PAYROLL LIABILITIES
December 2018

Check Date	Check	Vendor Name	Description	Amount
12/5/2018	2280	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 336.40
12/5/2018	2281	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,608.93
12/5/2018	2282	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,200.18
12/5/2018	2283	MIFOP	UNION DUES	\$ 188.00
12/5/2018	2284	MISDU	FOC DEDUCTIONS	\$ 224.60
12/5/2018	2285	ALERUS FINANCIAL	RHSP CONTRIBUTIONS	\$ 445.74
12/19/2018	2287	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 336.40
12/19/2018	2288	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,480.34
12/19/2018	2289	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,105.66
12/19/2018	2990	MISDU	FOC DEDUCTIONS	\$ 224.60
12/19/2018	2991	ALERUS FINANCIAL	RHSP CONTRIBUTIONS	\$ 1,610.83
TOTAL PAYROLL LIABILITIES				<u><u>\$ 8,761.68</u></u>

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
TAX LIABILITIES
December 2018

Check Date	Check	Vendor Name	Description	Amount
12/12/2018	2607	Void	VOID CHECK	\$ -
12/12/2018	2608	CITY OF PLEASANT RIDGE-DDA	2018 TAX COLLECTIONS	\$ 3,475.84
12/12/2018	2609	CITY OF PLEASANT RIDGE-GENERAL	2018 TAX COLLECTIONS	\$ 81.49
12/12/2018	2610	CITY OF PLEASANT RIDGE-TAXES	2018 TAX COLLECTIONS	\$ 103,082.99
12/12/2018	2611	FERNDALE SCHOOL DISTRICT	2018 TAX COLLECTIONS	\$ 51,258.98
12/12/2018	2612	OAKLAND COUNTY TREASURER	2018 TAX COLLECTIONS	\$ 96,662.54
TOTAL TAX LIABILITIES				<u>\$ 254,561.84</u>

CITY OF PLEASANT RIDGE CHECK REGISTER
ACCOUNTS PAYABLE
December 11, 2018

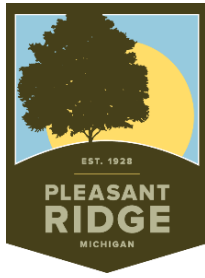
Check Date	Check	Vendor Name	Description	Amount
12/11/2018	22585	BERGER CHEVROLET	2019 CHEVY TAHOE POLICE VEHICLE PURCHASE	\$ 35,235.00
12/11/2018	22586	21ST CENTURY MEDIA-MICHIGAN	LEGAL NOTICE PRINTING	\$ 282.25
12/11/2018	22587	ALPHA PSYCOLOGICAL SERVICES LLC	PD PRE EMPLOYMENT SERVICES - SIMON	\$ 695.00
12/11/2018	22588	ANDERSON, ECKSTEIN & WESTRICK	ENGINEERING SERVICES	\$ 14,342.35
12/11/2018	22589	BADGER METER, INC.	WATER METER MAINTENANCE	\$ 448.74
12/11/2018	22590	BLUE CROSS BLUE SHIELD OF MICHIGAN	HEALTHCARE BENEFITS	\$ 5,770.70
12/11/2018	22591	CLINTON RIVER WATERSHED COUNCIL	2019 MEMBERSHIP DUES	\$ 500.00
12/11/2018	22592	DETROIT EDISON COMPANY	STREETLIGHTING	\$ 3,141.48
12/11/2018	22593	ELECTION SOURCE	ELECTION EQIPT TESTING SERVICES	\$ 750.00
12/11/2018	22594	EUGENE LUMBERG	COURT PROSECUTIONS	\$ 405.00
12/11/2018	22595	GREAT AMERICAN FINANCIAL SRVS	TELECOMMUNICATION SERVICES	\$ 433.00
12/11/2018	22596	GREAT LAKES WATER AUTHORITY	IWC CHARGES	\$ 273.77
12/11/2018	22597	JANI-KING OF MICHIGAN, INC	BUILDING MAINTENANCE	\$ 2,161.00
12/11/2018	22598	KENNETH BORYCZ	INSPECTION SERVICES	\$ 900.00
12/11/2018	22599	MULTI-LAKES CONSERVATION ASSOC	FIRING RANGE SERVICES	\$ 551.75
12/11/2018	22600	OAKLAND COUNTY TREASURER	SEWERAGE TREATMENT	\$ 48,774.68
12/11/2018	22601	SCHEER'S ACE HARDWARE	BUILDING MAINTENANCE SERVICES	\$ 134.39
12/11/2018	22602	SOCRRA	REFUSE COLLECTION AGREEMENT	\$ 9,184.00
12/11/2018	22603	SOCWA	WATER PURCHASES	\$ 12,085.29
12/11/2018	22604	STEVENS, KIRINOVIC & TUCKER P.C.	AUDIT SERVICES	\$ 1,000.00
12/11/2018	22605	UNIFIRST CORPORATION	BUILDING MAINTENANCE SUPPLIES	\$ 164.05
12/11/2018	22606	W-S CITY OF PLEASANT RIDGE	UTILITIES SERVICES	\$ 9,307.66
12/11/2018	22607	WETMORE TIRE AND AUTO	PD VEHICLE MAINTENANCE	\$ 22.50
12/11/2018	22608	WOLVERINE POWER SYSTEMS	GENERATOR MAINTENANCE	\$ 330.00
Total for 12-11-2018				\$ 146,892.61

CITY OF PLEASANT RIDGE CHECK REGISTER
ACCOUNTS PAYABLE
December 20, 2018

Check Date	Check	Vendor Name	Description	Amount
12/20/2018	22624	VOID	VOID	\$ -
12/20/2018	22625	VOID	VOID	\$ -
12/20/2018	22626	VOID	VOID	\$ -
12/20/2018	22609	ALBANA KOKA	MUSEUM MAINTENANCE SERVICES	\$ 100.00
12/20/2018	22610	CITY OF FERNDALE	FIRE SERVCEs CONTRACT-JANUARY	\$ 21,381.72
12/20/2018	22611	CITY OF FERNDALE	DISPATCH SERVICES AGREEMENT-JANUARY 19	\$ 3,250.00
12/20/2018	22612	CITY OF ROYAL OAK	DPW SERVICES	\$ 213.64
12/20/2018	22613	JEREMY WATTERS	UNIFORM REIMBURSEMENT	\$ 275.34
12/20/2018	22614	LEGAL SHIELD	PREPAID LEGAL SERVICE BENEFIT	\$ 25.90
12/20/2018	22615	OPTUM BANK	2019 HSA CONTRIBUTION-GUZI	\$ 250.00
12/20/2018	22616	PROVIDENCE CORPORATE HEALTH	PREEMPLOYMENT SERVICES-SIMON	\$ 128.00
12/20/2018	22617	RAY KEE	INSPECTION SERVICES	\$ 1,350.00
12/20/2018	22618	RICHARD EMMA	CIVIL INFRACTION OVERPAYMENT	\$ 81.50
12/20/2018	22619	SAFEBUILT	CODE ENFORCEMENT SERVICES	\$ 660.00
12/20/2018	22620	SOCRRA	REFUSE COLLECTION AGREEMENT	\$ 231.87
12/20/2018	22621	UNIFIRST CORPORATION	MAT RENTAL AND JANITORIAL SUPPLIES	\$ 228.03
12/20/2018	22622	UNUM LIFE INSURANCE COMPANY	LIFE INSURANCE BENEFIT	\$ 1,117.61
12/20/2018	22623	WEX BANK	FUEL PURCHASES	\$ 1,551.14
Total for 12-20-2018				\$ 30,844.75

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
ELECTRONIC PAYMENTS
December 2018

Check Date	Check	Vendor Name	Description	Amount
12/10/2018	1350	MUNICIPAL EMP.RETIREMENT SYST.	RETIREMENT CONTRIBUTIONS	\$ 26,101.67
12/12/2018	1349	BLUE CROSS BLUE SHIELD OF MICHIGAN	HEALTHCARE BENEFITS	\$ 14,292.43
TOTAL ELECTRONIC PAYMENTS				\$ 14,292.43



City of Pleasant Ridge
23925 Woodward Avenue
Pleasant Ridge, Michigan 48069

RESOLUTION
in honor of
Dr. Martin Luther King, Jr.

Whereas, *Monday, January 21, 2019, will be recognized as a National Day of Observance in honor of the birthday of Dr. Martin Luther King, Jr., and*

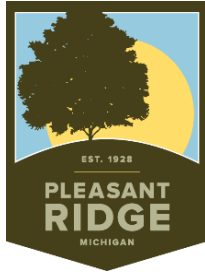
Whereas, *the Reverend Dr. Martin Luther King Jr. became a martyr by assassination April 4, 1968; his life ending at thirty-nine years by the bullet of bigotry; and*

Whereas, *the world has always feared and crucified the spiritual giants among mankind who become effective through example, dedication to true spiritual growth and personal sacrifice; and*

NOW, THEREFORE, I, Kurt Metzger by virtue of the authority vested in me as Mayor, do hereby urge all our residents to recognize this special day and join us as we rededicate ourselves to the principles of justice and equality for all.

Kurt Metzger, Mayor

SIGNED AND SEALED THIS 15TH DAY OF JANUARY, 2019



City of Pleasant Ridge
23925 Woodward Avenue
Pleasant Ridge, Michigan 48069

Mayoral Proclamation

January 2019 Volunteer Blood Donor Month

WHEREAS,

In Southeast Michigan, there is need for 250,000 units of blood per year for the protection of patients, and there is a need for additional healthy, regular volunteer donors to join the ranks of those who already give of themselves so generously.

NOW, THEREFORE,

I, Kurt Metzger, on behalf of the entire City Commission, do hereby proclaim the month of January as “Volunteer Blood Donor Month” for the City of Pleasant Ridge and urge all citizens to pay tribute to those among us who donate for others in need. I urge all citizens in good health to donate regularly. I also urge all civic and service organizations and businesses, if they have not already done so, to form blood donors groups to provide for others.

Kurt Metzger, Mayor

SIGNED AND SEALED THIS 15TH DAY OF JANUARY, 2019



City of Pleasant Ridge

From: Carolyn Lorenz, Finance
 To: Pleasant Ridge City Commission
 Date: January 7, 2019
 Re: 2018-19 Budget Amendment A-2019-001

Overview

The following budget amendments adjust revenue estimates for permits, municipal fines, local community stabilization funds as well as increased donations. This amendment also increases expenditures related to increased contractual services.

Background

Budget Amendment Group 1 – General Fund

We have adjusted our revenue estimates for permits and municipal fines to be more in line with actual year-to-date activity in these accounts.

Contractual expenses have been increased in the building department as a result of on-going projects related to the park and recreation master plan.

The amendment to the current budgeted amounts are as follows:

	<u>Increase (Decrease)</u>
Revenues	
101-000-477.000 Electrical Permits	\$1,500
101-000-478.000 Building Permits	\$21,000
101-000-479.000 Plumbing and Mechanical Permits	\$3,200
101-000-656.000 Municipal Fines	\$5,700
Expenditures	
101-371-809.000 Contractual Services	\$2,800

Budget Amendment Group 2 – Infrastructure Improvements Fund

We have increased the local grant revenue account to account for monies received as part of the local road improvement matching program. In addition, interest earnings are higher due better interest rates and increased cash and investment balances. The amendment to the current budgeted amounts is as follows:

	<u>Increase (Decrease)</u>
Revenues	
218-000-532.000 Local Grants	\$8,900
218-000-665.000 Interest Income	\$5,300

Budget Amendment Group 3 – Downtown Development Authority (DDA)

We have adjusted the local community stabilization budget to account for the DDA's share of personal property tax reimbursement from the State of Michigan.

	<u>Increase (Decrease)</u>
Revenues	
260-000-573.000 Local Community Stabilization	\$2,500

Budget Amendment Group 4 – Capital Improvement Fund

This amendment adjusts contributions and donations to account for an increased donation from the Historical Foundation. The amendment to the current budgeted amounts is as follows:

	<u>Increase (Decrease)</u>
Revenues	
401-000-675.000 Contributions and Donations	\$25,000

Requested Action

City Commission consideration of the above budget amendments.



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: City Commission
Date: January 10, 2019
Re: Michigan Regulation and Taxation of Marihuana Act

Overview

Staff is working with Greg Need on an overview of the Michigan Regulation and Taxation of Marihuana Act. We will present an overview of the act at the January 15 City Commission meeting. At the time of publication of this agenda packet we have not yet completed our written overview of the act, but we will present that to the City Commission as soon as it is complete.

Requested Action

No action is requested at this time.



Recreational Marihuana Proposition



michigan municipal league

We love where you live.

This paper is being provided by the Michigan Municipal League (MML) to assist its member communities.

The MML Legal Defense Fund authorized its preparation by Kalamazoo City Attorney Clyde Robinson. The document does not constitute legal advice and the material is provided as information only. All references should be independently confirmed.

The spelling of “marihuana” in this paper is the one used in the Michigan statutes and is the equivalent of “marijuana.”

Other resources

The Michigan Municipal League has compiled numerous resource materials on medical marihuana and is building its resources on recreational marihuana. They are available via the MML web site at:
www.mml.org/resources/information/mi-med-marihuana.html

Introduction

This paper is intended to provide municipal attorneys and their clients an idea of what to expect and the issues to be addressed, given the adoption by Michigan voters of Initiated Law 1 of 2018 generally legalizing marihuana on November 6, 2018. The scope of this paper will outline the provisions of the initiated statute and address some of the practical consequences for municipalities while raising concerns that local governmental officials should be prepared to confront. It is assumed that the reader has a working knowledge of both the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, and in particular the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*

While the initiated law, titled the Michigan Regulation and Taxation of Marihuana Act (MRTMA), uses some of the same terms found in the MMFLA, the language between the two Acts is not consistent. This circumstance alone, as well as other features of the initiated statute, requires a thoughtful and thorough review of the language adopted by Michigan voters and its potential impact at the local municipal level.

At its core, the MRTMA authorizes the possession and nonmedical use of marihuana by individuals 21 years of age and older, while establishing a regulatory framework to control the commercial production and distribution of marihuana outside of the medical context. While the regulatory scheme of the MRTMA is similar to that of the MMFLA, it also differs in significant ways.



When would the proposed law become effective if approved?

Under the provisions of Article II, § 9 of the Michigan Constitution, an initiated law takes effect 10 days after the official declaration of the vote. The State Board of Canvassers met on November 26 and certified the November 6 election results, so the effective date of the law will be December 6, 2018. The immediate effect of the law authorizes individuals age 21 and older to openly possess a small amount of marihuana and marihuana concentrate on their person, and possess and grow a larger amount of marihuana at their residence. Given the relatively short period to adjust to the change in the legal status of marihuana in Michigan, law enforcement officers should be provided training in advance of this change in the law so as to avoid claims of false arrest and allegations of Fourth Amendment unlawful search violations. This becomes particularly acute for law enforcement agencies that use drug-sniffing dogs that were trained to detect marihuana. Those animals will likely have to be retired from service as they cannot be relied upon to provide probable cause to support a search. Additionally, officers will have to deal with how to handle marihuana discovered in the course of a search incident to an arrest for another offense.

Another constitutional feature of a voter-initiated law is that it can only be amended by a vote of the electors or by $\frac{3}{4}$ vote of each house of the Legislature. This likely makes amending the statute difficult, but not impossible, as the MMMA has been amended at least twice since its adoption by the voters in 2008.

As for the actual licensure of businesses authorized to grow, process, and sell recreational marihuana, the Act requires that the Michigan Department of Licensing and Regulatory Affairs (LARA) begin accepting applications for state-issued licenses no later than a year after the effective date of the law and issue the appropriate license or notice of rejection within 90 days. (MRTMA § 9) Unlike the MMFLA, there is not a specific licensing board created to review and grant recreational marihuana establishment licenses. Given the deliberate speed of LARA and the Medical Marihuana Licensing Board in processing and authorizing licenses under the MMFLA, it is an open question whether the statutory deadline will be met. If it can't, then

the burden of licensing recreational marihuana establishments will fall to local municipalities, because the MRTMA specifically provides that if LARA does not timely promulgate rules or accept or process applications, "beginning one year after the effective date of this act," an applicant may seek licensure directly from the municipality where the marihuana business will be located. (MRTMA § 16)

Under this scenario, a municipality has 90 days after receipt of an application to issue a license or deny licensure. Grounds for denial of a license are limited to an applicant not being in compliance with an ordinance whose provisions are not "unreasonably impracticable," or a LARA rule issued pursuant to the MRTMA. If a municipality issues a license under these circumstances, it must notify LARA that a municipal license has been issued. The holder of a municipally-issued license is not subject to LARA regulation during the one-year term of the license; in other words, the municipality becomes the sole licensing and regulatory body for recreational marihuana businesses in the community in this circumstance. Any ordinance seeking to regulate recreational marihuana businesses should be drafted with the potential for this circumstance in mind.

What does the initiated statute seek to do?

The purposes actually stated in the MRTMA are many and varied. In addition to legalizing the recreational use of marihuana by persons 21 years and older, the statute 1) legalizes industrial hemp (cannabis with a THC concentration not exceeding 0.3 percent), and 2) licenses, regulates, and taxes the businesses involved in the commercial production and distribution of nonmedical marihuana. According to Section 2 of the statute, the intent of the law is to:

- prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age and older;
- remove the commercial production and distribution of marihuana from the illicit market;
- prevent revenue generated from commerce and marihuana from going to criminal enterprises or gangs;
- prevent the distribution of marihuana to persons under 21 years of age;

- prevent the diversion of marihuana to illicit markets;
- ensure the safety of marihuana and marihuana infused products; and
- ensure the security of marihuana establishments.

Whether the MRTMA will actually live up to all of these intentions is open to question as many of the areas mentioned are not directly addressed in the law. For instance, since the establishments that will be authorized to grow, process, and sell recreational marihuana will not be licensed until early 2020, how is it that individuals can lawfully obtain and possess marihuana upon the effective date of the Act?

What the statute permits

Under Section 5 of the MRTMA, persons 21 years of age and older are specifically permitted to:

- possess, use, consume, purchase, transport, or process 2.5 ounces or less of marihuana, of which not more than 15 grams (0.53 oz.) may be in the form of marihuana concentrate;
- within a person's residence, possess, store, and process not more than a) 10 ounces of marihuana; b) any marihuana produced by marihuana plants cultivated on the premises; and c) for one's personal use, cultivate up to 12 plants at any one time, on one's premises;
- give away or otherwise transfer, without remuneration, up to 2.5 ounces of marihuana except that not more than 15 g of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older as long as the transfer is not advertised or promoted to the public (registered medical marihuana caregivers and patients will be able to "give away" marihuana to non-patients);
- assist another person who is 21 years of age or more in any of the acts described above; and
- use, manufacture, possess, and purchase marihuana accessories and distribute or sell marihuana accessories to persons who are 21 years of age and older.

Although not a direct concern of municipalities, law enforcement and social service agencies need to be cognizant that the Act specifically provides that "a person shall not be denied custody of or visitation with the minor for conduct that is permitted by the Act, unless the person's behavior such that it creates an unreasonable danger to the minor they can be clearly articulated and substantiated." MRTMA § 5. Exactly what this phrase means will likely be a source of litigation in the family division of the circuit courts.

The possession limits under the MRTMA are the most generous in the nation. Most other states that have legalized marihuana permit possession of only one ounce of usable marihuana, 3.5g to 7g of concentrate, limit the number of plants to six, and do not permit possession of an extra amount within one's residence. An additional concern arises as to how these limits will be applied. It will be asserted that the limits are per every individual age 21 or older who resides at the premises. So, the statutory permissible possessory amounts are ostensibly doubled for a married couple and quadrupled or more for a group of college students or an extended family sharing a residence. While this same concern is also present under the MMMA, the quantity of marihuana permitted to be possessed under the MMMA is significantly less than under the MRTMA, and lawful possessors (patients and caregivers) are required to be registered with the State.

What is "Not Authorized" under the statute

The initiated law does not set forth outright prohibitions, but instead cleverly explains what the "act does not authorize." Specifically, under the terms of Section 4 of the MRTMA, one is not authorized to:

- operate while under the influence of marihuana or consume marihuana while operating a motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoke marihuana while in the passenger area of the vehicle on a public way;
- transfer marihuana or marihuana accessories to a person under the age of 21;

- process, consume, purchase, or otherwise obtain, cultivate, process, transport, or sell marihuana if under the age of 21;
- separate plant resin by butane extraction or other method that utilizes a substance with the flashpoint below 100° Fahrenheit in any public place motor vehicle or within the curtilage of any residential structure (This prohibition is broader than the one limited solely to butane extraction found in the MMMA.);
- consume marihuana in a public place or smoke marihuana where prohibited by a person who owns occupies or manages property; however, a public place does not include an area designated for consumption within the municipality that has authorized consumption in a designated area not accessible to persons under 21 years of age;
- cultivate marihuana plants if plants are visible from a public place without the use of binoculars, aircraft, or other optical aids; or; outside of an enclosed area equipped with locks or other functioning security devices that restrict access;
- possess marihuana accessories or possess or consume marihuana on the grounds of a public or private school where children attend preschool, kindergarten, or grades one through 12; in a school bus; or on the grounds of any correctional facility; and
- possess more than 2.5 ounces of marihuana within a person's place of residence unless any excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

MRTMA § 4.5 then provides that “All other laws inconsistent with this act do not apply to conduct that is permitted by this act.” This general statement does not provide for a total repeal of existing marihuana laws, but its lack of specificity to other statutes being impacted, something that the Legislative Service Bureau helps the Legislature avoid, may portend problems in its application.

Differences in terminology between statutes addressing medical and recreational marihuana

The MRTMA does not neatly fit with the MMMA. It provides at Section 4.2 that it “does not limit any privileges, rights, immunities or defenses of a person as provided” by the MMMA. This raises the question whether registered patients and caregivers may lawfully possess marihuana exceeding the amounts permitted under the MMMA. However, this may become a moot point, since in all probability, once the commercial provisions of the MRTMA are fully in operation, the number of registered patients and caregivers under the MMMA could reasonably be expected to drop significantly, as its practical application would largely be limited to registered patients under the age of 21 and their caregivers.

Additionally, the MRTMA references the MMFLA at several places. In addition to the “does not limit” language referenced above, the statute at § 9.6 provides that for the first 24 months after LARA begins accepting applications for marihuana establishment licenses, only those persons holding a MMFLA license may apply for a retailer, processor, class B or class C grower, or secure transporter license issued under the MRTMA. And § 8.3(c), is broadly worded so as to preclude LARA from promulgating rules which prohibit a recreational marihuana establishment from operating at a shared location with a licensed medical marihuana facility.

The lack of consistency between the statute addressing medical marihuana and the recreational marihuana statute is reflected in the following chart.

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes

	MMFLA	MMMA	Proposed MRTMA
Grower Limits			
Class A	500 plant limit		100 plant limit (limited to Michigan residents for first two years)
Class B	1000 plant limit		500 plant limit
Class C	1500 plant limit; stackable		2000 plant limit; not clear if stackable
Microbusiness	-----		150 plant limit (limited to Michigan residents for first two years)
Secure Transporter	Required to move marihuana between licensed facilities; may move money		No specific requirement to use; no authority to transport money
Compliance with Marihuana Tracking Act	Required		No reference or requirement
Plant Resin Separation	-----	Butane extraction prohibited in a public place, motor vehicle, or inside a residence or within curtilage of a residential structure or in a reckless manner	Butane extraction or another method that utilizes a substance with a flashpoint below 100° F prohibited in a public place, motor vehicle, or within curtilage of any residential structure
Possession Limits			
Registered Patient (18 years and older, but can be less than 18)		2.5 oz. useable marihuana and 12 plants*	
Registered Caregiver (five patient limit)		2.5 oz. useable marihuana and 12 plants per patient*	

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes

	MMFLA	MMMA	Proposed MRTMA
Possession Limits			
Other Persons (21 years and older under MRTMA)		Not permitted	(a) 2.5 oz. of marihuana, of which not more than 15 grams may be concentrate; (b) 10 oz. secured within one's residence; (c) any amount produced by plants cultivated on the premises; and (d) 12 plants
Inconsistent Terms			
Licensed marihuana businesses	marihuana facility		marihuana establishment
Equipment to grow, process or use marihuana	paraphernalia		marihuana accessories
Business that sells marihuana	provisioning center		marihuana retailer
Certain parts of marihuana plant	Usable marihuana and usable marihuana equivalencies		Term not used
Marihuana-infused products	Excludes products consumed by smoking; exempts products from food law		Does not exclude products consumed by smoking or provide food law exemption
Enclosed, locked facility		Specifically defined to address a structure, an outdoor grow area, and motor vehicles	Container or area within a person's residence equipped with locks or other functioning security device that restricts access to the area or container's contents
Limitations on scope of local regulation	Purity, pricing or conflict with MMFLA or LARA rules		"Unreasonably Impracticable" or conflict with MRTMA or LARA rules

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes

	MMFLA	MMMA	Proposed MRTMA
Inconsistent Terms			
Property rights	License is a revocable privilege, not a property right; facilities subject to inspection and examination without a warrant		Not addressed
Zoning	Municipalities specifically authorized to zone, but growers limited to industrial, agricultural or unzoned areas	Municipalities may not limit caregiver operations to residential districts as a “home occupation” <i>Deruiter v Byron Twp.</i> (July 2018) and <i>Ypsilanti Twp. v. Pontius</i> (Oct. 2018)	Municipal regulation limited to: (a) reasonable sign restrictions; (b) time, place and manner of operation of marihuana establishments and the production, manufacture, sale and display of marihuana accessories; and (c) authorizing sale of marihuana for consumption in designated areas or at special events
License eligibility			
Elected officials and governmental employees	Not eligible		Not addressed
Felony or controlled substance felony within past 10 years or misdemeanor conviction for controlled substance violation or dishonesty theft or fraud within past five years	Not eligible		A prior conviction for a marihuana-related offense does not disqualify an individual unless offense involved distribution of a controlled substance to a minor
Taxation	3 percent on gross retail receipts of provisioning centers		10 percent on sales price for marihuana sold or transferred by marihuana retailers and micro businesses

*Under § 8 of the MMMA a patient and patient's caregiver may also collectively possess a quantity of marihuana that is not more than reasonably necessary to ensure an uninterrupted availability of marihuana for the purpose of treatment.

There also appears to be some inconsistency within the MRTMA itself. Section 6.1 permits a municipality to “completely prohibit or limit the number of (recreational) marihuana establishments within its boundaries.” However, §6.5 provides that a municipality may not prohibit a recreational marihuana grower, processor, and retailer from: 1) operating within a single facility; or 2) *“operating at a location shared with a marihuana facility operating pursuant to the (MMFLA).”* (Emphasis supplied) The italicized phrase has been interpreted by some marihuana advocates as precluding a community that opted in to the MMFLA from opting out of the MRTMA since to do so would prevent recreational establishments from co-locating in a medical marihuana facility, which is prohibited. However, this argument overlooks the clear grant of authority at §6.1 permitting a municipality by either legislative action or initiative ballot from completely prohibiting recreational marihuana establishments. The real concern with §6 is for those communities that permit both recreational and medical marihuana businesses. The plain language at §6.5 seemingly permits the more intensive grower (which under the MMFLA is restricted to industrial, agricultural or unzoned areas) and processing operations to share a location with marihuana businesses more conducive to being located in commercial or office zoning districts. A legislative fix may be needed to clarify that only analogous medical and recreational marihuana businesses can be co-located.

What may a municipality do?

Unlike the MMFLA, where municipalities must “opt in,” under the MRTMA, a municipality must “opt out.” The proposed statute permits a municipality to “completely prohibit” or “limit the number of marihuana establishments.” Given the language used in Section 6 of the MRTMA, a municipality should not rely upon prior ordinances or resolutions adopted in response to the MMFLA, but should affirmatively opt out of the MRTMA or limit the number of marihuana establishments by ordinance, not by resolution. Further, petitions containing the signatures of qualified electors of the municipality in an amount greater than five percent of votes cast for governor in the most recent gubernatorial election, may initiate an ordinance to completely prohibit or provide for the number of marihuana establishments within the municipality.

The initiative language in the MRTMA is problematic. Given the wording, it cannot be assumed that voters can initiate an ordinance to “opt in” should the local governing body choose to exempt the municipality from the Act. Rather, the initiative options are either to “completely prohibit” or “limit the number” of marihuana establishments. It is an open question whether the initiative authority to provide for the number of establishments could be an avenue for voters to override the local governing body's action to “opt out” of the statute. Additionally, the vague wording of the statute leaves it open to question as to whether an initiative providing for the number of marihuana establishments must (or should) set forth proposed numbers or limits for each separate type of marihuana establishment or whether the limit on establishments is collective in nature. Logic would favor the former, but the statute is not precise.

Not opting out of the recreational marihuana statute will impact existing medical marihuana facilities in a municipality because for the first 24 months of the Act, only persons holding a MMFLA license (in any community where such is permitted) may apply for a recreational retailer, class B or C grower, or secure transporter license under the MRTMA unless after the first 12 months of accepting applications LARA determines that additional recreational marihuana establishment licenses are needed. MRTMA §9.6.

A municipality choosing not to opt out of the MRTMA may adopt certain other ordinances addressing recreational marihuana and recreational marihuana establishments provided that they “are not unreasonably impractical” and do not conflict with the Act or any rule promulgated pursuant to the Act. The statutory definition of the redundant term “unreasonably impracticable,” found at Section 3(u), almost begs to be litigated. As defined by the initiated statute, the term means:

“that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent business person would not operate the marihuana establishment.”

Unfortunately, given that the possession, cultivation, processing, and sale of marihuana remains a crime under federal law, how does one assess an “unreasonable risk” or determine what constitutes such a high investment of time or money so as to deter a reasonably prudent business person from going forward? Further, does this definition remove the judicial deference and presumption of reasonableness that accompanies ordinances? The term “unreasonably impractical” was taken directly from Colorado law, and as of this writing, it does not appear to have been construed by an appellate court in that State. As an aside, would “reasonably impracticable” regulations be acceptable?

Specifically, an ordinance may establish reasonable restrictions on public signs related to marihuana establishments; regulate the time, place, and manner of operation of marihuana establishments, as well as the production, manufacture, sale, or display of marihuana accessories; and, authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age or special events in limited areas and for a limited time. A violation of ordinances regulating marihuana establishments is limited to a civil fine of not more than \$500. MRTMA § 6.2.

However, some of these regulatory authorizations are problematic. For instance, the ability to establish reasonable restrictions on public signs related to recreational marihuana, being content-based, likely runs afoul of the holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). Further, the MRTMA does not, unlike the MMFLA, specifically authorize a municipality to exercise its zoning powers to

regulate the location of marihuana establishments. Rather, the MRTMA authorizes ordinances that “regulate the time, place, and manner of operation of marihuana establishments.”

The use of the time, place, and manner First Amendment test on the ability of government to regulate speech is ill-suited and inappropriate to the licensure and regulation of local businesses. One cannot help but believe that the choice of the time, place, and manner language was an intentional effort so as to permit marihuana establishments to heavily borrow from established legal precedent that largely circumscribes the ability of governmental authorities to restrict speech. Specifically, valid time, place, and manner type of restrictions must:

1. be content neutral;
2. be narrowly tailored to serve a significant governmental interest; and
3. leave open ample alternative channels for communication.

Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)

The above formulation is not consistent with Michigan zoning law doctrine, which, although subject to the due process and equal protection guarantees of the Fourteenth Amendment, generally requires that there be a reasonable governmental interest being advanced by the regulation. See *Charter Township of Delta v. Dinolfo*, 419 Mich 253, 268 (1984). To this end, the only clear reference to the zoning power in the MRTMA is the grant to municipalities to reduce the separation distance between marihuana establishments and pre-existing public and private schools providing K-12 education from 1000’ to a lesser distance.

A municipality’s ability to authorize designated areas and special events for the consumption marihuana holds the potential to give rise to specialty businesses such as in California where restaurants make marihuana-infused food and drinks available to diners.

Section 6.5 of the MRTMA specifically precludes a municipality from prohibiting the transportation of marihuana through the municipality, even though it has otherwise opted out.

If a municipality limits the number of establishments that may be licensed, and such limitation prevents LARA from issuing a state license to all applicants who otherwise meet the requirements for the issuance of a license, the MRTMA provides that “the municipality shall decide among the competing applications by competitive process intended to select applicants who are best suited to operate in compliance with the act within the municipality.” MRTMA § 9.4. This provision presents the Pandora’s Box which confronted municipalities that attempted to cap the number of licenses issued under the MMFLA. Any competitive process that seeks to determine who is “best suited” inherently has a subjective component that may expose the municipality to legal challenges based on alleged due process violations by the municipality from unsuccessful applicants asserting that the process employed was unfair on its face or unfairly administered. While there may be good reasons to limit the number of recreational marijuana establishments, any community that chooses to do so should be prepared to defend itself from challenges by unsuccessful applicants.

A municipality may adopt an ordinance requiring that marijuana establishments located within its boundaries obtain a municipally-issued marijuana establishment license; but, the annual fee for such a license is limited to \$5,000 and any qualifications for licensure may not conflict with the MRTMA or rules promulgated by LARA pursuant to the Act.

What limitations on the State are applicable to municipalities?

According to the statute, a State rule may not be unreasonably impracticable, or limit the number of any of the various types of license that may be granted, or require a customer to provide a retailer with identifying information other than to determine a customer’s age or acquire personal information other than that typically required in a retail transaction or preclude the co-location of a marijuana establishment with a licensed medical facility. MRTMA §8.3.

The State is required to issue a license under the Act if the municipality does not notify LARA that the proposed establishment is not in compliance with a local ordinance and if the proposed location is not within an area “zoned exclusively for residential use and not within 1000 feet of a pre-existing public or private school providing K-12 education.” A municipality is authorized to reduce the 1000’ separation from a school requirement. MRTMA §9.3.

Additionally, the grounds for disqualifying a license applicant based on a prior controlled substance conviction is much reduced under the MRTMA than under the MMFLA. An applicant for a medical marijuana facilities license is disqualified if they have any of the following:

- a felony conviction or release from incarceration for a felony within the past 10 years;
- a controlled substance-related felony conviction within the past 10 years; or
- a misdemeanor conviction involving a controlled substance, theft, dishonesty, or fraud within the past five years.

In contrast, under the MRTMA any prior conviction solely for a marijuana offense does not disqualify or affect eligibility for licensure unless the offense involved distribution to a minor. Thus, persons convicted of trafficking in large amounts of marijuana would be eligible for a municipal marijuana establishment license. MRTMA §8.1(c).

Additionally, LARA is precluded from issuing a rule and municipalities may not adopt an ordinance requiring a customer to provide a marijuana retailer with any information other than identification to determine the customer’s age. MRTMA §8.3(b). In this regard, the MRTMA provides an affirmative defense to marijuana retailers who sell or otherwise transfer marijuana to a person under 21 years of age if the retailer reasonably verified that the recipient appeared to be 21 years of age or older by means of government issued photographic identification containing a date of birth. MRTMA §10.2.

There are also limitations on holding ownership interests in different types of facilities. Owners of a safety compliance facility or secure transporter may not hold an ownership interest in a grower, or processor, or retailer, or microbusiness establishment. The owner of a microbusiness may not hold an interest in a grower, or processor, or retailer, safety compliance, or secure transporter

establishment. And a person may not hold an interest in more than five marihuana growers or more than one microbusiness, unless after January 1, 2023 LARA issues a rule permitting otherwise. MRTMA §9.3.

Finally, for the first 24 months after LARA begins accepting applications for licensure, only persons who are residents of Michigan may apply for a Class A grower or microbusiness license and to be eligible for all other licenses, persons must hold a State operating license pursuant to the MMFLA. MRTMA §9.6.

What if the State fails to act in a timely fashion?

If the State does not timely promulgate rules (despite the Act not providing when those must be issued) or accept or process applications within 12 months after the effective date of the Act, an applicant may submit an application for a recreational marihuana establishment directly to the municipality where the business will be located. MRTMA §16. A municipality must issue a license to the applicant within 90 days after receipt of the application unless the municipality determines that the applicant is not in compliance with an ordinance or rule adopted pursuant to the Act. If a municipality issues a license, it must notify the department that the license has been issued. That municipal license will have the same force and effect as a State license but the holder will not be subject to regulation or enforcement by the State during the municipal license term. It is unclear whether, if the State puts in place a licensing system during the term of a municipal license, the establishment can be required to seek State licensure or is merely required to renew the license with the municipality.

Municipality as an employer or landlord

The MRTMA does not require that an employer permit or accommodate conduct otherwise allowed by the Act in the workplace or on the employer's property. The Act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. Nor does the Act prevent an employer from refusing to hire a person because of that person's violation of a workplace drug policy. MRTMA §4.3. In this regard, the statute appears to codify the holding of *Casias v. Wal-Mart Stores, Inc.*, 764 F Supp 2d 914 (WD Mich 2011) *aff'd*, 695 F3d 428 (6th Cir 2012) permitting a private employer to discharge an employee who as a registered patient under the MMMA used marihuana outside of work hours, was not under the influence while at work, but tested positive after suffering an injury while at work. However, note should be taken that in *Braska v. Challenge Manufacturing Co.*, 307 Mich App 340; 861 NW2d 289 (2014) the Court determined that under the terms of the MMMA, employees discharged from employment solely on the basis of positive drug tests for marihuana were not disqualified from receiving unemployment benefits.

In the event that a municipality has created a housing commission, or otherwise provides housing or otherwise leases property and therefore acts as a landlord, the MRTMA permits the lessor of property to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on leased property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking. MRTMA §4.4.



Municipal share of Marihuana Excise Tax Fund

Under the terms of the MMFLA, municipalities (cities, villages, and townships) in which a medical marihuana facility is located get a *pro rata* share of 25 percent of a medical marihuana excise fund created by the imposition of a 3 percent tax on gross retail sales at provisioning centers. However, under the terms of the MMFLA, if a law authorizing the recreational or nonmedical use of marihuana is enacted, the tax on medical marihuana sales sunsets 90 days following the effective date of the new law. MCL 333.27601. Thus by early March 2019, the excise tax just beginning to be collected by provisioning centers under the MMFLA will be repealed.

The MRTMA seeks to fill the gap created by the loss of the 3 percent excise tax under the MMFLA by creating marihuana regulation fund through the imposition of a 10 percent excise tax (which would be in addition to the 6 percent sales tax) on the sales price of marihuana sold or otherwise transferred by a marihuana retailer or microbusiness to anyone other than another marihuana establishment. However, the sale to be allocated to municipalities is reduced to 15 percent and before any money is provided to cities, villages, and townships in which a marihuana retail store or microbusiness is located, the State is made whole for its implementation, administration, and enforcement of the Act—and until 2022 or for at least two years, \$20 million from the fund must be annually provided to one or more clinical trials approved by the FDA that are researching the efficacy of marihuana in the treatment of U.S. armed services veterans and preventing veteran suicide. MRTMA §14.

The net effect for municipalities could result in more money under the MRTMA than under the MMFLA. This is because: a) the tax rate levied is over three times higher under the MRTMA (10 percent v. 3 percent); b) there is a larger pool of potential consumers (registered patients and caregivers v. all persons aged 21 and older); and c) the allocation to municipalities under the MRTMA is based on the number of marihuana retail stores and micro businesses as opposed to all types of marihuana facilities under the MMFLA. However, if a municipality does not permit recreational

marihuana retail establishments, it will not receive any revenue under the MRTMA, but will still have to deal with the social consequences of marihuana use.

The following table illustrates the differences between the two statutory approaches based on assumption of \$1 billion in annual gross sales, State regulatory expenses being recouped by applicable fees, and a municipality having one percent of the total number of medical marihuana facilities or recreational retail businesses.

	MMFLA	MRTMA
Annual Gross Retail Sales	\$1,000,000,000	\$1,000,000,000
Applicable Excise Tax Rate	3 percent	10 percent
Amount of Excise Tax Fund	\$30,000,000	\$100,000,000
Less Allocation for Veterans' Health Research until 2022	$\frac{0}{\$30,000,000}$	$\frac{-\$20,000,000}{\$80,000,000}$
Percentage Allocated to Municipalities	25 percent	15 percent
Amount Available for Municipalities	\$7,500,000	\$12,000,000
1 percent of facilities or retail establishments in municipality	\$75,000	\$120,000

Seemingly to convince voters to approve the MRTMA, 35 percent of the marihuana regulation fund will be allocated to the school aid fund for K-12 education and another 35 percent to the Michigan transportation fund for the repair and maintenance of roads and bridges. Unlike the MMFLA, which allocated 15 percent split equally (5 percent each) between county sheriffs where a marihuana facility was located, the Commission on Law Enforcement Standards for Officer Training, and to the State Police, there is no allocation directly to law enforcement purposes under the MRTMA.

Conclusion

As challenging as it was for municipalities to come to grips with medical marihuana regulation under the MMFLA, the difficulties posed by the proposed MRTMA regarding recreational marihuana are likely to be significantly greater. Under the MMFLA, many municipalities took a “wait and see” position on the issue of broad commercialization of medical marihuana, which only required that the governing body of the municipality do nothing. And for those municipalities that chose to “opt in,” the MMFLA granted them a great deal of regulatory discretion, which some representatives of the marihuana industry have called “onerous” [Langwith, “Local Overreach”, 97 Mich B J 36, 37 (August 2018)], so as to reasonably safeguard the public safety, health, and welfare.

The MRTMA on the other hand, requires a municipality to affirmatively take legislative action to “opt out” of regulating recreational marihuana commercial enterprises. For those municipalities that choose to permit recreational marihuana establishments to exist in the community, the regulatory framework is much more circumscribed than under the MMFLA, and is certainly more likely to raise legal issues. Fortunately, commercialization of recreational marihuana is at least a year away, and by that time the State regulatory framework for medical marihuana will have been in place for nearly two years.

Apart from the commercialization of recreational marihuana, municipal law enforcement officials and officers will be required to know the new rules surrounding “legalized” marihuana within days of the election. At a minimum, county and municipal prosecutors should be ready to provide training on the law in early November. It is also likely that defendants who committed marihuana offenses prior to November 6 will seek dismissal of those charges given the approval of the ballot proposal. Several county prosecutors have been reported as being willing to dismiss pending marihuana possession charges issued before the election if the alleged conduct falls within the scope of the initiated law.

In the meantime, municipal attorneys would be well-advised to read through the initiated statute more than once and be prepared to advise their clients of the significant ramifications of legalized marihuana on local governmental and social services.





michigan municipal league

INITIATION OF LEGISLATION

An initiation of legislation to allow under state law the personal possession and use of marihuana by persons 21 years of age or older; to provide for the lawful cultivation and sale of marihuana and industrial hemp by persons 21 years of age or older; to permit the taxation of revenue derived from commercial marihuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the Michigan Regulation and Taxation of Marihuana Act.

Sec. 2. The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.

Sec. 3. As used in this act:

- (a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.
- (b) "Department" means the department of licensing and regulatory affairs.
- (c) "Industrial hemp" means a plant of the genus *cannabis* and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus *cannabis* regardless of moisture content.
- (d) "Licensee" means a person holding a state license.
- (e) "Marihuana" means all parts of the plant of the genus *cannabis*, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. For purposes of this act, marihuana does not include:
 - (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;
 - (2) industrial hemp; or
 - (3) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- (f) "Marihuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- (g) "Marihuana concentrate" means the resin extracted from any part of the plant of the genus *cannabis*.
- (h) "Marihuana establishment" means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the department.
- (i) "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (j) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.
- (k) "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of

age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

(l) "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

(m) "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

(n) "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

(o) "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(p) "Municipal license" means a license issued by a municipality pursuant to section 16 of this act that allows a person to operate a marihuana establishment in that municipality.

(q) "Municipality" means a city, village, or township.

(r) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(s) "Process" or "Processing" means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

(t) "State license" means a license issued by the department that allows a person to operate a marihuana establishment.

(u) "Unreasonably impracticable" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

Sec. 4. 1. This act does not authorize:

(a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;

(b) transfer of marihuana or marihuana accessories to a person under the age of 21;

(c) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana;

(d) separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure;

(e) consuming marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age;

(f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;

(g) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way;

(h) possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or

(i) Possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

2. This act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.

3. This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not

prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana.

4. This act allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.

5. All other laws inconsistent with this act do not apply to conduct that is permitted by this act.

Sec. 5. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

(a) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;

(b) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once;

(c) assisting another person who is 21 years of age or older in any of the acts described in this section; and

(d) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public.

2. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege.

3. A person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

Sec. 6. 1. Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. 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. A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.

2. A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that:

(a) establish reasonable restrictions on public signs related to marihuana establishments;

(b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;

(c) authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time; and

(d) designate a violation of the ordinance and provide for a penalty for that violation by a marihuana establishment, provided that such violation is a civil infraction and such penalty is a civil fine of not more than \$500.

3. A municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.

4. A municipality may charge an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality.

5. A municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating

within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

Sec. 7. 1. The department is responsible for implementing this act and has the powers and duties necessary to control the commercial production and distribution of marihuana. The department shall employ personnel and may contract with advisors and consultants as necessary to adequately perform its duties. No person who is pecuniarily interested, directly or indirectly, in any marihuana establishment may be an employee, advisor, or consultant involved in the implementation, administration, or enforcement of this act. An employee, advisor, or consultant of the department may not be personally liable for any action at law for damages sustained by a person because of an action performed or done in the performance of their duties in the implementation, administration, or enforcement of this act. The department of state police shall cooperate and assist the department in conducting background investigations of applicants. Responsibilities of the department include:

- (a) promulgating rules pursuant to section 8 of this act that are necessary to implement, administer, and enforce this act;
- (b) granting or denying each application for licensure and investigating each applicant to determine eligibility for licensure, including conducting a background investigation on each person holding an ownership interest in the applicant;
- (c) ensuring compliance with this act and the rules promulgated thereunder by marihuana establishments by performing investigations of compliance and regular inspections of marihuana establishments and by taking appropriate disciplinary action against a licensee, including prescribing civil fines for violations of this act or rules and suspending, restricting, or revoking a state license;
- (d) holding at least 4 public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of this act;
- (e) collecting fees for licensure and fines for violations of this act or rules promulgated thereunder, depositing all fees collected in the marihuana regulation fund established by section 14 of this act, and remitting all fines collected to be deposited in the general fund; and
- (f) submitting an annual report to the governor covering the previous year, which report shall include the number of state licenses of each class issued, demographic information on licensees, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this act.

Sec. 8. 1. The department shall promulgate rules to implement and administer this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328, including:

- (a) procedures for issuing a state license pursuant to section 9 of this act and for renewing, suspending, and revoking a state license;
- (b) a schedule of fees in amounts not more than necessary to pay for implementation, administration, and enforcement costs of this act and that relate to the size of each licensee or the volume of business conducted by the licensee;
- (c) qualifications for licensure that are directly and demonstrably related to the operation of a marihuana establishment, provided that a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor;
- (d) requirements and standards for safe cultivation, processing, and distribution of marihuana by marihuana establishments, including health standards to ensure the safe preparation of marihuana-infused products and prohibitions on pesticides that are not safe for use on marihuana;
- (e) testing, packaging, and labeling standards, procedures, and requirements for marihuana, including a maximum tetrahydrocannabinol level for marihuana-infused products, a requirement that a representative sample of marihuana be tested by a marihuana safety compliance facility, and a requirement that the amount of marihuana or marihuana concentrate contained within a marihuana-infused product be specified on the product label;
- (f) security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marihuana between marihuana establishments, provided that such requirements do not prohibit cultivation of marihuana outdoors or in greenhouses;
- (g) record keeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana by licensees;
- (h) requirements for the operation of marihuana secure transporters to ensure that all marihuana establishments are properly serviced;
- (i) reasonable restrictions on advertising, marketing, and display of marihuana and marihuana establishments;

- (j) a plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition and enforcement and to positively impact those communities; and
 - (k) penalties for failure to comply with any rule promulgated pursuant to this section or for any violation of this act by a licensee, including civil fines and suspension, revocation, or restriction of a state license.
2. In furtherance of the intent of this act, the department may promulgate rules to:
- (a) provide for the issuance of additional types or classes of state licenses to operate marihuana-related businesses, including licenses that authorize only limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marihuana, licenses that authorize the consumption of marihuana within designated areas, licenses that authorize the consumption of marihuana at special events in limited areas and for a limited time, licenses that authorize cultivation for purposes of propagation, and licenses intended to facilitate scientific research or education; or
 - (b) regulate the cultivation, processing, distribution, and sale of industrial hemp.
3. The department may not promulgate a rule that:
- (a) establishes a limit on the number of any type of state licenses that may be granted;
 - (b) requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer's age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;
 - (c) prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility; or
 - (d) is unreasonably impracticable.

Sec. 9. 1. Each application for a state license must be submitted to the department. Upon receipt of a complete application and application fee, the department shall forward a copy of the application to the municipality in which the marihuana establishment is to be located, determine whether the applicant and the premises qualify for the state license and comply with this act, and issue the appropriate state license or send the applicant a notice of rejection setting forth specific reasons why the department did not approve the state license application within 90 days.

2. The department shall issue the following state license types: marihuana retailer; marihuana safety compliance facility; marihuana secure transporter; marihuana processor; marihuana microbusiness; class A marihuana grower authorizing cultivation of not more than 100 marihuana plants; class B marihuana grower authorizing cultivation of not more than 500 marihuana plants; and class C marihuana grower authorizing cultivation of not more than 2,000 marihuana plants.

3. Except as otherwise provided in this section, the department shall approve a state license application and issue a state license if:

- (a) the applicant has submitted an application in compliance with the rules promulgated by the department, is in compliance with this act and the rules, and has paid the required fee;
- (b) the municipality in which the proposed marihuana establishment will be located does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of this act and in effect at the time of application;
- (c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;
- (d) no person who holds an ownership interest in the marihuana establishment applicant:
 - (1) will hold an ownership interest in both a marihuana safety compliance facility or in a marihuana secure transporter and in a marihuana grower, a marihuana processor, a marihuana retailer, or a marihuana microbusiness;
 - (2) will hold an ownership interest in both a marihuana microbusiness and in a marihuana grower, a marihuana processor, a marihuana retailer, a marihuana safety compliance facility, or a marihuana secure transporter; and
 - (3) will hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness, except that the department may approve a license application from a person who holds an ownership interest in more than 5 marihuana growers or more than 1 marihuana microbusiness if, after January 1, 2023, the department promulgates a rule authorizing an individual to hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness.

4. If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.

5. All state licenses are effective for 1 year, unless the department issues the state license for a longer term. A state license is renewed upon receipt of a complete renewal application and a renewal fee from any marihuana establishment in good standing.

6. The department shall begin accepting applications for marihuana establishments within 12 months after the effective date of this act. Except as otherwise provided in this section, for 24 months after the department begins to receive applications for marihuana establishments, the department may only accept applications for licensure: for a class A marihuana grower or for a marihuana microbusiness, from persons who are residents of Michigan; for a marihuana retailer, marihuana processor, class B marihuana grower, class C marihuana grower, or a marihuana secure transporter, from persons holding a state operating license pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801; and for a marihuana safety compliance facility, from any applicant. One year after the department begins to accept applications pursuant to this section, the department shall begin accepting applications from any applicant if the department determines that additional state licenses are necessary to minimize the illegal market for marihuana in this state, to efficiently meet the demand for marihuana, or to provide for reasonable access to marihuana in rural areas.

7. Information obtained from an applicant related to licensure under this act is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 10. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act or the rules promulgated thereunder, the following acts are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection except as authorized by this act, and are not grounds to deny any other right or privilege:

(a) a marihuana grower or an agent acting on behalf of a marihuana grower who is 21 years of age or older, cultivating not more than the number of marihuana plants authorized by the state license class; possessing, packaging, storing, or testing marihuana; acquiring marihuana seeds or seedlings from a person who is 21 years of age or older; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(b) a marihuana processor or agent acting on behalf of a marihuana processor who is 21 years of age or older, possessing, processing, packaging, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(c) a marihuana secure transporter or an agent acting on behalf of a marihuana secure transporter who is 21 years of age or older, possessing or storing marihuana; transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(d) a marihuana safety compliance facility or an agent acting on behalf of a marihuana safety compliance facility who is 21 years of age or older, testing, possessing, repackaging, or storing marihuana; transferring, obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(e) a marihuana retailer or an agent acting on behalf of a marihuana retailer who is 21 years of age or older, possessing, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; selling or otherwise transferring marihuana to a person 21 years of age or older; or receiving compensation for goods or services; or

(f) a marihuana microbusiness or an agent acting on behalf of a marihuana microbusiness who is 21 years of age or older, cultivating not more than 150 marihuana plants; possessing, processing, packaging, storing, or testing marihuana from marihuana plants cultivated on the premises; selling or otherwise transferring marihuana cultivated or processed on the premises to a person 21 years of age or older; or receiving compensation for goods or services.

(g) leasing or otherwise allowing the use of property owned, occupied, or managed for activities allowed under this act;

(h) enrolling or employing a person who engages in marihuana-related activities allowed under this act;

(i) possessing, cultivating, processing, obtaining, transferring, or transporting industrial hemp; or

(j) providing professional services to prospective or licensed marihuana establishments related to activity under

this act.

2. A person acting as an agent of a marihuana retailer who sells or otherwise transfers marihuana or marihuana accessories to a person under 21 years of age is not subject to arrest, prosecution, forfeiture of property, disciplinary action by a professional licensing board, denial of any right or privilege, or penalty in any manner, if the person reasonably verified that the recipient appeared to be 21 years of age or older by means of government-issued photographic identification containing a date of birth, and the person complied with any rules promulgated pursuant to this act.

3. It is the public policy of this state that contracts related to the operation of marihuana establishments be enforceable.

Sec. 11. (a) A marihuana establishment may not allow cultivation, processing, sale, or display of marihuana or marihuana accessories to be visible from a public place outside of the marihuana establishment without the use of binoculars, aircraft, or other optical aids.

(b) A marihuana establishment may not cultivate, process, test, or store marihuana at any location other than a physical address approved by the department and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marihuana establishment to access the area.

(c) A marihuana establishment shall secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees and other persons permitted by the marihuana establishment to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and shall secure its inventory and equipment during and after operating hours to deter and prevent theft of marihuana and marihuana accessories.

(d) No marihuana establishment may refuse representatives of the department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

(e) No marihuana establishment may allow a person under 21 years of age to volunteer or work for the marihuana establishment.

(f) No marihuana establishment may sell or otherwise transfer marihuana that was not produced, distributed, and taxed in compliance with this act.

(g) A marihuana grower, marihuana retailer, marihuana processor, marihuana microbusiness, or marihuana testing facility or agents acting on their behalf may not transport more than 15 ounces of marihuana or more than 60 grams of marihuana concentrate at one time.

(h) A marihuana secure transporter may not hold title to marihuana.

(i) No marihuana processor may process and no marihuana retailer may sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.

(j) No marihuana retailer may sell or otherwise transfer marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995), unless the marihuana is transferred for consumption on the premises where sold.

(k) No marihuana establishment may sell or otherwise transfer tobacco.

Sec. 12. In computing net income for marihuana establishments, deductions from state taxes are allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.

Sec. 13. 1. In addition to all other taxes, an excise tax is imposed on each marihuana retailer and on each marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.

2. Except as otherwise provided by a rule promulgated by the department of treasury, a product subject to the tax imposed by this section may not be bundled in a single transaction with a product or service that is not subject to the tax imposed by this section.

3. The department of treasury shall administer the taxes imposed under this act and may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328 that prescribe a method and manner for payment of the tax to ensure proper tax collection under this act.

Sec. 14. 1. The marihuana regulation fund is created in the state treasury. The department of treasury shall deposit all money collected under section 13 of this act and the department shall deposit all fees collected in the fund. The state treasurer shall direct the investment of the fund and shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund.

2. Funds for the initial activities of the department to implement this act shall be appropriated from the general fund. The department shall repay any amount appropriated under this subsection from proceeds in the fund.

3. The department shall expend money in the fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide \$20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:

- (a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;
- (b) 15% to counties in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the county;
- (c) 35% to the school aid fund to be used for K-12 education; and
- (d) 35% to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.

Sec. 15. A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:

1. Except for a person who engaged in conduct described in sections 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), or 4(1)(h), a person who possesses not more than the amount of marihuana allowed by section 5, cultivates not more than the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than \$100 and forfeiture of the marihuana.

2. Except for a person who engaged in conduct described in section 4, a person who possesses not more than twice the amount of marihuana allowed by section 5, cultivates not more than twice the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than twice the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than twice the amount of marihuana allowed by section 5:

- (a) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than \$500 and forfeiture of the marihuana;
- (b) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than \$1,000 and forfeiture of the marihuana;
- (c) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than \$2,000 and forfeiture of the marihuana.

3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:

- (a) for a first violation, is responsible for a civil infraction and may be punished as follows:
 - (1) if the person is less than 18 years of age, by a fine of not more than \$100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling; or
 - (2) if the person is at least 18 years of age, by a fine of not more than \$100 and forfeiture of the marihuana.
- (b) for a second violation, is responsible for a civil infraction and may be punished as follows:
 - (1) if the person is less than 18 years of age, by a fine of not more than \$500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or
 - (2) if the person is at least 18 years of age, by a fine of not more than \$500 and forfeiture of the marihuana.

4. Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

Sec. 16. 1. If the department does not timely promulgate rules as required by section 8 of this act or accept or process applications in accordance with section 9 of this act, beginning one year after the effective date of this act, an applicant may submit an application for a marihuana establishment directly to the municipality where the marihuana establishment will be located.

2. If a marihuana establishment submits an application to a municipality under this section, the municipality shall issue a municipal license to the applicant within 90 days after receipt of the application unless the municipality finds and notifies the applicant that the applicant is not in compliance with an ordinance or rule adopted pursuant to this

act.

3. If a municipality issues a municipal license pursuant to this section:

- (a) the municipality shall notify the department that the municipal license has been issued;
- (b) the municipal license has the same force and effect as a state license; and
- (c) the holder of the municipal license is not subject to regulation or enforcement by the department during the municipal license term.

Sec. 17. This act shall be broadly construed to accomplish its intent as stated in section 2 of this act. Nothing in this act purports to supersede any applicable federal law, except where allowed by federal law. All provisions of this act are self-executing. Any section of this act that is found invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.



NOVEMBER
2018
BALLOT PROPOSAL
18-1

An Overview

Prepared by
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On November 6, 2018, Michigan voters will have the opportunity to vote on Proposal 18-1, which would allow under State law the personal possession and use of marijuana by individuals 21 years of age or older. The result of a petition to initiate legislation, Proposal 18-1 will appear on the ballot as follows:

A proposed initiated law to authorize and legalize possession, use and cultivation of marijuana products by individuals who are at least 21 years of age and older, and commercial sales of marijuana through state-licensed retailers.

This proposal would:

- Allow individuals 21 and older to purchase, possess and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption.
- Impose a 10-ounce limit for marijuana kept at residences and require amounts over 2.5 ounces be secured in locked containers.
- Create a state licensing system for marijuana businesses and allow municipalities to ban or restrict them.
- Permit retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located.
- Change several current violations from crimes to civil infractions.

Should this proposal be adopted?

If a majority of the electors vote "yes" on Proposal 18-1, the "Michigan Regulation and Taxation of Marihuana Act" will be enacted.

Current State and Federal Law

Under Article 7 (Controlled Substances) of the Public Health Code, marijuana, except that used for the purpose of treating a debilitating medical condition under the Michigan Medical Marihuana Act (MMMA), is listed as a Schedule 1 controlled substance, which means that it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. Marijuana used to treat a debilitating medical condition is listed as a Schedule 2 controlled substance. Under the Code, manufacturing, creating, or delivering marijuana or possessing it with intent to manufacture, create, or deliver it is a felony. Knowingly or intentionally possessing marijuana, or using it, is a misdemeanor.

The MMMA, which was approved by the voters in 2008, allows qualifying patients to possess up to 2.5 ounces of marijuana (and 12 plants), and to use it for medicinal purposes. In 2016, the Legislature modified the medical marijuana framework in Michigan by enacting the Medical Marihuana Facilities Licensing Act (MMFLA). The MMFLA established, among other things, the Medical Marihuana Licensing Board and license categories for entities that grow, process, transport, test, and sell medical marijuana.

At the Federal level, marijuana is listed as a Schedule 1 drug, and the Federal government prohibits, and prescribes criminal penalties for, the importation, exportation, manufacture, distribution, possession, and use of marijuana.

The Proposal

Individual Conduct. The proposal would allow an individual 21 years of age or older to do any of the following:

- Possess, use, consume, purchase, transport, or process 2.5 ounces or less of marijuana.
- Within his or her residence, possess, store, and process not more than 10 ounces and any marijuana produced by plants cultivated on the premises, and cultivate not more than 12 plants

for personal use, provided that no more than 12 plants were possessed, cultivated, or processed at once.

- Transfer without remuneration up to 2.5 ounces to an individual 21 years of age or older, if the transfer were not advertised or promoted to the public.
- Use, manufacture, possess, and purchase marijuana accessories.

The proposal would prescribe civil and criminal penalties for violations.

An employer would not have to allow or accommodate conduct authorized under the proposal in a workplace or on an employer's property. The proposed Act would not prohibit an employer from disciplining an employee or refusing to hire a candidate for violation of a workplace drug policy or for working under the influence of marijuana.

Municipalities. The proposal would allow a municipality to prohibit or limit the number of marijuana establishments within its boundaries. Individuals could petition to initiate an ordinance to provide for the number of marijuana establishments allowed, or to prohibit marijuana establishments within, a municipality. The proposed ordinance would appear on the next general election ballot if the petition received a sufficient number of signatures.

A municipality also could adopt other ordinances establishing reasonable restrictions on signage, or time, place, and manner restrictions, provided they were not unreasonably impracticable and did not conflict with the Act or its rules.

Department of Licensing and Regulatory Affairs (LARA). The Department would be responsible for implementing the Act. Among other things, LARA would have to promulgate rules establishing procedures for issuing a State license, establishing a schedule of fees, and prescribing qualifications for licensure.

The Department would have to begin accepting applications for marijuana establishments within 12 months after the Act's effective date. For 24 months after it began accepting applications, LARA could accept applications only from specified entities. After receiving the application and the application fee, LARA would have to forward a copy of the application to the municipality where the establishment would be located, determine whether the applicant and premises qualified for the license, and issue the license or send the applicant a notice of rejection within 90 days.

The Department would have to issue the following license types:

- Marijuana retailer-could purchase marijuana from marijuana establishments, and sell it to other establishments or individuals 21 years of age or older.
- Marijuana safety compliance facility-could test marijuana for potency, contaminants.
- Marijuana secure transporter could obtain marijuana from marijuana establishments to transport it to other establishments.
- Marijuana processor-could obtain marijuana from marijuana establishments, process and package it, and sell or transfer it to other marijuana establishments.
- Marijuana microbusiness- could cultivate up to 150 plants, process and package marijuana, and sell it to individuals 21 years of age or older.
- Marijuana grower- could cultivate marijuana and sell it to establishments; Class A-up to 100 plants; Class B-up to 500 plants; Class C-up to 2,000 plants.

Proposal 18-1 also would establish a process through which an applicant would apply to a municipality for a license if, beginning a year after the Act's effective date, the Department did not timely promulgate rules or accept or process applications.

Excise Tax & Distribution. In addition to all other taxes, marijuana retailers and microbusinesses would have to pay an excise tax of 10% on the sales price of marijuana transferred to anyone other than a marijuana establishment. The Department would have to spend the money collected

first for implementation, administration, and enforcement, and next, for at least two years, \$20.0 million each year to one or more clinical trials researching the efficacy of marijuana in treating veterans and preventing veteran suicide. The unspent balance would have to be allocated as follows:

- 15% to municipalities in which a marijuana retail store or microbusiness was located, allocated in proportion to the number of those establishments within the municipality.
- 15% to counties in which a marijuana retail store or microbusiness was located, allocated in proportion to the number of those establishments within the county.
- 35% to the School Aid Fund for K-12 education.
- 35% to the Michigan Transportation Fund for repair and maintenance of roads and bridges.

Discussion

Proponents of Proposal 18-1 contend that prohibition efforts have cost billions of dollars and have failed to reduce the possession, sale, and use of marijuana. According to *The War on Marijuana in Black and White*, a 2013 American Civil Liberties Union (ACLU) report, several hundred thousand individuals are arrested for possession of marijuana each year. The same report indicates that in 2010, Michigan spent roughly \$91.4 million on these efforts. Despite these arrests, proponents note that marijuana use has remained relatively constant.

Proponents note that these efforts are to control a substance that is safer than other substances that can be purchased legally. According to the Trust for American's Health, in 2015, Michigan's alcohol-induced death rate was 9.9 per 100,000 (ignoring alcohol-attributable deaths related to injury and violence). Preliminary data from the Michigan Department of Health and Human Services shows that, of the 2,729 overdose deaths in Michigan in 2017, over 1,900 were from opioids. In contrast, there have been no recorded deaths resulting from an overdose on marijuana. Moreover, proponents state that several studies have shown positive associations between legalized recreational marijuana and a reduction in opioid-related deaths. Legalizing marijuana and taxing it would save money on enforcement efforts, and allow police to focus on more important public safety issues.

Opponents of legalization maintain that Proposal 18-1, if passed, would contribute to decreased public safety. Driving under the influence of alcohol and/or drugs (including marijuana) impairs an individual's ability to drive safely. Increased availability of marijuana, opponents claim, would increase the numbers of individuals who drive while impaired. Few reliable tools exist to determine when someone is impaired from marijuana use. Also, according to opponents, the legalization of marijuana likely would not reduce costs for public safety. In states that have legalized marijuana, law enforcement agencies have reported increases in public consumption of marijuana, illegal grow operations, property crimes, and drug trafficking.

Proposal 18-1 also could have negative impacts on public health. According to the National Academies of Sciences, Engineering, and Medicine, marijuana poses a number of possible health risks, including respiratory issues (if smoked), negative effects on mental health (such as schizophrenia or psychosis), negative impacts on fetal health, and an impaired ability to operate heavy machinery or automobiles.

Opponents of the proposal also contend that legalization would have a negative impact on the labor force and businesses. Employers often test job candidates for drugs because it is required under State or Federal law for the position in question, or because their insurance provider requires it. An impaired individual at work is a risk to his or her fellow employees, and a liability to his or her employer if that person's impairment causes an injury, property damage, or death. If more people consumed marijuana, it would be harder to find individuals who could pass a drug test. This would make it more difficult to find qualified applicants for positions. Conversely, if a business that was not bound by law to test opted not to do so, then it could see increased insurance costs from implementing such a policy.

Fiscal Impact

LARA. The initiated law would have a significant but indeterminate fiscal impact on LARA. The Department would use existing staff and resources currently directed towards the administration and enforcement of the MMMA and the MMFLA to begin implementation, including management of applications for licensing. The Department anticipates a need for an additional 27.0 full-time equated positions (FTEs) at an estimated cost of \$2.5 million. In addition, implementation and administration of the proposal would require increased information technology (IT) expenditures and additional facility space for associated operations. Funding for operations likely would be derived from licensing and other fees. Analyses of recreational marijuana legalization in other states suggest that revenue would be sufficient to fund recreational marijuana-related operations within LARA.

Department of State Police. Proposal 18-1 would require the MSP to cooperate with and assist LARA in conducting background investigations of applicants, the amount of effort and cost of which cannot be determined at this time. It also is unknown whether the proposal's adoption would result in a net increase or decrease in resource demands on law enforcement. For example, if marijuana were legalized, there would be the potential for increased incidences of impaired driving (which could require more patrols and arrests). Alternatively, there likely would be fewer arrests for adult possession and use of marijuana. These and other effects of legalization would depend on, among other things, individual behavior and whether legalization resulted in increased availability of marijuana. These and other variables make it difficult to project with any accuracy the fiscal impact of Proposal 18-1 on the MSP.

Judiciary & Department of Corrections. Proposal 18-1 could have a positive fiscal impact on State and local government. Fewer felony arrests and convictions could decrease resource demands on court systems, community supervision, jails, and correctional facilities. In 2016, 199 people were sentenced to prison for a marijuana-related felony conviction, and 3,620 were sentenced to jail, probation, or a combination of both. For any decrease in prison intakes, in the short term, the marginal cost to State government is approximately \$5,315 per prisoner per year. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. Any associated decrease in fine revenue would decrease funding to public libraries.

Department of Treasury. Adoption of Proposal 18-1 would result in additional administrative costs to the Department of Treasury. According to the Department, the costs would include IT and tax processing costs. The IT costs would include one-time implementation costs of over \$1.9 million to set up the new tax system and \$1.2 million in ongoing costs to support 4.0 FTEs in the Department of Technology, Management, and Budget, and to manage the tax flow. Because the recreational marijuana industry is primarily cash-based, additional support and staff would be necessary for the tax process and business service units within the Department of Treasury. These costs would depend on the volume of sales, and would start with 12.0 FTEs and \$1.75 million and remain at that level if the volume of sales were low, but could be as high as 22.0 FTEs and \$3.1 million.

The table below shows revenue projections from the sales tax, excise tax, and fees levied under the initiated law. The estimates are based upon per capita sales data from states that have adopted similar laws, and account for a provision of the MMFLA that eliminates the current 3% tax on provisioning centers should recreational marijuana be legalized. Differences in the degree of establishment of the medical marijuana industry as well as cultural, social, and economic factors between states likely will result in significant differences for the revenue collected. The impact presumes a one-year time frame for initial implementation activities.

Estimates of Revenue and Distributions, FY 2019-20 - FY 2022-23 (millions)				
	2019-20	2020-21	2021-22	2022-23
Sales Tax Revenue	\$ 35.5	\$ 66.5	\$ 98.9	\$ 105.6
School Aid Fund	26.0	48.7	72.5	77.4
Constitutional Revenue Sharing	3.6	6.6	9.9	10.6
General Fund/General Purpose	5.9	11.1	16.5	17.6
Marihuana Regulation Fund (MRF)	\$ 64.0	\$ 114.4	\$ 167.2	\$ 182.3
Excise Tax Revenue	53.8	100.7	149.9	160.0
License Application Fee Revenue	10.2	13.7	17.3	22.3
Distribution:				
Administration/Enforcement	\$ 2.5	\$ 2.6	\$ 2.7	\$ 2.8
Research	20.0	20.0	20.0	-
Counties	6.2	13.8	21.7	26.9
Municipalities	6.2	13.8	21.7	26.9
School Aid Fund	14.5	32.1	50.6	62.8
Michigan Transportation Fund	14.5	32.1	50.6	62.8
Total MRF Distribution	\$ 64.0	\$ 114.4	\$ 167.2	\$ 182.3
Medical Marihuana Excise Fund	\$ (22.4)	\$ (23.5)	\$ (24.7)	\$ (25.9)
1st Responder Presumed Coverage	(6.7)	(7.1)	(7.4)	(7.8)
Counties	(6.7)	(7.1)	(7.4)	(7.8)
Municipalities	(5.6)	(5.9)	(6.2)	(6.5)
Sheriffs	(1.1)	(1.2)	(1.2)	(1.3)
MCOLES	(1.1)	(1.2)	(1.2)	(1.3)
State Police	(1.1)	(1.2)	(1.2)	(1.3)
Total Med Marihuana Excise Distribution	\$ (22.4)	\$ (23.5)	\$ (24.7)	\$ (25.9)
Total Revenue	\$ 77.1	\$ 157.4	\$ 241.4	\$ 262.0

Local Governments. The proposal could have a negative fiscal impact on local units that prohibited marijuana establishments, or had no establishments within their boundaries, if those local units currently have medical marijuana provisioning centers, as they would lose excise tax revenue tied to those centers. Municipalities that did have marijuana establishments likely would see a positive fiscal impact.

Each municipality would be allowed to charge an annual fee of up to \$5,000 per establishment to defray the application, administrative, and enforcement costs associated with the operation of the marijuana establishments. In addition, municipalities would receive 15% of the unspent balance of the Marihuana Regulation Fund in proportion to the number of retail stores and microbusinesses within the municipality. Counties with those establishments also would receive 15% of the unspent balance of the Fund in proportion to the number of those establishments within the county. Cities, villages, and townships also would see additional revenue from the projected increase in constitutional revenue sharing.



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: City Commission
Date: January 10, 2019
Re: Zoning Ordinance Amendment Request - SDM Sales Hours

Overview

Mr. Sunny Singh, the owner of the Sunoco Station at 23701 Woodward is requesting that the City amend the Zoning Ordinance to allow the sales of SDM packaged liquor (beer and wine only) from 8 am until midnight. Currently, SDM sales are limited to the hours of 9 am until 10 pm.

Background

Section 82-197(b)(9) establishes sales hours for alcoholic beverages at businesses with a SDM package liquor license. The proposed amendment would change the sales hours to 8 am to midnight.

Mr. Singh had mentioned his desire to expand the permitted sales hours during the initial approval process. City staff advised that we retain the 9 am to 10 pm hours and monitor if there were any impacts from the sale of beer and wine at the Sunoco station for a period before considering expanding the hours.

With about half a year of experience behind us, we have not experienced any issues with beer and wine sales at the Sunoco station. The police have not experienced any significant increase in calls for service to the Sunoco station compared to prior periods of time, and we have not had any calls for service specifically related to the sale of beer and wine at the station.

Process

The Planning Commission held a public hearing on December 10 and recommended that the City Commission approve the amendment. The City Commission will hold a public hearing at the January 15 meeting and then make a final decision on the proposed ordinance.

Requested Action

City Commission consideration of the proposed zoning ordinance amendment after holding the public hearing.

CITY OF PLEASANT RIDGE
Ordinance No ____

AN ORDINANCE TO AMEND THE CITY OF PLEASANT RIDGE CODE OF ORDINANCES, CHAPTER 82 – ZONING.

THE CITY OF PLEASANT RIDGE ORDAINS:

Section 1.

The following sections of Chapter 82, Zoning, of the Pleasant Ridge City Code are amended as follows:

Section 82-197(b)(9), Neighborhood Specialty Food Store, is amended to read as follows:

- c. Hours of operation shall be between 8:00 am and midnight.~~9:00 a.m. and 10:00 p.m.~~

Section 2. Severability

Should any provision or part of this Article be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Article, which shall remain in full force and effect.

Section 3. Repealer

All other ordinances or parts of ordinances in conflict with this ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 4. Savings clause

Nothing in this Article shall be construed to affect any suit or proceeding pending in any court or any rights acquired or any liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 8 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 5. Effective Date

This Ordinance shall become effective seven days after publication of a notice of adoption, as provided by law.

Section 6. Adoption

This Ordinance is hereby declared to have been adopted by the Pleasant Ridge City Commission at a meeting duly called and held on the ____ day of ____, 20__, and ordered to be given publication in the manner prescribed by law.



Amy M. Drealan, City Clerk

Planning Commission Public Hearing:
Planning Commission Recommendation: ...
City Commission Introduction:
City Commission Public Hearing:
City Commission Adoption:
Published:
Effective:

Sunny's Food Mart, Inc.

23701 Woodward Avenue
Pleasant Ridge, Michigan 48069

Phone: (248) 207-3933

Facsimile: (248) 398-4595

Email: sunny007@me.com

August 23, 2018

Jim Breuckman
City of Pleasant Ridge
23925 Woodward Avenue
Pleasant Ridge, Michigan 48069

RE: Change of alcohol sale times.

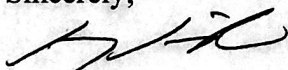
Dear Jim,

It has been several months since I acquired my liquor license to sell packaged beer and wine at my location. Although it has had a great response with the community, the permitted sale times have been questioned by a lot of customers. We get a lot of requests to sell after 10pm and unfortunately, I am currently unable to do so.

As you know, we have had zero issues since acquiring the liquor license and have strictly enforced the time restrictions as stated in the ordinance. I am respectfully requesting that the time frame to sell alcohol be changed to 8am to 12am daily. I am asking for additional 3 hours daily. I do not see any potential problems that could arise from increasing the time slot and hope that you agree with me.

Please let me know what steps need to be taken to apply for the change of alcohol sale times. I look forward to hearing from you soon.

Sincerely,



Sunny Singh
Sunny's Food Mart, Inc.



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: City Commission
Date: January 10, 2019
Re: Traffic Calming Manual and Program

Overview

We receive recurring complaints from residents about a range of traffic issues in the City. All of our local streets are residential streets, with Ridge and Woodward Heights also serving as collector streets with regional connections. The residential nature of our streets means that residents experience the traffic issues that affect their street every day.

We have been working on a formal traffic calming program and a traffic calming manual to present a few methods by which the City or residents may initiate traffic calming measures.

Background

The goal of traffic calming is to manage vehicle speeds and to maintain them at a reasonable level to maintain safety for all users of the street (drivers, bicyclists, walkers, rollerbladers, skateboarders, etc.) and for residents of the street.

We have been collecting traffic data for a few years, starting with the streets that we know have the highest traffic volumes. The City has also been proactively working on implementing traffic calming measures on the streets where the data confirms we have the most pressing traffic issues. Based on the data, we focused first on Ridge Road, where we have effectively reduced average vehicle speeds by over 5 miles per hour and increased safety at intersections.

Next we will be focusing on Woodward Heights for city-initiated projects.

Traffic Calming Methods

The manual identifies several traffic calming methods that can be used. Each method can be used in certain instances, and not all methods will be viable in every situation.

The manual also identifies methods and actions that are not traffic calming, and that do not address the cause of volume or speed issues. These include stop signs, police enforcement, and street closures.

Project Initiation and Funding Process

The manual also includes a policy by which residents in a street or a block can petition the City to implement traffic calming measures. As written, citizen-initiated petitions would require the residents on the street to pay for those improvements via special assessment.

This process is one that the Commission will have to review and consider. The reason for the process being proposed this way is because we have 6 streets¹ that have more pronounced speeding or traffic volume issues because they receive a high volume of cut-through traffic from both Pleasant Ridge and regional traffic. Therefore, the traffic issues are generated primarily by through drivers, and not residents of the street. Given that the traffic issues generated on those streets is created collectively, the solutions should be initiated and funded by the City using our collective tax dollars.

The remainder of streets in the City have very similar speed and traffic volumes. These streets carry mostly local traffic, traffic volumes are lower than on the 6 previously discussed streets, and generally there is not a pronounced speeding problem based on the 25-mph speed limit. The premise is that it is fair for the residents of those streets to fully or at least partially fund the direct cost of traffic calming improvements if they want them implemented because the traffic on those streets is primarily created by the residents of those streets.

Process

We will introduce the traffic calming manual at the January 15 City Commission meeting. There will be a Town Hall meeting on January 22 at 4 Ridge at 6:30 pm to further discuss the manual with any interested residents. We will revise the manual based on the input we receive at that meeting and bring it back to the City Commission for consideration and eventually, adoption.

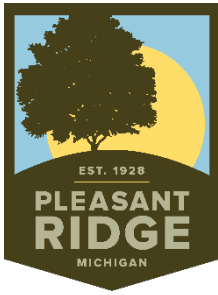
Requested Action

No action is requested at this time.

¹ To wit: Millington, Oxford, Oakland Park, Ridge, Sylvan between Indiana and Woodward, and Woodward Heights.

City of Pleasant Ridge Traffic Calming Manual

Public Comment Draft
January 9, 2019



City of Pleasant Ridge

Traffic Calming Manual

Adopted by the City Commission _____, 2019

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1. Introduction

1.1 A City of Beautiful Streets

The City of Pleasant Ridge is blessed with some of the most beautiful residential streets in metro Detroit. Tree-lined corridors with beautiful homes create an ambiance that makes Pleasant Ridge one of the most sought after addresses for people in the know in the area. Streets have become a significant placemaking aspect of the identity of Pleasant Ridge. The City has created a policy and has been investing in renewing our street tree canopy to ensure that our leafy character will persist for decades to come.

This manual seeks to address the commonly-cited issue of too-high vehicle speeds in the City.

1.2 Problem Statement

Pleasant Ridge is a first-ring suburb that was developed largely between 1920 and 1930. As the region has grown around Pleasant Ridge, we have seen changes in the regional transportation network. Now, Woodward and I-696 carry hundreds of thousands of cars through our City each day. Crossing Woodward is but one issue for anyone on foot or on bike. Many of our local streets – Ridge, Oakland Park, and Woodward Heights most notably - carry higher traffic volumes generated by residents of Pleasant Ridge and other adjacent cities. Finally, while our residential streets generally have lower traffic volumes and most drivers travel at reasonable speeds, some local or cut-through drivers do travel at excessive rates of speed.

This manual is intended to examine the facts of existing traffic volumes and speed to provide a baseline for decision making, and to identify a range of proven traffic calming measures that can be implemented on our local streets.

1.3 Passive vs. Proactive Design

Passive Design assumes and tries to account for the worst-case scenario for user behavior. It overdesigns streets to build in a design cushion for speeding drivers. Wider travel lanes, larger curve radii, clear zones, and even building setbacks create a condition where unsafe vehicle speeds are accounted for. However, this passive design philosophy that seeks to accommodate speeding cars ends up encouraging more speeding.

Proactive Design is based on the understanding that human behavior is adaptable and responds to external conditions. Street design is an external condition that influences driver behavior. Instead of designing for the fastest and worst driver, which creates conditions that encourages normal drivers to travel at faster speeds, proactive design uses street design to create the desired outcomes, guiding user behavior through physical and environmental cues.

1.4 Vehicle Speed and Safety

Vehicle speed is a key risk factor in traffic injuries, influencing both the risk of a crash and the severity of injuries that result. Controlling vehicle speed can prevent crashes from happening and lessens the severity of injuries sustained by the victims.

Being a primarily residential community and given that Pleasant Ridge streets are all residential in nature, our primary concern is the safety of pedestrians walking along and across our streets, and bicyclists riding in or across our streets.

Impact Speed. The human body is designed to withstand impacts up to a certain speed. A person falling 12 feet to the ground will impact the ground at about 19 miles per hour. Almost all people would survive this fall with varying levels of injury based on their age, overall health, and other factors such as how they struck the ground. Similarly, almost all people survive being hit by a car traveling at 20 mph.

However, Newton's laws dictate that a doubling in vehicle speed results as four times as much kinetic energy being absorbed during an impact. Small increases in vehicle speed results in a disproportionately large increase in pedestrian fatalities.

The following table summarizes two established and often cited sources of research for the relationship between vehicle speed and pedestrian fatalities. The key takeaway from the table is that almost all persons will survive a crash at 20 mph. Fatalities become much more likely at 30 mph, and become highly likely at 40 mph.

The goal of Pleasant Ridge's traffic calming program is to limit speeds to 25 mph or below in accordance with traffic control laws, but also to ensure that any vehicle-pedestrian crashes that do occur are not fatal. A further goal of the traffic calming program is to make it extremely difficult to travel at speeds of greater than 30 mph along our residential streets.

Vehicle Speed	Source 1	Source 2
20 mph	5%	5%
30 mph	45%	37%
40 mph	85%	83%

Source 1: *Killing Speed and Saving Lives*, UK Dept. of Transportation, London, England. See also Limpert, Rudolph. *Motor Vehicle Accident Reconstruction and Cause Analysis*. Fourth Edition. Charlottesville, VA. The Michie Company, 1994, p. 663

Source 2: [*Vehicle Speeds and the Incidence of Fatal Pedestrian Collisions prepared by the Australian Federal Office of Road Safety, Report CR 146, October 1994, by McLean AJ, Anderson RW, Farmer MJB, Lee BH, Brooks CG*](#)

1.5 Basis for Recommendations

The basis for recommendations made in this document are established and accepted engineering manuals and studies. Examples of these include the AASHTO Green Book, the Institute of Transportation Engineers Traffic Engineering Handbook, the NACTO Urban Street Design Guide¹, and studies published by the FHWA, universities, and other respected sources. Citations are offered where appropriate.

¹ The NACTO urban street design guide provides a more in-depth examination of traffic safety, street design, and traffic calming. It is available for review online at: <https://nacto.org/publication/urban-street-design-guide/>

2. Physical Factors that Influence Vehicle Speed

2.1 Target Speed, Design Speed, Posted Speed, and Operating Speed²

- 2.1.1. Design Speed. The physical configuration of streets plays an important role in providing cues to motorists of what constitutes a safe speed. The design speed of a street refers to the speed at which motorists are expected to drive based on their perception of safety. Drivers will generally go the maximum speed at which they feel safe. The design speed is therefore the product of a series of design choices for the street.

Many street design manuals suggest that the design speed should be 5 to 10 mph above the posted speed limit. This general premise draws upon the principle that a higher design speed provides a safety cushion for drivers who speed. However, this practice results in drivers feeling comfortable driving at speeds that are faster than the posted speed limit.

Glossary of Terms:

Target Speed. The desired speed at which the City would like traffic to travel on a street.

Posted Speed. The posted speed limit for a street. The posted speed is usually, but not always, the same as target speed.

Design Speed. The speed at which traffic is expected to travel on a street based on geometric design factors.

Operating Speed. The observed speed at which most traffic travels on a street. It is often defined as the 85th percentile vehicle speed.

- 2.1.2. Posted Speed. The posted speed is determined by local and state laws. Posted speeds that do not correspond with the design speed of a street are frequently ignored. Police enforcement can help limit speeds, but it is an artificial and short-term practice because enforcement of posted speed limits that are lower than the design speed of the street is in effect forcing drivers to go slower than they feel safe doing.
- 2.1.3. Resulting Operating Speed. Most of the streets in Pleasant Ridge and throughout the region are designed based on the conventional highway design process which takes the target speed (25 mph for Pleasant Ridge local streets), adds a 5 mph “safety cushion,” and then designs a street with a design speed of 30 mph. Therefore the 85th percentile speed observed on many Pleasant Ridge streets is close to 30 mph.

Operating speed usually equals design speed, even if the posted speed is lower. The design speed on most Pleasant Ridge streets is 30 mph, even though the speed limit is 25 mph, and this is reflected in the data which shows that the 85th percentile operating speed on most of our residential streets is very near 30 mph.

- 2.1.4. **A better practice is to align the design speed of the street with the target speed.** By first setting a target speed at which the City wishes drivers to travel, we can make design choices that cause drivers to feel comfortable driving at the target speed, and not higher.

However, lowering speeds on our streets requires increasing the friction that drivers feel. This will require implementing measures to retrofit the design of our streets that are unpopular

² For more information on this topic, see: <https://nacto.org/publication/urban-street-design-guide/design-controls/design-speed/>

2 Physical Factors that Influence Vehicle Speed

with some or many. But, if the desire is truly to lower vehicle speeds on our streets, this is something that we as a community must accept and implement.

2.2 Geometric Factors that Influence Design Speed

Geometric factors that influence the design speed of a street include:

- Lane Width – wider travel lanes encourage higher speeds
- Number of lanes – more lanes encourage higher speeds
- Curb radii – larger curb radii encourage higher speeds
- Straight street segments – straight street segments without any kind of horizontal deflection encourage higher speeds.

2.3 Geometric Calming Factors Which Limit Vehicle Speed

Vehicle speed can be limited by either introducing vertical (i.e. speed bumps, humps, and the like), or horizontal elements to constrict the width of the street.

Vertical speed control elements only influence vehicle speeds in a limited area surrounding the speed bump. For this reason, they must be installed in series along a street to limit speeds along a street segment, or they are appropriately used at specific points along a street where lower speeds are important, such as crosswalks.

Horizontal speed control elements can be targeted to specific points along a street to lower travel speeds in a specific area, or they can be implemented along an entire street to lower vehicle speeds along the entire segment.

Vertical and horizontal speed control measures are discussed in detail in Section 4 of this manual.

3. Traffic Calming Options

3.1 Chicane

- 3.1.1. Overview. Chicanes are barriers placed in the street that require drivers to slow down and drive around them. The barriers can be in the form of landscaping, curb extensions, street furniture, parked cars, or other devices.
- 3.1.2. Location. Chicanes can be used in any location along a residential street where there is space to accommodate the barriers or curb extensions necessary to create the calming measure.
- 3.1.3. Negatives. There are no major negatives created by chicanes.
- 3.1.4. Cost. Costs are dependent on the specific conditions on the street and the design choices made for the chicane, but generally it will cost between \$10,000 and \$20,000 to implement.



3.2 Traffic Circle/Mini-Roundabout

- 3.2.1. Overview. A traffic circle is a small area that is painted or raised with curbs in the middle of an intersection. The traffic circle requires vehicles to slow down to traverse through the intersection. They also eliminate left turn conflicts in intersections, resulting in safer turning movements. Traffic circles provide some traffic calming, but also intersection control benefits.
- 3.2.2. Location. Traffic circles can be in the middle of intersections.
- 3.2.3. Negatives. There are no major negatives created by traffic islands, however, they only slow down traffic by a few miles per hour on average. They are best used as a complement to and in conjunction with other traffic calming measures along the street.
- 3.2.4. Cost. Cost is highly dependent on design choices and the size of the circle and will vary widely. Traffic circles can be installed for anywhere from \$5,000 to \$75,000, depending on the context.



3.3 Choker/Pinchpoint

- 3.3.1. *Overview.* This element is created with curb extensions to narrow the roadway. These elements can be used to slow traffic speeds, and to create a mid-block crosswalk. Trees may also be planted in the extended curb area to further visually narrow the street and reduce travel speeds. Pedestrians have a reduced crossing distance, which improves safety.



Chokers can be used to create either one or two travel lanes. The traffic calming effect of narrowing down to one lane is greater, but if two vehicles arrive at the choke point at the same time, it requires one driver to yield to the other. The traffic calming effect of two lanes is less, as two cars can pass by each other without stopping.

- 3.3.2. *Location.* Chokers can be used anywhere along a street. Practically, they will have to be at a location where the curb extensions will not impact driveways or utilities.
- 3.3.3. *Negatives.* Chokers will reduce the available on-street parking supply. They can also create an uncomfortable environment for bicyclists. One way around this is to maintain a passage for bicyclists next to the curb.

Chokers also have a limited area of influence on travel speeds, as vehicles will return to the pre-traffic calming speed once they are away from the choke point.

- 3.3.4. *Cost.* Costs are dependent on the specific conditions on the street and the design choices made for the choker, but generally one choker will cost between \$10,000 and \$20,000 to implement.

3.4 Center Median

- 3.4.1. *Overview.* This element is created by adding a median in the middle of the street to narrow the roadway. This element can be used to slow traffic speeds, and to create a mid-block crosswalk. The center median can be planted with landscaping or can be all concrete. The median must have raised curbs.



- 3.4.2. *Location.* Medians can only be used where they will not impact access into and out of driveways. In Pleasant Ridge, this limits the number of locations that they can be located.

- 3.4.3. *Negatives.* Center medians can limit on-street parking supply. They can also create a locally uncomfortable environment for bicyclists due to the narrowing of the street. Medians also have a limited area of influence on travel speeds.
- 3.4.4. *Cost.* Generally, a center median will cost between \$10,000 and \$25,000 to implement.

3.5 Bike Lanes/Paint

- 3.5.1. *Overview.* Overly-wide streets can be narrowed by adding bike lanes, or by striping in edge lines to narrow travel lanes. Narrower travel lanes are shown to reduce travel speeds.
- 3.5.2. *Location.* This technique can be used to create 9.5 to 11-foot-wide travel lanes and assigning some road space to a bike lane.
- 3.5.3. *Negatives.* There are no major negative impacts of narrowing travel lanes with paint, including creating bike lanes where space permits.
- 3.5.4. *Cost.* Cost will depend on the length of the roadway and the type of paint used, but generally, the cost will not exceed \$7,500 per mile of street.



3.6 Corner Bump-Outs

- 3.6.1. *Overview.* Corner bump outs are curb extensions at intersections that are used to narrow the street and shorten crossing distances for pedestrians. The primary purpose of corner bump outs is to increase pedestrian safety at intersections, and to slow down vehicle turning speeds.
- 3.6.2. *Negatives.* Corner bump outs can make it difficult for large vehicles to navigate corners without swinging into the opposing travel lane. It is important to carefully select an appropriate design vehicle for the intersection.
- 3.6.3. *Cost.* Costs are dependent on the specific conditions on the street and the design choices made for the corner bump outs, but generally it will cost between \$10,000 and \$20,000 to implement bump outs on one street at a corner.



3.7 On-Street Parking/Yield Street

- 3.7.1. **Overview.** Allowing for on-street parking on both sides of a street naturally introduces nearly all the preceding horizontal traffic calming methods at no cost. Parked cars along the street will create natural choke points and chicanes that slow travel speeds.



A variation on allowing on-street parking on both sides of the street is to create alternating “checkerboard” parking zones on both sides of the street. This naturally creates chicanes on the street, while still maintaining two travel lanes. This type of alternating-side parking arrangement is a compromise that offers more of a traffic calming benefit than the standard one side only on-street parking arrangement while maintaining two travel lanes.

- 3.7.2. **Negatives.** Many drivers do not like yield streets because it requires them to slow down, and occasionally stop to allow oncoming traffic to pass. However, this is the purpose of traffic calming. For residents of the street, the biggest negative is that drivers or rear-seat passengers getting out of parked vehicles on the street side can exit vehicles into a narrow roadway space, which can be uncomfortable.
- 3.7.3. **Cost.** There is no significant cost to implementing parking on both sides of the street to create a yield street. There may be some cost for street markings or to remove signs, but these are negligible.

3.8 Speed Humps

- 3.8.1. **Overview.** Speed humps influence traffic speeds for 200 to 300 feet on either side of the hump. This means that a series of humps are required to reinforce a consistent speed on a street.



Studies show that, when properly deployed, speed humps result in 85th percentile speeds of 25.6 mph for 14-foot humps, or 27.3 mph for 12-foot humps.³

Speed humps are only recommended for use on streets with an 85th percentile speed of 30 mph or higher. Implementing speed humps on streets with an 85th percentile speed lower than 30 mph will only result in a small speed reduction, if any.

³ Ewing, R. *Traffic Calming State of the Practice*, Institute of Transportation Engineers/Federal Highway Administration, 1999, p. 104

- 3.8.2. *Location.* The first hump in a series must be in a position where it cannot be approached at a high speed from either direction. To achieve this objective, the first hump in a series is typically installed within 100 to 200 feet of a small-radius curve or stop sign. Care should be taken so that humps are not proposed in areas which would conflict with existing infrastructure
- 3.8.3. *Spacing.* Research indicates that spacing humps between 300 and 500 feet apart is most effective at lowering the 85th percentile speed to the targeted range.
- 3.8.4. *Negatives.* Speed humps increase air and noise pollution at and near the hump itself as vehicles slow, and then accelerate once clear of the hump. This is reinforced by the City of Ferndale's recent pilot projects to install speed humps on some residential streets. Their survey results show that residents who live at or near the humps complain about increased vehicle noise, among relatively mixed results overall.⁴

The humps reduce the availability of on street parking for residents who live at a hump.

Finally, the humps have an aesthetic impact. In Pleasant Ridge, we would have asphalt humps on concrete streets.

- 3.8.5. *Cost.* Cost estimates for speed humps range from \$3,000 to \$5,000 per hump.

3.9 Signs

3.9.1. Radar Speed Signs

- a. Overview. Radar speed signs offer education and feedback to drivers by highlighting the speed limit on a street and showing the current travel speed of the vehicle approaching the sign. Radar speed signs have been shown to reduce travel speeds by about 10% from the baseline condition before they were installed.
- b. Location. Radar speed signs are best suited for higher volume streets.
- c. Cost. Each radar speed sign costs about \$5,000 - \$7,500 for the equipment and installation. Solar technology eliminates the need for electrical service to the sign but can lead to periods where the sign is not functional due to a loss of battery charge.



3.10 Raised Intersections.

- 3.10.1. *Overview.* Raised intersections bring the level of the street up to match that of the sidewalk. This creates a large speed table within an intersection that requires drivers to slow down when traversing the intersection. Bollards are often used to keep vehicles from leaving the vehicle travel way and crossing into pedestrian space.
- 3.10.2. *Location.* This traffic calming method is often used in more densely populated areas, or in places that have non-residential or a mixture of uses. Their applicability in Pleasant Ridge will

⁴ City of Ferndale Neighborhood Traffic Calming Post-Project Survey Findings, January 17, 2018

3 Traffic Calming Options

likely be limited, but they could be used in certain instances. For example, where a bike path or multi-use path crosses a street.

- 3.10.3. *Negatives.* There are no intrinsic negatives to a raised intersection, but they do often require alterations to storm water infrastructure because they change grade and drainage patterns on a street. They are also costly because they require significant concrete work to raise the street level up to the sidewalk and require reconstruction of an intersection from sidewalk to sidewalk rather than from curb to curb.
- 3.10.4. *Cost.* It is difficult to estimate a cost because the specific conditions at each intersection are different. Creating a raised intersection where an alley crosses a residential street may cost about \$20,000, while creating a raised intersection at two residential streets could cost upwards of \$60,000. The costs and planning involved in implementing this type of traffic calming measure will most likely mean that it will only be used as part of a larger infrastructure project being done by the City or another road agency.

4. Traffic Control Methods that are NOT Traffic Calming

Some traffic control devices and practices are intended to improve safety and street function at intersections or specific points along the street, but do not provide a traffic calming benefit and should not be used for traffic calming purposes.

4.1 Stop Signs.⁵

- 4.1.1. Overview. Stop signs are used to assign right-of-way at busy intersections. National standards have been established to determine when stop signs are warranted, taking into consideration traffic volume, sight distance, and accident history.
- 4.1.2. Location and Impact. Engineering studies across the nation have shown that stop signs are relatively ineffective as a speed control measure, except within 150 feet of the intersection. While speeds decrease in the immediate vicinity of unwarranted stop signs, speeds often increase between stop signs as drivers “make up for lost time,” thus any effect that they have on speeds is limited to the small area surrounding the stop sign itself.
- 4.1.3. Negatives. Stop signs also increase air pollution, waste fuel, and create more traffic noise as vehicle accelerate away from the stop sign. The City receives such complaints from residents who live near the stop signs on Woodward Heights at Bermuda.

Most drivers are reasonable and prudent. When confronted with unreasonable and unnecessary restrictions, motorists are more likely to violate them, which often leads to contempt for other traffic signs.

For the above reasons, the City will not install stop signs for speed control. The City only implements stop signs when they are warranted for intersection control, as determined by an engineering study.

4.2 Street Closures

Street closures are not traffic calming. Traffic calming seeks to slow and manage existing traffic on a street. Street closures eliminate through traffic on one street and redistribute it to other nearby streets. Street closures are a system-level decision that benefits one street to the detriment of other streets. As such, the City will not consider requests for permanent street closures.

4.3 Enforcement

Enforcement of traffic rules and traffic control such as speed limits and stop signs address the symptoms of the problem, not the cause. When discussing traffic issues in the City, there is a perception that the police simply need to enforce the existing rules and traffic signs. However, we have 26 local streets, and many areas in town where there are traffic issues. Speeding on Oakland Park and Oxford, the prohibited

⁵ *Speed Control in Residential Areas*, Institute of Transportation Engineers & Michigan Office of Highway Safety Planning, p. 12

<https://mutcd.fhwa.dot.gov/hm/2009r1r2/part2/part2b.htm#section2B05>

https://safety.fhwa.dot.gov/intersection/other_topics/fhwasa09027/resources/iowa%20Traffic%20and%20Safety%20FS-%20Unsignalized%20Intersections.pdf

<https://www.fcgov.com/traffic/pdf/ntsp-stop.pdf>

4 Traffic Control Methods that are NOT Traffic Calming

turn on Millington, the stop sign at Bermuda and Woodward Heights, the daily backups at Roosevelt School, etc. The police cannot sit on all of these problems all of the time.

Enforcement does not address the root cause of these problems. While enforcement can cause drivers to obey the rules while enforcement is occurring, once enforcement stops drivers will return to their previous behavior. It is the conditions on and around the street that allow drivers to be comfortable speeding, or running stop signs, or making prohibited turns.

The purpose of traffic calming is to change the conditions on the street so that drivers do not feel comfortable engaging in the problem behavior. The purpose of traffic calming is to change driver behavior all of the time, not just the fraction of the time that the police can spend enforcing the various issues that exist around town.

5. Vehicle Speed and Volume Data

The City has been gathering speed and volume data for local streets since late 2014. The data is gathered by the City based on our own knowledge of which streets carry higher volumes or see higher speeds, and based on resident requests to examine traffic issues on a particular street.

Table 1. Traffic Data Inventory by Street (sorted by Average Vehicle Speed)

Street	Date	Location	Average Weekday Volume	Average Weekend Volume	Average Vehicle Speed	85th Percentile Speed
Ridge	2015.10	100 ft. S of Cambridge	4,724	3,778	29.5	32.9
Ridge	2014.12	100 ft. S of Oakland Park	3,549	3,257	28.5	32.3
Oakland Park	2015.09	800 ft. E of Ridge	2,624	2,156	28.4	32.1
Oakland Park	2015.08	800 ft. E of Ridge	2,827	2,286	27.9	32.1
Oxford	2015.10	850 ft. W of Woodward	913	951	27.6	32.1
Ridge	2015.11	100 ft. S of Cambridge	4,735	4,064	26.8	30.8
Ridge	2018.09	100 ft. S of Oakland Park	3,601	3,115	26.8	30.4
Ridge	2018.10	100 ft. S of Oakland Park	--	--	26.6	29.8
Woodward Heights	2015.04	400 ft. E of Indiana	2,854	2,068	26.2	29.9
Oxford	2015.05	850 ft. W of Woodward	1,152	888	26.2	30.3
Cambridge W	2014.12	300 ft. E of Oakdale	525	227	26.2	30.7
Sylvan	2015.08	250 ft. E of Woodward	1,256	867	25.7	29.8
Millington	2015.08	400 ft. E of Ridge	1,159	1,170	24.9	28.9
Elm Park Ave	2018.03	500 ft. W of Ridge	278	258	23.9	28.0
Maplefield	2015.05	150 ft. N of Cambridge	424	--	23.4	30.2
Hanover	2016.09	500 ft. W of Ridge	338	292	22.9	27.2
Indiana	2015.07	150 ft. N of Sylvan	892	730	21.4	26.0
Cambridge E	2017.07	250 ft. W of Woodward	891	--	20.9	24.8
Wellesley	2017.06	600 ft. E of Indiana	170	152	20.8	24.8
Woodward Alley	2018.07	Bet. D'shire & Kens'ton	284	215	18.0	20.6
Gainsboro	2015.07	150 ft. S of Wellesley	90	79	18.0	21.8

6. Implementation Methods

There are two methods for implementing traffic calming projects: 1) City led implementation, and 2) resident petition led implementation.

6.1 City Initiated Projects

The City will initiate and fund projects where conditions warrant an active intervention. The City's policy is to evaluate streets which have an average weekday traffic volume higher than 2,500 vehicles, OR where the 85th percentile speed is 32 mph or higher (7 mph over the 25-mph speed limit).⁶

The City will also implement traffic calming measures on streets that do not meet either of the above criteria if there are specific areas that present a significant safety hazard for bicyclists or pedestrians, or when traffic calming improvements can be implemented as part of a larger project.

The City has implemented traffic control measures on Ridge Road and is planning an improvement to the Oakland Park/Sylvan crossing at Woodward. Woodward Heights will be the next target street that the City will be implementing traffic calming measures.

6.2 Street Petition Process

The City supports a neighborhood-driven approach to residential speed control on streets that do not meeting the criteria for City-led projects. The City will also consider a resident-led process on a street that qualifies for city-initiated projects. To be effective, speed control measures need to be supported by the residents along a street.

The City will explore traffic calming measures when petitioned by the residents of a street using the following process:

- 6.2.1. If at least 66% of the households on a street sign on in favor of implementing traffic calming measures on their street, the City will convene a meeting and explore traffic calming measures that can be implemented, along with the cost of implementation.
- 6.2.2. The City will present the traffic calming options and costs and allow the residents of the street to determine their desired course of action. The cost to implement traffic calming measures through the petition process will be assessed equally to all residents on the block through a special assessment district. The purpose of the initial meeting is to present options and an estimate of their cost to the residents on the block.
- 6.2.3. If appropriate, the City can field-test some or all the traffic calming measures and collect speed data to determine the impact of the measures before the residents of the block decide upon their desired course of action.

Once the desired course of action is determined by the residents of the block, the proposed improvement and (if necessary) special assessment petition will be forwarded to the City Commission for a public hearing and decision.

⁶ The 32 mph 85th percentile speed was established as the cut-off because our streets have a 30mph design speed. The 85th percentile speed on most of our residential streets is around 30mph. It is not possible to retrofit all of our residential streets to have lower 85th percentile speeds without reconstructing them. Also, studies show that speed humps will result in 25-27mph 85th percentile speeds.