

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

Regular Planning Commission Meeting
Monday, April 26, 2021

Members of the Planning Commission, and Residents: This shall serve as your official notification of the Regular Meeting of the Planning Commission to be held Monday, April 26, 2021, 7:00 P.M., via teleconference as described below. The following items are on the Agenda for your consideration:

REGULAR PLANNING COMMISSION MEETING-7:00 P.M.

1. Meeting Called to Order.
2. Roll Call.
3. Minutes:
 - a. Regular Planning Commission Meeting held Monday, January 25, 2021.
4. **PUBLIC DISCUSSION** – Items not on the Agenda.
5. Marijuana business location discussion.
6. City Manager’s Report.
7. Other Business.
8. Adjournment.

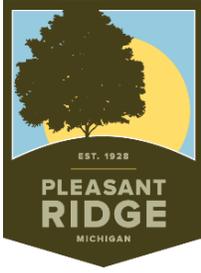
Due to the COVID-19 State of Emergency declared by the Governor’s Executive Order 2020-4, the limitation on public assemblies of Executive Order 2020-11, and the permitting of public meetings by remote participation allowed by Governor’s Executive Order 2020-15, the April 26, 2021 Pleasant Ridge Planning Commission meeting will be conducted via remote participation.

<https://us02web.zoom.us/j/86051167702?pwd=aGN1NEJLeHVDZnNacEhTTiswbEkrdz09&from=addon>

Meeting ID: 860 5116 7702

Passcode: 112674

All members of the public will be permitted to participate during the public comment and public hearing portions of the meeting. There are two ways that members of the public can participate in the meeting by joining the Zoom meeting by computer videoconference. If you have any ADA questions, please call the Clerk's Office (248) 541-2901.



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

**Planning Commission Meeting
January 25, 2021**

Having been duly publicized, Chairman Treuter called the meeting to order at 7:04pm.

Present: Commissioners Corrigan, Vemula, McCoy, Bellak, Martin-Campbell, Matyas, Wilkinson, Treuter.
Also Present: City Manager Breuckman, City Commission liaison Perry.
Absent: Commissioner Stiffman.

Minutes

PC-2021-1568

Motion by Commissioner McCoy, second by Commissioner Corrigan, that the minutes of Regular Planning Commission meeting held Monday, December 14, 2020, be approved.

Adopted: Yeas: Commissioners McCoy, Corrigan, Martin-Campbell, Bellak, Matyas, Vemula, Wilkinson, Treuter.
Nays: None

Election of Officers for the Pleasant Ridge Planning Commission/Downtown Development Authority

PC-2021-1569

Motion by Commissioner Corrigan, second by Commissioner Bellak, that Tom Treuter be nominated and appointed as Chairman, Tom Wilkinson be nominated and appointed as Vice-Chairman, and Fred McCoy be nominated and appointed as Secretary to the Pleasant Ridge Planning Commission/Downtown Development Authority.

Adopted: Yeas: Commissioners McCoy, Corrigan, Martin-Campbell, Bellak, Matyas, Vemula, Wilkinson, Treuter.
Nays: None

Master Plan Discussion

Breuckman outlined the current master plan and some of the suggested updates. Updates include demographics, detailing potential mixed-use development and senior housing.

PC-2021-1570

Motion by Commissioner Wilkinson, second by Commissioner Corrigan, that that the Pleasant Ridge Planning Commission affirm the continued validity of the current Pleasant Ridge Master Plan, and the



City of Pleasant Ridge

James Breuckman, City Manager

From: Jim Breuckman, City Manager
To: Planning Commission
Date: April 22, 2021
Re: Marijuana Establishment Regulation

Overview

It is possible that the City may have to confront marijuana business regulation soon. In this case, the Planning Commission will be called upon to consider zoning ordinance amendments. I would like to discuss an approach we can take with you so that we are prepared to quickly call for a public hearing for ordinance amendments.

Background

It is possible that the City may be considering a citizen-initiated ballot initiative in November that would allow for marijuana businesses in Pleasant Ridge if approved by the voters. This would require the City to be prepared with zoning and licensing ordinances to address this possibility.

the statewide ballot initiative regarding recreational marijuana passed in November 2018. The City Commission considered whether to allow marijuana establishments in late 2018 and early 2019 and decided to opt out from allowing any recreational marijuana businesses in Pleasant Ridge. I have attached an agenda summary from January 2019 that outlines the concerns and reasons why that decision was made.

All of the documents relating to that decision making process are available on the City website at: https://cityofpleasantrydge.org/lsvr_document/recreational-marihuana-establishments/

However, state law includes a provision that allows a local ballot initiative to set the number of recreational marijuana establishments that a local community will license. If such an initiative passes the City will have to be ready with licensing and zoning regulations for such uses.

Staff will discuss this item further at the April 26 Planning Commission meeting.

Requested Action

Planning Commission discussion with staff of the above item.

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 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.

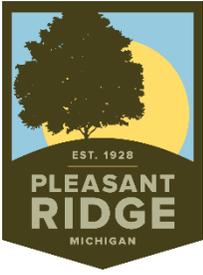
3. If a municipality issues a municipal license pursuant to this section:

(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.



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.