

ZONING TOPIC: MARIHUANA

PREPARING COMMUNITIES FOR NEW LEGISLATION REGARDING

Recreational Marihuana

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Why Examine This Issue?

Recent legislative changes in Michigan's marihuana laws are prompting communities to evaluate whether or not to permit marihuana establishments.

Marihuana laws in Michigan

- Michigan Medical Marihuana Act (MMMA) – 2008
 - Initiated Act 1 of 2008 (ballot measure approved by Michigan voters)
- Medical Marihuana Facility Licensing Act (MMFLA) – 2016
 - Public Acts 281, 282, and 283 of 2016
- Michigan Regulation & Taxation of Marihuana Act (MRTMA) – 2018
 - Initiated Law 1 of 2018 (ballot measure approved by Michigan voters)

Medical Marihuana

Michigan Medical Marihuana Act (MMMA), November 2008

- Physicians are allowed to prescribe marihuana to registered patients upon diagnosis of certain medical conditions.
- Michigan Department of Community Health established an identification card system for qualified patients and caregivers (small-scale growers).
- Allows permitted individuals (caregivers) to grow limited amounts of marihuana for qualifying patients following specific regulations (up to 12 plants per patient, serving up to 5 patients). Certified patients may grow up to 12 plants for their personal use.
- Accommodates small-scale grow operations for medical purposes.
- Treats grow operations like other uses—zoning may not entirely exclude them.
- Dispensaries were not explicitly authorized.

Medical Marihuana

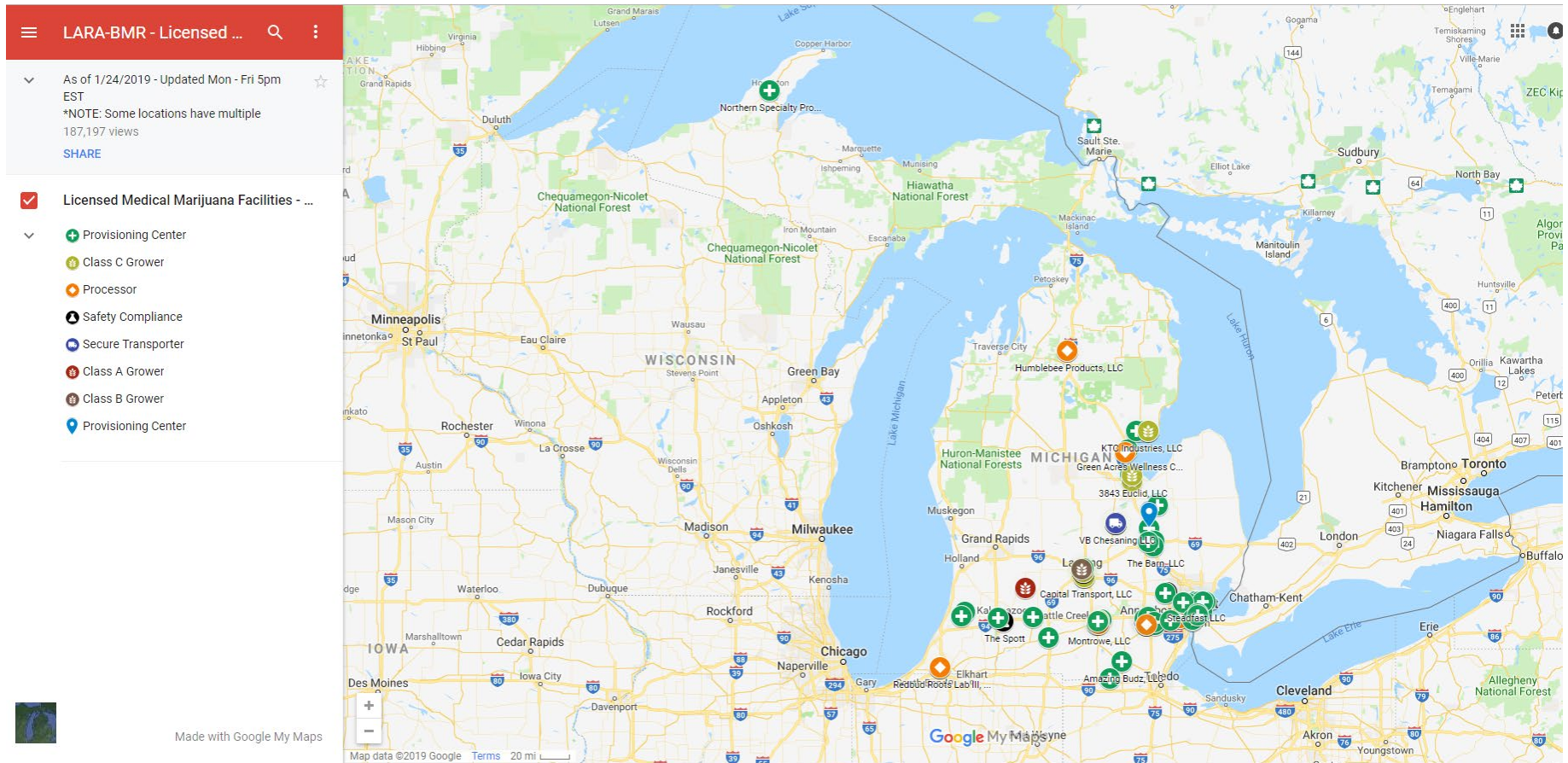
Medical Marihuana Facility Licensing Act (MMFLA)

On September 21, 2016 Governor Synder signed three bills that created the

Medical Marihuana Facility Licensing Act (MMFLA) that **expanded the types of medical marihuana activities** permitted under state law to include:

- Growers (commercial-scale operations)
- Processors (resins, edibles, etc.)
- Transporters (secure transportation)
- Safety Compliance Facilities (testing labs)
- Provisioning Centers (dispensaries)

Licensed MMFLA Facilities in Michigan



- LARA rules effective 12/2018

01/25/19

Recreational Marihuana

Michigan Regulation and Taxation of Marihuana Act (MRTMA)

November 2018 ballot proposal that passed in Michigan that **permits the recreational use and possession of marihuana for people 21 and older and will permit the following facilities following the establishment of licensing rules by the State:**

- Growers (commercial-scale operations)
- Processors (resins, edibles, etc.)
- Transporters (secure transportation)
- Safety Compliance Facilities (testing labs)
- Provisioning Centers (dispensaries)
- Microbusiness (cultivation of less than 150 plants) - New

Municipal Considerations

- **Medical Marihuana:** There is no deadline for municipalities to adopt authorizing ordinances.
 - Municipalities are not required to “opt out” or prohibit marihuana facilities within their boundaries. If municipalities do nothing, marihuana facilities will be unable to be licensed at the state level to operate in their locality (municipalities opting out still must respond to notices of application received from the state).
- **Recreational Marihuana:** Municipalities are required to pass ordinances to prohibit or limit marihuana facilities within their boundaries.

Marihuana is still illegal at the federal level. States that have adopted medical marihuana and recreational marihuana laws have done so on the assumption that the federal government won't enforce its own laws.

Key Differences between Medical Marihuana and Recreational Marihuana Statutes			
	MMFLA	MMMA	MRTMA
Grower Limits			
Class A	500 plant limit	Not addressed	100 plant limit (limited to Michigan residents for first two years)
Class B	1000 plant limit	Not addressed	500 plant limit
Class C	1500 plant limit; stackable	Not addressed	2000 plant limit; not clear if stackable
Microbusiness	Not addressed	Not addressed	150 plant limit (limited to Michigan residents for first two years)
Secure Transporter	Required to move marihuana between licensed facilities; may move money	Not addressed	No specific requirement to use; no authority to transport money
Compliance with Marihuana Tracking Act	Required	Not addressed	No reference or requirement
Plant Resin Separation	Not addressed	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)	Not addressed	2.5 oz. useable marihuana and 12 plants*	Not addressed
Registered Caregiver (five patient limit)	Not addressed	2.5 oz. useable marihuana and 12 plants per patient*	Not addressed

Key Differences between Medical Marihuana and Recreational Marihuana Statutes

	MMFLA	MMMA	MRTMA
Possession Limits			
Other Persons (21 years and older under MRTMA)	Not addressed	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	Not addressed	marihuana establishment
Equipment to grow, process or use marihuana	paraphernalia	Not addressed	marihuana accessories
Business that sells marihuana	provisioning center	Not addressed	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	Not addressed	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	Not addressed	"Unreasonably Impracticable" or conflict with MRTMA or LARA rules

Key Differences between Medical Marihuana and Recreational Marihuana Statutes			
	MMFLA	MMMA	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	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	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	Not addressed	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	Not addressed	10 percent on sales price for marihuana sold or transferred by marihuana retailers and micro businesses

Excerpted from "Recreational Marihuana Proposition," a white paper by Kalamazoo City Attorney Clyde Robinson. The full paper is available at www.mml.org.

Resources

- Michigan Marihuana Regulation

- https://www.michigan.gov/lara/0,4601,7-154-89334_79571---,00.html

- Map of Licensed Facilities

- <https://www.google.com/maps/d/u/0/viewer?mid=1enHhLpd940Do-D3laelB09hVrv1IMRcw&ll=44.4765987344969%2C-85.77523835000005&z=7>

- Michigan Municipal League

- <http://www.mml.org/resources/information/mi-med-marihuana.html>