



# City of Pleasant Ridge

James Breuckman, City Manager

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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.