

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

**City Commission Meeting
February 12, 2019
Agenda**

Honorable Mayor, City Commissioners and Residents: This shall serve as your official notification of the Regular City Commission Meeting to be held Tuesday, February 12, 2019, at 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:

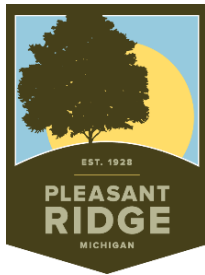
REGULAR CITY COMMISSION MEETING – 7:30 P.M.

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 Krzysiak – Ferndale Public Schools**
 - **Commissioner Perry – Planning/DDA**
 - **Commissioner Scott – Historical Commission**
 - **Commissioner Wahl – Recreation 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 Public Hearing and Regular City Commission Meeting held Tuesday, January 15, 2019.
 - b. Monthly Disbursement Report.
8. **Traffic Calming Manual.**
9. **Discussion regarding limits on Fireworks Ordinance.**
10. **The Michigan Regulation and Taxation of Marihuana Act.**
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 and Public Hearing
January 15, 2019**

Having been duly publicized, Deputy Mayor Perry called the meeting to order at 7:32 p.m.

Present: Commissioners Krzysiak, Perry, Scott, Wahl, Mayor Metzger
Also Present: City Manager Breuckman, City Clerk Drealan, City Attorney Need
Absent: None

Public Discussion

Amy Butters, 23 Millington, discussed the Ferndale Fine Arts Booster raffle. FAB supports students in the fine arts programs through donations of concert uniforms, an instrument trailer and the like. Tickets sell for \$10.00 and the prizes are \$500, \$1000 and \$2000. The drawing is February 2nd at 4:00 p.m. during the All City Concert. There is a drive to raise funds to provide bottled water and snacks for students during finals. A link to that site has been posted on the Facebook group page.

Governmental Reports

Chief Kevin Nowak, Pleasant Ridge Police Department, noted that Daniel Simon has been hired as a new part-time officer. He recently retired from the Ferndale Police Department and is a lifelong resident of the area. A new patrol car is being outfitted and should be in service within a week.

Acting Fire Chief/Fire Marshall Jack Pesha, Ferndale Fire Department, indicated that Chief Sullivan is recovering from a medical emergency that occurred in November.

Assistant City Manager Scott Pietrzak noted that the January meeting of the Recreation Commission will be rescheduled. The renovations to the big room at the community center are 98% complete. SOCRA has an app called Waste Wizard which will explain how to dispose of any material including hazardous waste that is not picked up curbside. The video doorbell company, Ring, has a program called Neighborhoods where residents can post videos to their neighbors to share useful information regarding suspicious activity in their area. He is working with Ring to obtain some test equipment to expand the service to various intersections in the city. Discount coupons for home doorbell systems may be made available. Krzysiak thanked Pietrzak for the tour of the community center and indicated that anything that needs work at the center should be brought to Pietrzak's attention. Krzysiak inquired about the status of the dog park. Pietrzak noted that at the current time the two entrances to the park use different access passes so citizens can have time to switch to the new pass. Additionally, wiring needs to be laid to connect the two gates. Installation of the underground wiring has been delayed due to the weather.

City Commission Liaison Reports

Commissioner Wahl reported on the Recreation Commission. The next meeting will be the week of February 4th. The movie of the month was Little Women. There is a free computer program on January 24th. A tour of the Masonic Temple with lunch will be February 7th. The Daddy Daughter dance is February 8th. February 27th there is a tour of Little Caesar's Arena with lunch. Spring sports registration is under way. Application deadline for summer camp counselors and lifeguards is March 8th.

Commissioner Krzysiak reported on Ferndale Public Schools. The process of drafting a new strategic plan began last year. They are recruiting stakeholders for the Strategic Planning Committee. Interested parents or students can email strategicplanning@ferndaleschools.org before January 26th. Seth Petty is the new principal for Ferndale Middle School. There is a Meet and Greet on January 31st at 6:00 p.m. Zoe Butters, FHS Liaison, spoke at the December 17th School Board meeting. She discussed the Winter Voices Concert, which was a great success, as well as Spirit Week and the Motor City Roundball Classic. Sydney Embry, the UHS Liaison, also addressed the Board. She noted that the students have been participating in a number of charitable activities including Ronald McDonald House and Gleaners. The student body pledged to continue to donate throughout the year. Bridget Tweedle and Lydia McKee represented the United Student Assembly and discussed the students' work on the Canned Food Drive for the Renaissance Church Food Pantry, and Adopt-a-Family. There was also a Penny Wars program that raised \$350 for gifts for needy families. The Superintendent's Excellence Award was given to Brittney and Branden Nichols. The Eagle of the Month award was presented to FMS Math Teachers, Mike Sigler and Nate Austin. Building Pride went to Upper Elementary. Katie Jeffrey gave an update on the work accomplished through the FUEL program. The next meeting is February 25th.

Commissioner Perry reported on the Planning Commission/DDA. The next Planning Commission meeting is January 28th. The Chariot program has been discontinued. There was discussion regarding the usage of the Chariot program. Ridership had been tapering down through the cold weather months. There was also discussion regarding potential alternative riding services.

Commissioner Scott reported on the Historical Commission. There will be a workshop on February 6th to introduce the new members of the commission to the museum. The next regular meeting will be March 6th.

Consent Agenda

18-3399

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

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

Overview of Proposal 18-1, Michigan Regulation and Taxation of Marijuana Act

Breuckman presented an overview of the Act. The Act permits possession and use of 2.5 ounces of marijuana and regulates the amount that can be grown at one location. Up to 2.5 ounces may be given to persons 21 and older. A list of prohibited actions was presented. The Commission needs to address the various options regarding marijuana businesses within the city. City Attorney Need addressed the licensing requirements through LARA. They have one year to promulgate rules for licensing. If they do not have rules in place within one year, individuals may apply to their local municipalities. Need noted that litigation is probable to answer some of the many questions arising from the passage of this bill. Any amendments to the bill require support from three quarters of the legislature to pass. The city can opt out of the bill which would prohibit marijuana establishments entirely. Opting in would allow the establishments with city regulation. Taking no action results in the city having opted in to the rules of the Act. The city can limit the number of establishments. If more applications are received than the city allows, the city must enter into a competitive process. The details of that competitive process are not defined. There are questions regarding what kind of ordinance would be necessary to regulate these establishments. There are also questions as to whether the city can ban certain types of establishments but allow others. The statute states that local ordinances cannot be unreasonably impracticable but does not clearly define that term. There will likely be litigation to clarify this issue. Local ordinances may regulate signage; the time, place and manner of operation; allow sale and use in some restricted areas and at special events. Violation of a local ordinance would result in a civil infraction with a fine of no more than \$500. Municipalities may require local licenses but may not charge a fee of more than \$5000 and cannot prohibit transportation of marijuana through the city. Krzysiak inquired whether the city could simply allow these establishments only in certain zones of the city. Need responded that that issue is unclear given the wording of the statute.

If the city opts in or out, a citizen initiative can be put on the ballot to change that decision. By state law the signatures of 5% of the voters are needed to place the issue on the ballot. Scott inquired regarding the number of licenses that might be issued statewide. There will be a 10% excise tax on retail sales. Those taxes will be used by the state to defray administration and enforcement costs. Additionally, for at least two years or until 2022, \$20 million may be spent annually for research into usage and veterans issues. After that, any balance will be distributed 15% to counties and 15% to municipalities in proportion to the number of retailers and microbusinesses; 35% to the school aid fund; and 35% to roads. The state has estimated that \$27 million dollars will be distributed to municipalities by 2022-23, however the potential tax revenue picture is really too uncertain to predict at this point in time. Metzger recommended continuously monitoring the process while some of these issues are addressed throughout the state before the city formally makes any kind of decision. There was discussion regarding the likelihood and cost of litigation. Krzysiak discussed the potential for increased revenues over time and recommended opting in sooner rather than later to maximize revenue. He expressed concern about the potential market getting more diluted over time. He read an article regarding the positive impact revenues from marijuana sales has made on small communities in Colorado. He recommended drafting an ordinance to allow these establishments in the city as soon as possible. Scott suggested waiting for a while to see what direction the state takes. Wahl expressed concern regarding bearing the burden of litigation that will likely come along with being an early adopter of any ordinance.

Ordinance to amend Section 82-197(b)(9)(c) - Automobile Service Station, Hours of Operation

Breuckman presented an overview of the proposed ordinance which would allow the Sunoco station to sell packaged beer and wine from 8:00 a.m. till midnight. The current hours are 9:00 a.m. to 10:00 p.m. There has been no increase in the need for police activity at the station in the six months since

packaged liquor sales were authorized. Residents within 300 feet of the station were notified of the amendment and asked to comment. No responses were received.

Mayor Metzger opened the public hearing at 8:50 p.m. Mr. Rob Sakat, 8 Fairwood, indicated that he was in favor of adopting the ordinance.

With no further comments or discussion, Mayor Metzger closed the public hearing at 8:51 p.m.

Perry was contacted by a resident who was concerned that the extended hours would attract unwanted patrons. Mr. Singh commented that 80% of his customers are residents of Pleasant Ridge and it is those residents who have expressed a desire to purchase alcohol during the extended hours.

18-3400

Motion by Commissioner Perry, second by Commissioner Wahl, to approve the amendment to ordinance 82-197(b)(9)(c) as presented.

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

Traffic Calming Manual and Program Introduction

Breuckman explained that a town hall meeting will be held Tuesday, January 22nd at 6:30 p.m. to discuss the effects of traffic calming measures. Traffic calming is the most common concern raised by residents throughout the city. The manual discusses the traffic calming process and the various techniques available. Overall Pleasant Ridge streets are safe, but improvements can always be made. As a general rule, slower speeds are safer for pedestrians. State law sets the speed limit on residential streets at 25 miles per hour. Design speed, posted speed and operating speed are all elements of traffic calming. While operating speed usually equals design speed, design speed is traditionally higher than posted speed to provide a safety buffer. In Pleasant Ridge 85% of drivers travel at 30 miles per hour which is also the design speed of the residential streets. Driver behavior can be changed by making adjustments so that design, posted and operating speed are all equal. There are limits on what the city can do with regard to signage and other traffic control measures. Other factors that can affect driver behavior include lane width, the number of lanes, curb radius and the number of straight street segments. There are both horizontal and vertical traffic calming elements. Horizontal elements include constricting the width of the street and creating deflections. Vertical elements include bumps, humps and tables that would cause traffic to slow down. There was discussion regarding various design options and their effect.

Krzysiak inquired regarding center lines. Breuckman noted that studies have shown that center lines actually cause drivers to go faster. Allowing parking on both sides of the street also slows traffic because it effectively narrows the street two cars cannot easily pass each other. This, however, is typically an unpopular solution. Wahl discussed allowing residents to test it on their streets because it can be easily reversed. City Attorney Need inquired whether there were more accidents when parking on both sides is allowed. Breuckman responded that the data does not seem to show that but there have been no specific studies on that issue. Pleasant Ridge switched to allowing parking only on one side of the street in the 1990s. Krzysiak inquired as to the reason for the change. Breuckman noted that it was likely either at the request of the fire marshal or local residents. Perry indicated that she was originally opposed to both side parking but Breuckman explained that there would not be more

cars, they would just be more spread out. Stop signs, road closures and enforcement measures do not improve traffic calming.

Traffic calming projects are being considered on streets that have either a volume of more than 2500 vehicles per day or where 85% of the speeds recorded are greater than 32 miles per hour. Areas where there is a high safety risk for pedestrians or bicyclists will also be considered. The streets that meet these criteria are Ridge, Woodward Heights, Oakland Park and Oxford. Residents can petition for traffic calming projects on other streets by filing a petition signed by 66% of the households on the street. The city would then present options and costs. The residents would determine the desired course of action. Various options would be field tested and then the residents would vote to make them permanent. The residents would pay for the cost of the improvements through a special assessment district. A lot of data has been collected for every street which residents can review in the manual.

There will be a special meeting focusing on Woodward Heights immediately following the general town hall. Krzysiak commended the guide and encouraged residents to review their options. He would be in favor of the city sharing the cost of improvements with the residents.

City Manager's Report

(None)

Other Business

Krzysiak indicated that next book club meeting is January 16th, the book is *Shark's Fin and the Sichuan Pepper: A Sweet-Sour Memoir*. The February book is *The Underground Railroad*, by Evelyn Millstein. The meeting will be on February 20th at the Community Center. The author will be present at the meeting. Mayor Metzger commented on the life and contributions of Eugen Kepler who passed away recently.

With no further business or discussion, Mayor Metzger adjourned the meeting at 9:34 p.m.

Mayor Kurt Metzger

Amy M. Drealan, City Clerk

/dleg

January 2019

ACCOUNTS PAYABLE

PAYROLL LIABILITIES	\$	11,137.30
---------------------	----	-----------

ACCOUNTS PAYABLE	\$	264,092.81
------------------	----	------------

TAX LIABILITIES	\$	530,256.55
-----------------	----	------------

TOTAL	\$	275,230.11
--------------	-----------	-------------------

PAYROLL

Janaury 2, 2019	\$	37,948.62
-----------------	----	-----------

Janaury 16, 2019	\$	38,019.22
------------------	----	-----------

Janaury 30, 2019	\$	35,974.39
------------------	----	-----------

TOTAL	\$	111,942.23
--------------	-----------	-------------------

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
PAYROLL LIABILITIES
January 2019

PG 1

Check Date	Check	Vendor Name	Description	Amount
1/2/2019	2292	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 336.40
1/2/2019	2293	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,604.85
1/2/2019	2294	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,167.48
1/2/2019	2295	MIFOP	UNION DUES	\$ 188.00
1/2/2019	2296	MISDU	FOC DEDUCTIONS	\$ 224.60
1/2/2019	2297	ALERUS FINANCIAL	RHSP CONTRIBUTIONS	\$ 443.99
1/16/2019	2298	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 336.40
1/16/2019	2299	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,487.47
1/16/2019	2300	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,129.08
1/16/2019	2301	MISDU	FOC DEDUCTIONS	\$ 224.60
1/16/2019	2302	ALERUS FINANCIAL	RHSP CONTRIBUTIONS	\$ 491.78
1/30/2019	2303	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 336.40
1/30/2019	2304	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,489.85
1/30/2019	2305	ALERUS FINANCIAL	RETIRMENT CONTRIBUTIONS	\$ 1,005.06
1/30/2019	2306	MISDU	FOC DEDUCTIONS	\$ 224.60
1/30/2019	2307	ALERUS FINANCIAL	RHSP CONTRIBUTIONS	\$ 446.74
TOTAL PAYROLL LIABILITIES				<u>\$ 11,137.30</u>

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
TAX LIABILITIES
January 2019

PG 2

Check Date	Check	Vendor Name	Description	Amount
01/15/2019	2613	VOID CHECK	VOID CHECK	\$ -
01/15/2019	2614	CITY OF PLEASANT RIDGE-DDA	2018 TAX COLLECTIONS	\$ 6,881.65
01/15/2019	2615	CITY OF PLEASANT RIDGE-GENERAL	2018 TAX COLLECTIONS	\$ 244.45
01/15/2019	2616	CITY OF PLEASANT RIDGE-TAXES	2018 TAX COLLECTIONS	\$ 132,456.60
01/15/2019	2617	DON BREWSTER KANTZ TRUST	2018 TAX OVERPAYMENT	\$ 576.19
01/15/2019	2618	FERNDALE SCHOOL DISTRICT	2018 TAX COLLECTIONS	\$ 59,718.37
01/15/2019	2619	FIRST AMERICAN TITLE INSURANCE COMP	2018 TAX OVERPAYMENT	\$ 738.15
01/15/2019	2620	LEGACY TITLE	2018 TAX OVERPAYMENT	\$ 172.64
01/15/2019	2621	NATIONS TITLE AGENCY OF MI	2018 TAX OVERPAYMENT	\$ 163.98
01/15/2019	2622	OAKLAND COUNTY TREASURER	2018 TAX COLLECTIONS	\$ 261,175.53
01/15/2019	2623	PAUL EISENSTEIN	2018 TAX OVERPAYMENT	\$ 300.60
01/30/2019	2624	CITY OF PLEASANT RIDGE-DDA	2018 TAX COLLECTIONS	\$ 2,725.03
01/30/2019	2625	CITY OF PLEASANT RIDGE-TAXES	2018 TAX COLLECTIONS	\$ 25,374.58
01/30/2019	2626	DM HOMES OF METRO DETROIT LLC	2018 WINTER TAX OVERPAYMENT	\$ 42.05
01/30/2019	2627	FERNDALE SCHOOL DISTRICT	2018 TAX COLLECTIONS	\$ 13,268.97
01/30/2019	2628	OAKLAND COUNTY TREASURER	2018 TAX COLLECTIONS	\$ 26,417.76
TOTAL TAX LIABILITIES				\$ 530,256.55

CITY OF PLEASANT RIDGE CHECK REGISTER
ACCOUNTS PAYABLE
January 15, 2019

Check Date	Check	Vendor Name	Description	Amount
01/15/2019	22627	21ST CENTURY MEDIA-MICHIGAN	LEGAL NOTICE PUBLICATOIN	\$ 365.25
01/15/2019	22628	ACCUSHRED, LLC	SHREDDING SERVICES	\$ 105.00
01/15/2019	22629	ADKISON, NEED & ALLEN P.L.L.C.	CITY ATTORNEY SERVICES	\$ 3,194.25
01/15/2019	22630	AIR WORKS HEATING AND COOLING	REFUND OF PERMIT FEES P18-0411	\$ 75.00
01/15/2019	22631	AMY DREALAN	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22632	ANDERSON, ECKSTEIN & WESTRICK	ENGINEERING SERVICES	\$ 2,973.90
01/15/2019	22633	BADGER METER, INC.	METER READING SUPPORT SERVICES	\$ 69.66
01/15/2019	22634	BENDZINSKI AND COMPANY	CONTINUING DISCLOSURE SERVICES	\$ 1,000.00
01/15/2019	22635	BRILAR	DPW SERVICES - OCTOBER 2018	\$ 24,941.01
01/15/2019	22636	CITY OF FARMINGTON HILLS	REGISTRATION FEES - RIED AND NOWAK	\$ 300.00
01/15/2019	22637	CITY OF FERNDAL	FIRE SERVICES CONTRACT	\$ 21,381.72
01/15/2019	22638	CITY OF FERNDAL	DISPATCH SERVICES AGREEMENT	\$ 3,250.00
01/15/2019	22639	CITY OF ROYAL OAK	DPW SERVICES - DECEMBER 2018	\$ 178.90
01/15/2019	22640	COMMUNITY MEDIA NETWORK	MEETING RECORDING	\$ 400.00
01/15/2019	22641	DAVEY TREE EXPERT COMPANY	TREE MAINTENANCE SERVICES	\$ 7,250.00
01/15/2019	22642	DEBORAH GREEN	MEETING TRANSCRIPTION	\$ 62.50
01/15/2019	22643	DELL MARKETING LP	POLICE VEHICLE EQUIPMENT	\$ 4,624.38
01/15/2019	22644	DES MOINES STAMP MANUFACTURING	POLICE DEPT SUPPLIES	\$ 19.55
01/15/2019	22645	DETROIT EDISON COMPANY	STREETLIGHTING - DECEMBER 2018	\$ 3,169.86
01/15/2019	22646	EUGENE LUMBERG	COURT PROSECUTIONS	\$ 708.75
01/15/2019	22647	FERNDAL PIZZA CO., INC.	MEETING SUPPLIES	\$ 64.56
01/15/2019	22648	FIRE EXTINGUISHER SALES & SERV	FIRE EXTINGUISHER MAINTENANCE	\$ 196.05
01/15/2019	22649	GREAT AMERICAN FINANCIAL SRVS	TELEPHONE LEASE EQUIPMENT	\$ 433.00
01/15/2019	22650	GREAT LAKES WATER AUTHORITY	IWC CHARGES-NOVEMBER 2018	\$ 273.77
01/15/2019	22651	HOLIDAY LIGHTING SERVICE	RECREATION PROGRAM SUPPLIES	\$ 2,343.00
01/15/2019	22652	HUNT SIGN COMPANY, LTD	STREET SIGN MAINTENANCE	\$ 318.00
01/15/2019	22653	ICMA RETIREMENT CORPORATION	ANNUAL PLAN MAINTENANCE FEES	\$ 250.00
01/15/2019	22654	J & J AUTO TRUCK CENTER	VEHICLE MAINTENANCE	\$ 156.93
01/15/2019	22655	JAMES BREUCKMAN	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22656	JANI-KING OF MICHIGAN, INC	JANITORIAL SUPPLIES	\$ 2,161.00
01/15/2019	22657	JOSEPH GRIMM	RECREATION PROGRAM PRESENTATION	\$ 75.00
01/15/2019	22658	KENNETH BORYCZ	INSPECTION SERVICES	\$ 510.00
01/15/2019	22659	KEVIN NOWAK	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22660	LEGAL SHIELD	PREPAID LEGAL SERVICES	\$ 51.80
01/15/2019	22661	LIVING LAB	PARKS AND RECREATION MASTER PLAN	\$ 2,904.29
01/15/2019	22662	MELANIE SEVALD	RECREATION PROGRAM INSTRUCTIOER	\$ 816.00
01/15/2019	22663	MICH.MUNICIPAL WORKER'S COMP.	WORKERS COMPENSATION	\$ 362.00
01/15/2019	22664	MICHELLE DELACOURT	NEWSLETTER PUBLICATION SERVICES	\$ 565.00
01/15/2019	22665	MICHIGAN MUNICIPAL LEAGUE	Q-4 2018 UNEMPLOYMENT CONTRIBUTION	\$ 11.79
01/15/2019	22666	O'REILY AUTO PARTS	VEHILCE MAINTENANCE	\$ 29.47
01/15/2019	22667	OAKLAND COUNTY ANIMAL CONTROL	DOG LICENSE EXPENSE	\$ 227.25
01/15/2019	22668	OAKLAND COUNTY TREASURER	CLEMIS USER FEES	\$ 2,074.00
01/15/2019	22669	OAKLAND COUNTY TREASURER	BSA TAX USER AGREEMENT	\$ 395.94
01/15/2019	22670	OAKLAND SCHOOLS	PRINTING SERVICES	\$ 942.40
01/15/2019	22671	PATRICK THOMPSON DESIGNS, INC	DESIGN SERVICES	\$ 15,147.67
01/15/2019	22672	PLANTE & MORAN PLLC	ACCOUNTING SERVICES	\$ 5,517.00
01/15/2019	22673	ROBERT RIED	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22674	SAFEBUILT	CODE ENFORCEMENT SERVICES	\$ 660.00
01/15/2019	22675	SCHEER'S ACE HARDWARE	BUILDING MAINTENANCE SUPPLIES	\$ 140.59
01/15/2019	22676	SCOTT PIETRZAK	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22677	SHAWNIE STAMPER	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22678	SOCRRA	REFUSE COLLECTION AGREEMENT	\$ 17,199.00
01/15/2019	22679	SOCWA	WATER PURCHASES	\$ 12,755.92
01/15/2019	22680	TEPEL BROTHER PRINTING	NEWLSETTER PRINTING	\$ 3,224.00
01/15/2019	22681	TIMOTHY SCHULTZ	PERFORMANCE BONUS	\$ 600.00
01/15/2019	22682	TOSHIBA FINANCIAL SERVICES	COPIER LEASE AGREEMENT	\$ 1,143.66
01/15/2019	22683	UNIFIRST CORPORATION	MAT RENTAL AND JANITORIAL SUPPLIES	\$ 228.03
01/15/2019	22684	VICTORIA DICKINSON	RECREATION PROGRAM INSTRUCTION	\$ 128.00
01/15/2019	22685	WEX BANK	FUEL PURCHASES	\$ 2,814.17

Total for 1-15-2019

\$ 152,389.02

CITY OF PLEASANT RIDGE CHECK REGISTER
ACCOUNTS PAYABLE
January 30, 2019

Check Date	Check	Vendor Name	Description	Amount
01/30/2019	22686	BLUE CROSS BLUE SHIELD OF MICHIGAN	HEALTHCARE BENEFITS	\$ 5,771.18
01/30/2019	22687	AIR WORKS HEATING AND COOLING	COMMUNITY CENTER RENOVATIONS	\$ 3,487.00
01/30/2019	22688	ANDERSON, ECKSTEIN & WESTRICK	ENGINEERING SERVICES	\$ 3,886.00
01/30/2019	22689	DAVEY TREE EXPERT COMPANY	TREE MAINTENANCE SERVICES	\$ 12,240.00
01/30/2019	22690	EUGENE LUMBERG	COURT PROSECUTIONS	\$ 438.75
01/30/2019	22691	GREAT LAKES WATER AUTHORITY	IWC CHARGES-DECEMBER 2018	\$ 273.77
01/30/2019	22692	IRON RIDGE 404 LLC	RETURN OF DEMOLITION BOND	\$ 5,000.00
01/30/2019	22693	LOUISE JONES	COMMUNITY CENTER ART WORK DEPOSIT	\$ 2,000.00
01/30/2019	22694	OCAAO	2019 BOARD OF REVIEW TRAINING	\$ 20.00
01/30/2019	22695	PATRICK THOMPSON DESIGNS, INC	ENGINEERING AND DESIGN SERVICES	\$ 3,160.14
01/30/2019	22696	RAY KEE	INSPECTIONS SERVICES	\$ 1,350.00
01/30/2019	22697	SOCRRA	REFUSE COLLECTION CONTRACT	\$ 8,246.87
01/30/2019	22698	STATE OF MICH.-DEPT.OF TREAS.	2018 SALES TAX EXPENSE	\$ 60.73
01/30/2019	22699	TOSHIBA FINANCIAL SERVICES	COPIER LEASE SERVICES	\$ 1,143.66
01/30/2019	22700	TRANSNATION TITLE AGENCY	UTILITY BILL OVERPYMT - 14 KENSINGTON	\$ 137.03
01/30/2019	22701	UNIFIRST CORPORATION	MAT RENTAL AND JANITORIAL SUPPLIES	\$ 341.02
01/30/2019	22702	USZTAN CONSTRUCTION	COMMUNITY CENTER RENOVATIONS	\$ 24,044.89
01/30/2019	22703	W-S CITY OF PLEASANT RIDGE	CITY WATER PURCHASES	\$ 484.86
01/30/2019	22704	WALLSIDE WINDOWS	OVERPAYMENT BLDG PERMIT P19-0035	\$ 30.00
Total for 1-30-2019				\$ 72,115.90

CHECK REGISTER FOR CITY OF PLEASANT RIDGE
ELECTRONIC PAYMENTS
January 2019

PG 5

Check Date	Check	Vendor Name	Description	Amount
01/08/2019	1351	FIDELITY SECURITY LIFE INS CO	HEALTHCARE BENEFITS	\$ 281.57
01/09/2019	1352	BLUE CROSS BLUE SHIELD OF MICHIGAN	HEALTHCARE BENEFITS	\$ 13,214.77
01/10/2019	1353	MUNICIPAL EMP.RETIREMENT SYST.	RETIREMENT CONTRIBUTIONS	\$ 26,091.55
TOTAL ELECTRONIC PAYMENTS				\$ 39,587.89



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
 To: City Commission
 Date: February 7, 2019
 Re: Traffic Calming Manual Consideration for Adoption

Overview

Over the past month we have been soliciting feedback on the traffic calming manual. We held a town hall event on January 22, and we presented the manual to the Planning Commission for their input on January 28.

At this time, the manual has been revised and is ready for adoption by the Commission if you are so inclined.

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.

Resident Petition Initiation Process

The manual also includes a policy by which residents on a street or a block can petition the City to implement traffic calming measures. Section 6.2 lays out the process.

As written, Section 6.2 will require the approval of a special assessment district by the residents along a block to spread the cost to implement traffic calming measures equally among all households along the block or street, depending on the boundaries of the area to be improved.

Section 6.2. also establishes that the City Commission may make funding available to offset some of the cost of traffic calming projects in the form of grants or matching funds.

This process is one that the Commission should be aware of and comfortable with before the manual is adopted. The reason for the process being proposed this way is because we have four 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 on these streets are generated primarily by through drivers rather than the 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.

¹ To wit: Oxford, Oakland Park, Ridge, and Woodward Heights.

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 four previously discussed streets, and generally there is not a pronounced speeding problem based on the 25-mph speed limit. The reasoning 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 generated by the residents themselves.

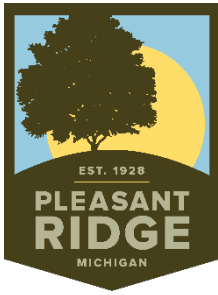
Requested Action

City Commission consideration of the proposed Traffic Calming Manual for adoption.



City of Pleasant Ridge Traffic Calming Manual

Second Draft
January 29, 2019



City of Pleasant Ridge

Traffic Calming Manual

Adopted by the City Commission _____, 2019

Table of Contents

Table of Contents.....	i
1. Introduction	1
1.1 A City of Beautiful Streets	1
1.2 Problem Statement.....	1
1.3 Passive vs. Proactive Design.....	1
1.4 Vehicle Speed and Safety.....	2
1.5 Basis for Recommendations.....	3
2. Physical Factors that Influence Vehicle Speed	4
2.1 Target Speed, Design Speed, Posted Speed, and Operating Speed.....	4
2.2 Geometric Factors that Influence Design Speed	5
2.3 Geometric Calming Factors Which Limit Vehicle Speed.....	5
3. Traffic Calming Options.....	7
3.1 Chicane	7
3.2 Traffic Circle/Mini-Roundabout	7
3.3 Choker/Pinchpoint.....	8
3.4 Center Median	8
3.5 Bike Lanes/Paint.....	9
3.6 Corner Bump-Outs.....	9
3.7 On-Street Parking/Yield Street.....	10
3.8 Speed Humps.....	10
3.9 Signs	11
3.10 Raised Intersections.....	11
4. Traffic Control Methods that are NOT Traffic Calming	13
4.1 Stop Signs.....	13
4.2 Street Closures.....	13
4.3 Enforcement	13
5. Vehicle Speed and Volume Data.....	15
6. Implementation Methods.....	16
6.1 City-Initiated Projects	16
6.2 Resident Petition Process.....	16

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 the region. 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. The quality of the public realm along our streets significantly contributes to the identity of Pleasant Ridge. Our beautiful streets draw people to walk and bike. However, an oft-cited issue is that of too-high vehicle speeds. Speeding cars can be a danger to pedestrians or bicyclists, but even when they are not a danger, vehicles traveling at too-high speeds degrade the public realm with the excessive noise and feeling of danger that they create. This manual seeks to address the commonly-cited issue of too-high vehicle speeds in the City by providing residents with a way to implement measures on their block or street to slow down cars to an acceptable speed for a residential area.

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 nearby 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.

This manual does not identify on-street bike facilities or other non-motorized improvements. Pleasant Ridge's local streets are all low-volume as defined by street design manuals, and there is not a need, nor is there a feasible way to provide separated non-motorized or bicycle infrastructure on our streets. Given our traffic volumes, the design of our streets, and their local nature it is acceptable to expect bicycles to share the street with cars. Calming vehicle traffic will create a safer environment for bicyclists riding on the street.

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.

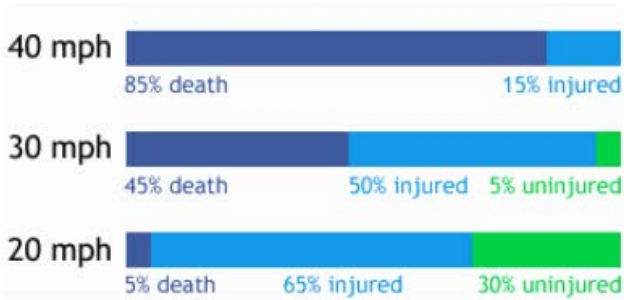
However, Newton’s laws dictate that a doubling in vehicle speed results as four times as much kinetic energy being absorbed during and impact. Small increases in vehicle speed results in a disproportionately large increase in pedestrian fatalities.

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.

Chance of Pedestrian Fatality

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



The relationship between pedestrian injury severity and motor vehicle impact speeds. Source: Federal Highway Administration

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

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

unpopular 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/lowa%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 Resident Petition Process

The City supports a neighborhood-driven approach to residential speed control on streets that do not meet the criteria for City-led projects. To be clear, the City will also consider a resident-led process on one of the four streets that qualify 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 50% of the households on a block sign on in favor of implementing traffic calming measures on their block, the City will convene a meeting and present different traffic calming measures that can be implemented on that block, along with the estimated cost to permanently implement each measure.
- 6.2.2. The residents of the block will provide input to the City, and collaboratively we will decide which traffic calming measures to test along the block. The field tests will be conducted using temporary materials. The City will collect speed and volume data before and during the test, and residents will be able to provide qualitative input about how they believe the traffic calming measures work. There is no cost to the residents to conduct the traffic calming tests.
- 6.2.3. The City will convene a post-test meeting with the residents of the block to review the results of the test. The City will also present revised cost estimates to make the traffic calming measures permanent.
- 6.2.4. The residents of the block will then determine if they want to make the traffic calming measures permanent. The cost to make the improvements permanent will be assessed equally to each property on the block through a special assessment, which will be repaid over time on the residents' tax bill (usually 5 or 10 years). Approval of the special assessment

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 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.

district will require a second petition signed by at least 55% of the households on the block. State law⁷ provides for the creation of special assessment districts in home rule cities, and the City Charter⁸ establishes the method by which the City Commission may establish a special assessment district.

- 6.2.5. The City may from time to time make funding available to offset the cost of resident-initiated traffic calming projects. This funding may be in the form of grants or matching funds, as determined by the City Commission.

⁷ [http://www.legislature.mi.gov/\(S\(foibgd50r32byh1xyotq4qay\)\)/mileg.aspx?page=GetObject&objectname=mcl-117-4d](http://www.legislature.mi.gov/(S(foibgd50r32byh1xyotq4qay))/mileg.aspx?page=GetObject&objectname=mcl-117-4d)

⁸ https://library.municode.com/mi/pleasant_ridge/codes/code_of_ordinances?nodeId=PTICH_ARTVIIIIPAS



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
 To: City Commission
 Date: February 7, 2019
 Re: Fireworks Regulation Overview

Overview

On December 28, 2018 former governor Snyder signed PA 635 of 2019 into law. This act amended the State's fireworks regulations, with the most significant change for local governments being a change in the days that firework discharge may be limited to.

Pleasant Ridge has existing fireworks regulations in Section 42.97 of our Code of Ordinances. With the changes in State law, we can amend our existing standards to adjust when fireworks discharge is permitted.

Background

The following table summarizes days when fireworks discharge is permitted by our current ordinance, and when they may be limited per PA 635:

Holiday	Current Ordinance		New State Law	
	Days Allowed	Time Allowed	Days Allowed	Time Allowed
New Year's Day	December 31 - January 2	8 am – 1 am	December 31 – January 1	11 am – 11:45 pm
MLK Day	January 20 - January 22	8 am – 12 am	Not allowed	
Washington's Birthday	February 17 - February 19	8 am – 12 am	Not allowed	
Memorial Day	May 26 - May 28	8 am – 12 am	May 26 – May 27	11 am – 11:45 pm
Independence Day	July 3 – July 5	8 am – 12 am	June 29 – July 4 + July 5 (if Fri. or Sat.)	11 am – 11:45 pm
Labor Day	September 1 – September 3	8 am – 12 am	September 1 – September 2	11 am – 11:45 pm
Columbus Day	October 13 – October 15	8 am – 12 am	Not allowed	
Veterans Day	November 10 – November 12	8 am – 12 am	Not allowed	
Thanksgiving Day	November 27 - November 29	8 am – 12 am	Not allowed	
Christmas Day	December 24 – December 26	8 am – 12 am	Not allowed	

Requested Action

City Commission direction to staff to either begin preparing an amendment to our fireworks regulations or to do nothing and leave the existing standards in place.

MEMORANDUM

TO: Jim Breuckman
FROM: Gregory K. Need
RE: Fireworks Regulations
DATE: February 6, 2019

You asked for some information regarding fireworks regulations and my suggestions on any required or recommended changes to the City Code.

In 2011, the Michigan Fireworks Safety Act (“Act”) was enacted. That law expanded the types of fireworks that are legal for use in Michigan by allowing certain consumer and low impact fireworks, and also limited local regulation. A summary of the types of allowed fireworks is found in the attached FAQ from the Department of Licensing and Regulatory Affairs.

Except as expressly provided by the Act, the City cannot regulate by ordinance the sale, display, storage, transportation, discharge, or distribution of fireworks that are regulated by state law. Per the Act, fireworks may only be sold to consumers from retail locations that follow certain requirements, including requirements from the National Fire Protection Association. The Act does authorize local municipalities to issue permits (with state-prescribed application forms) for the ignition, use, and discharge of display fireworks, with some limits.

Section 7 of the Act sets forth the limitation on local ordinances. In essence, the City may prohibit any kind of fireworks use or discharge on any date and hour, except for those expressly set forth in Section 7. In 2013, Section 7 was amended as to the days and hours when local regulation of fireworks discharge is allowed.

At the end of 2018, former Governor Snyder signed Acts 634 and 635 of 2018, which again amended the Act. Act 635, also attached, again amends Section 7 and generally decreases the number of days and hours where fireworks discharge is allowed. It also increases the fine for violation of a local fireworks ordinance from \$500 to \$1,000, provided that the ordinance must provide that \$500 of the fine be remitted to the local law enforcement agency responsible for enforcing the ordinance. In addition, Section 7(4) provides that, beginning August 1, 2019, a local government may enact and enforce an ordinance that regulates the use of temporary structures for fireworks sales, which may be a general ordinance or as part of the zoning ordinance. The Commission should decide if it wishes to consider such regulation.

Act 634 makes several changes in the state licensing process.

Section 42.97 of the City Code currently addresses fireworks regulations. The prohibited days and hours are consistent with the 2013 amendments to the Act. The Act also includes provisions for seizure of illegal fireworks, restrictions on discharging and using fireworks on public, church, or school property or the property of another person without permission, as well as discharge or use by one under the influence of alcohol or a controlled substance. These latter restrictions are not

currently in 42-97, and the Commission should also decide if it wishes to consider these regulations .

Assuming the Commission still wishes to regulate fireworks as currently provided in the Code, it is my recommendation that City administration and I be authorized to prepare an amendment to the Code, consistent with the recent legislation as to days and hours, and with any of the additional regulations listed previously that the Commission wants to consider.

Please call with any questions.



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF FIRE SERVICES
JULIE SECONTINE
STATE FIRE MARSHAL

SHELLY EDGERTON
DIRECTOR

Frequently Asked Questions Fireworks General

1. Question: What types of fireworks are legal in the State of Michigan?

Answer: Effective January 1, 2012, the Michigan Fireworks Safety Act, PA 256 of 2011 allows the sale and use of consumer fireworks [Examples of legal fireworks](#).

- a) Consumer fireworks, referred to as 1.4G would include: roman candles, bottle rockets and other items that leave the ground. For reference, please see American Pyrotechnics Association (APA) standard 87.1, 2001 Edition: [APA Standard](#).
- b) Novelty items such as sparklers, snakes, snaps and poppers remain legal for sale and use. Novelty fireworks are not regulated under the Michigan Fireworks Safety Act.
- c) Low Impact Fireworks such as ground sparkling devices, ground based or handheld sparklers also remain legal for sale and use in Michigan. Per PA 256 of 2011, [Section 28.456](#) requires a low impact registration be filed with the Bureau of Fire Services. To register for low impact fireworks please see the [fireworks low impact registration](#) link.
- d) Display fireworks, typically referred to as 1.3G, are large and explosive items typically used for public display and are locally permitted for use by professionals. They are not regulated by the Department of Licensing and Regulatory Affairs (LARA).

2. Question: Who may not buy or use consumer fireworks?

Answer: According to the Michigan Fireworks Safety Act PA 256 of 2011, [Section 28.462](#):

- a) Prohibits the sale of consumer fireworks to a minor (anyone under the age of 18).
- b) Prohibits the use of consumer fireworks by anyone who is under the influence of drugs or alcohol.
- c) Fireworks may not be used on public, school, or private property of another person unless express permission is obtained to use the fireworks on that property.

LARA is an equal opportunity employer
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
3101 TECHNOLOGY BLVD., SUITE H • P.O. BOX 30700 • LANSING, MICHIGAN 48909
www.michigan.gov/bfs • (517) 241-8847 • Fax: (517) 332-1427 or (517) 332-1428

3. Question: How long is the consumer fireworks certificate valid for?

Answer: A consumer fireworks certificate is valid from the date of issuance through April 30th of the following year. A retailer must apply annually and meet all statutory requirements. Guidelines for application process can be found at the BFS Fireworks Program home page at: [2017 Fireworks Guidelines](#).

4. Question: What is a fireworks safety fee and how is it collected?

Answer: Per PA 256 of 2011, [Section 28.460](#) the fireworks safety fee is a 6% safety fee collected by the retailer at the time of sales in addition to the 6% sales tax on both consumer and low-impact fireworks. Fire safety fees must be paid to the Bureau of Fire Services and sales tax must be paid to the Department of Treasury.

- a) Fireworks safety fees are due no later than 20 days after the end of every preceding month. Payments for fireworks safety fees can be submitted online.
- b) If you are not selling fireworks every month you are still **required** to submit a fireworks safety fee monthly report that indicates zero sales.
- c) Applications will be denied if all sales reports from the previous year have not been submitted. This requirement starts during the month of issuance of the certificate and continues until April 30 of the following year or until you have submitted a Cancellation Request from your Fireworks Account.
- d) After the cancellation request is submitted online, safety fee reporting is no longer required beginning the following month. **Note:** *Reversal of the cancellation is not permitted*; a new application must be made if you want to sell at the same location again.

5. Question: What if I only want to sell novelty fireworks like sparklers, snakes, snaps and poppers?

Answer: PA 256 of 2011 doesn't apply to novelties. Novelty fireworks may be sold without being registered or obtaining a certificate.

6. Question: What if I only want to sell low impact fireworks like sparkling wheel devices and ground sparkling devices?

Answer: Per PA 256 of 2011, [Section 28.456](#), the act requires that any retailer selling low-impact fireworks in the State of Michigan:

- a) Register online each calendar year not less than ten days before the low-impact fireworks are sold.
- b) The low impact retailer must collect the 6% fireworks safety fee and remit those fees to the Bureau of Fire Services 20 days after the end of each month.

- c) After registration if you are not selling low impact fireworks every month you are still **required** to submit a fireworks safety fee monthly report that indicates zero sales.
- d) This requirement is valid starting during the month of registry and ending on December 31 of the same year.
- e) In order to sell low impact fireworks the following year, the retailer must Re-register.

7. Question: I have a display fireworks business; do I have to apply for a fireworks certificate with the Bureau of Fire Services?

Answer: No. All permits issued for the discharge of display fireworks are obtained from the local unit of government, jurisdiction or municipality where the fireworks are being displayed. Fees, if any, charged for these permits are retained by that local jurisdiction.

8. Question: Where does the city, township or village obtain display fireworks permit forms?

Answer: The application for a Display Permit is posted on the [Fireworks Program home page](#).

9. Question: What do I need to do if I want a display permit for my township?

Answer: The permit is approved and issued via the local unit of government, jurisdiction or municipality where the application is being submitted.

10. Question: Where can I find more detailed information about fireworks products and safety?

Answer: Please visit the following websites:

[Consumer Product Safety Commission](#)
[APA Standard 87-01](#)

11. Question: Who do I contact if I have more questions?

Answer:

- a) You may refer to the Bureau of Fire Services website at www.michigan.gov/bfs for information related to fireworks.
- b) You may call the Bureau of Fire Services at 517-241-8847 or 517-373-7441 or by facsimile at 517-332-1427.
- c) You may email fireworks@michigan.gov. **Note:** Email is the preferred method of contact during the fireworks season (April – September) due to the high demand on staff. Emails will be responded to promptly within one business day.

Act No. 635
Public Acts of 2018
Approved by the Governor
December 28, 2018
Filed with the Secretary of State
December 28, 2018
EFFECTIVE DATE: December 28, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Chirkun and Yaroch

ENROLLED HOUSE BILL No. 5940

AN ACT to amend 2011 PA 256, entitled “An act to revise, consolidate, and codify the laws relating to certain fireworks; to regulate the purchase, possession, sale, and use of certain fireworks; to establish a fireworks safety fund; to establish a fireworks safety fee; to provide for the transfer and expenditure of funds; to prescribe the powers and duties of certain state agencies; to provide for penalties and remedies; and to repeal acts and parts of acts,” by amending section 7 (MCL 28.457), as amended by 2013 PA 65.

The People of the State of Michigan enact:

Sec. 7. (1) Except as provided in this act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this act.

(2) A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, including, but not limited to, an ordinance prescribing the hours of the day or night during which a person may ignite, discharge, or use consumer fireworks. If a local unit of government enacts an ordinance under this subsection, the ordinance shall not regulate the ignition, discharge, or use of consumer fireworks on the following days after 11 a.m.:

- (a) December 31 until 1 a.m. on January 1.
- (b) The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days.
- (c) June 29 to July 4 until 11:45 p.m. on each of those days.
- (d) July 5, if that date is a Friday or Saturday, until 11:45 p.m.
- (e) The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

(3) An ordinance under subsection (2) shall impose a civil fine of \$1,000.00 for each violation of the ordinance and no other fine or sanction. The ordinance must provide for the remittance of \$500.00 of the fine collected under the ordinance to the local law enforcement agency responsible for enforcing the ordinance.

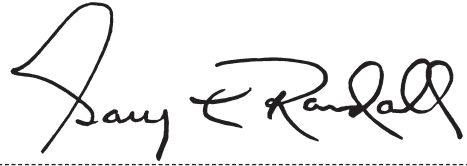
(4) Beginning August 1, 2019, a local unit of government with a population of 100,000 or more or a local unit of government located in a county with a population of 750,000 or more may enact or enforce an ordinance that regulates the use of a temporary structure. An ordinance established under this subsection may include, but is not limited to, a restriction on the number of permits issued for a temporary structure, regulation of the distance required between 2 or more temporary structures, or a zoning ordinance that regulates the use of a temporary structure. An ordinance established under this subsection may not prohibit the temporary storage, transportation, or distribution of fireworks by a consumer fireworks certificate holder at a retail location that is a permanent building or structure. As used in this subsection, “temporary structure” means a movable structure that is used in the sale, display, storage, transportation, or distribution of fireworks, including, but not limited to, a tent or a stand.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

(a) House Bill No. 5939.

(b) House Bill No. 5941.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: City Commission
Date: February 7, 2019
Re: Michigan Regulation and Taxation of Marihuana Act

Overview

Staff is requesting direction from the Commission on how to proceed with addressing the new Regulation and Taxation of Marihuana Act. As discussed at previous meetings, we must make a decision and pass an ordinance addressing our local regulation of marihuana establishments by November of this year before the marihuana businesses may start applying for licenses in December.

We have provided sample motions for three possible approaches to this issue:

1. Plan for a public input process including a possible town hall and surveys to receive public input before deciding to opt in or out.
2. Opt-in to the Act and begin preparing an ordinance to allow for marihuana establishments to locate in the City.
3. Opt-out of the Act and begin preparing an ordinance to prohibit marihuana establishments to locate in the City. This decision can be reconsidered in the future after the State establishes its licensing requirements, after other municipalities gain experience with marihuana establishments for us to learn from, after some of the unanswered legal issues and questions are resolved by the courts or further legislation, and after we have a better sense of the financial payback to the City for allowing marihuana establishments.

Requested Action

City Commission approval of a motion providing direction to staff on how to proceed addressing this issue.



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: City Commission
Date: January 14, 2019
Re: Michigan Regulation and Taxation of Marihuana Act Summary

Overview

Following is an overview of the Michigan Regulation and Taxation of Marihuana Act (“the act”), which was passed into law as a ballot initiative in the recent November general election. The act became effective December 6, 2018.

The act permits persons 21 years and older to possess, use, consume, purchase, transport, or process marihuana for personal use. The City Commission cannot take any actions regarding the portions of the law that deal with the personal possession and use of marihuana. For more information on these provisions of the act, refer to the MML overview of the act and the full text of the act which are attached to this memo.

The act establishes taxes on recreational marihuana, including a formula for how tax revenue is distributed. It also includes provisions for the permitting and regulation of marihuana businesses (referred to as “establishments” in the act).

Finally, the law also establishes provisions for the permitting and regulation of marihuana businesses, referred to as “establishments” in the act. The specific issue that is before the City Commission and must be determined by the end of 2019 is if the City is going to opt out and not allow marihuana establishments, or if we will allow marihuana establishments to locate here.

As a ballot initiative, the act may only be amended by a 3/4 vote of each branch of the legislature.

Based on experience in other states, and given many ambiguities, it is highly likely that there will be extensive litigation regarding the act and its implementation.

Although recreational use is now legal in Michigan, marijuana remains illegal under federal law, although after passage of the act, the two U.S. Attorneys for Michigan stated that prosecution of marijuana users or low-level offenders was in effect a lower priority and did not foresee that emphasis changing.

The remainder of this summary will focus on the tax and business permitting components of the act.

Background

Types of Marihuana Businesses

The act defines a range of Marihuana Establishments, or businesses:

- Marihuana Grower. A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- Marihuana Safety Compliance Facility. A person licensed to test marihuana, including certification for potency and the presence of contaminants.
- Marihuana Processor. A person licensed to obtain marihuana from marihuana establishments, to process and package marihuana, and sell or otherwise transfer marihuana to marihuana establishments.
- Marihuana Microbusiness. A person licensed to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or otherwise transfer marihuana to persons who are 21 years of age or older to a marihuana safety compliance facility, but not to other marihuana establishments.
- Marihuana Retailer. 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.
- Marihuana Secure Transporter. A person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- Any Other Type of Business Licensed by the State. A catch-all item in the marihuana establishment definition that is not further defined in the act.

Restrictions

Section 4 of the act sets forth several restrictions on the use of marihuana, and on establishments. These restrictions include:

- Operating a vehicle under the influence of marihuana or consuming marihuana while operating a vehicle.
- Transfer of marihuana to and use of marihuana by any person under the age of 21.
- Operation of a marihuana establishment by any person under the age of 21.
- Consuming marihuana in a public place, except that a municipality may designate public areas for marihuana consumption if those places are not accessible to persons under the age of 21.
- Cultivating marihuana plants if the plants are visible from a public place or outside of an enclosed area equipped with locks or other security devices that restrict access to the area.
- Possessing marihuana, marihuana accessories, or consuming marihuana on the grounds of a school, school bus, or correctional facility.

- Possessing more than 2.5 ounces of marihuana in a residence unless the marihuana is stored in a container or area equipped with locks or other functioning security devices.
- Employers (including municipal employers) may continue to maintain workplace drug policies.
- Property owners may prohibit or regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana on property the person owns except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.

Licensing

The Act requires that the State Licensing and Regulatory Affairs Department (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. LARA is charged with promulgating their rules and processes by December 6, 2019.

If LARA does not meet this deadline, Section 16 of the Act stipulates that applicants can apply directly to the municipality. Under this scenario, a municipality has 90 days after receipt of an application to issue or deny a license. A license may only be denied due to an applicant not complying 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 will need to be drafted with the potential for this circumstance in mind.

Commentary: The possibility that LARA may not meet their deadline to have state licensing procedures in place, or the possibility that LARA may begin accepting applications sooner, is a compelling reason to adopt an ordinance now opting out of allowing marihuana establishments. We can then revisit that decision and regulate these facilities once LARA has their licensing and regulatory system in place. This prevents us from having to be the sole licensing agency and would provide us with more information upon which to make our decision in the future.

Local Control and Licensing of Marihuana Establishments

1. Section 6 allows municipalities to completely prohibit or limit the number of marihuana establishments within its boundaries. Section (9) of the act states that if a municipality limits the number of establishments and that limit prevents LARA from issuing a state license to all applicants who meet the requirements of the act, the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with the act within the municipality.

Commentary: A prohibition would be adopted as a general ordinance. Should the city decide to allow the establishments, regulations could be done through a licensing ordinance, the zoning ordinance, or, more likely, a combination of the two. There are several issues with limiting the number of establishments. There is no further definition or explanation of what is required for the “competitive process”, nor how a municipality decides why one application is better suited than another if there are several applications exceeding the limit established by the municipality. Another unresolved issue is whether a community that decides to “opt-in” can decide to allow only certain types of establishments and not others. The Michigan Municipal League has taken a conservative approach, suggesting that if a community opts-in, it must allow all types of establishments (although the number of each can be limited), because there is no specific authorization to “opt- out” entirely by category. These issues will very likely be resolved, if at all, by litigation.

2. Local ordinances may not be “unreasonably impracticable” and may not conflict with the act or any rule promulgated by the State pursuant to the act.

The act defines “unreasonably impracticable” as “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.”

Commentary: This subjective definition will almost certainly be the subject of future litigation.

Local ordinances may also:

- 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,
 - c. manufacture, sale, or display of marihuana accessories;
 - d. 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
 - e. 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 the act or rules promulgated by LARA.
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.

6. The act includes its own right of citizen initiative, both as to allowing or prohibiting these establishments. This right is in addition to the right of citizen initiative already found in Article V of the city charter. Under the act, residents may petition for an ordinance that would completely prohibit or allow marihuana establishments within the city. If petitions signed by qualified electors in an amount greater than 5 percent of the votes cast for governor in the city in the last gubernatorial election, the ordinance must be placed on the ballot at the next general election for approval or rejection.

Commentary: The possibility exists that, no matter what the commission does about prohibiting or allowing these establishments, the voters could reverse that action through a local initiative.

Taxation

The act establishes an excise tax on each marihuana retailer, and marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment. B2B marihuana sales are not taxed.

Tax revenues are collected by the Michigan Department of Treasury and placed in a State Marihuana Regulation Fund which must remain separate from the State general fund.

The fund will be used for the following activities, in order:

1. The first use of the fund shall be by the State for the implementation, administration, and enforcement of the act. There is no limitation in the act on how much the State charge the fund for these activities, so theoretically the State could appropriate all the revenues from the fund for these administration and enforcement activities. However, the Senate Fiscal Analysis attached to this overview estimates that these administrative activities will likely consume only a small amount of the fund.
2. Until 2022, or for at least 2 years, the fund shall provide \$20 million annually to one or more clinical trials meeting several conditions that research the efficacy of marihuana in treating medical conditions of armed service veterans to preventing veteran suicide.
3. Whatever undetermined amount that is left over in the fund will then be allocated as follows:
 - a. 15% to municipalities in which a marihuana retail store or microbusiness is located, allocated in proportion to the number of marihuana retail stores and microbusinesses within the municipality (*note: presumably this means as a proportion of such uses in a municipality to the total number in the entire state*)
 - b. 15% to counties based on the number of retail stores or microbusinesses in proportion.
 - c. 35% to the school aid fund for K-12 education
 - d. 35% to the transportation fund for the repair and maintenance of roads and bridges.

It is impossible to estimate with any reasonable degree of accuracy what the revenue benefit for Pleasant Ridge could be if we allow marihuana establishments to locate in our City.

First, we do not know if any retail or microbusiness establishments will locate here. If, for example, a grower and a transporter locate here, but no retail or microbusinesses do, we will see no additional tax

revenue.

Second, we do not have any reasonable way of estimating how much tax revenue will be distributed to municipalities. The Senate Fiscal Analysis estimates that a total of \$26.9 million is expected to be distributed annually to municipalities by 2022-23, but we have no idea what our local share of that distribution could be because there are too many unknown variables with the number, type, and location of marihuana establishments both in Pleasant Ridge and the State as a whole.

Requested Action

No action is requested at this time. The City Commission must determine if we will allow marihuana establishments in Pleasant Ridge, and if so, what local ordinances governing their operation we will enact well before December 6 of this year. If we wish to opt-out of allowing marihuana establishments, we will have to enact an ordinance to do so by that date.



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 marihuana 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 marihuana establishments located within its boundaries obtain a municipally-issued marihuana 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 marihuana 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 marihuana 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 marihuana 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 marihuana would be eligible for a municipal marihuana 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 marihuana 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 marihuana retailers who sell or otherwise transfer marihuana 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



NOVEMBER
2018
BALLOT PROPOSAL
18-1

An Overview

Prepared by
Jeffrey Mann,
Associate Director;
Bruce Baker, Ryan Bergan, Abbey Frazier,
Elizabeth Raczkowski, Cory Savino, and
Josh Sefton, Fiscal Analysts;
and
David Zin, Chief Economist

Ellen Jeffries, Director

Phone (517) 373-2768

<http://www.senate.michigan.gov/sfa>



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.

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.