



# **Recreational Marihuana**

## **December 13, 2018    Westland**

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# And now...the fun begins!



# Michigan Regulation and Taxation of Marihuana Act (MRTMA)



Initiated Law 1 of 2018

MCL 333.27951 through 333.27967

Effective December 6, 2018





# When did it go into effect?

\*10 days after the State Board of Canvassers certified the results of the election (Certified on November 26, 2018)

\*The Legislature can only amend with a 3/4 majority in each house





# Individual Possession



\*Persons 21 years of age may possess, use, consume, purchase, transport, or process 2.5 ounces or less of marihuana of which 15 grams (0.53 oz) may be in the form of marihuana concentrate

\*Within a person's residence, a person may 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



# Individual Possession



A person 21 years of age or older may give away or otherwise transfer, 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



# Individual Possession



\*A person 21 years of age or older may assist another person who is 21 years of age or older in any of the acts just described

\*A person 21 years of age or older may use, possess, and purchase marihuana accessories and distribute or sell marihuana accessories to persons who are 21 years of age or older





# Marihuana Establishments

The new law also contains a great deal of language related to regulation of “Marihuana Establishments”

The language of the MRTMA contains terms that are inconsistent with the MMFLA (Medical Marihuana Facilities Act) which may result in confusion and or litigation

We do not know how this will all be resolved





# MRTMA creates 6 (or 7) types of Marihuana Establishments



## 1) Grower :

Class A – 100 plants

Class B – 500 plants

Class C – 2,000 plants



# MRTMA creates 6 (or 7) types of Marihuana Establishments



- 2) Processor : extracts resin from plant /creates marihuana-infused products
- 3) Secure Transporter : transports marihuana & cash between facilities; but MRTMA does not explicitly require use of licensed transporters



# MRTMA creates 6 (or 7) types of Marihuana Establishments



4) Safety Compliance Facility : tests samples of marihuana for contaminants and its active ingredients

5) Retailer : sells marihuana/marihuana infused products only to registered patients and caregivers



# MRTMA creates 6 (or 7) types of Marihuana Establishments



6) Microbusiness : grow up to 150 plants, process, package and sell marihuana

?) “Any other type of marihuana-related business licensed” by the State: MMFLA facilities







# Municipal Regulation of Commercial Recreational Marihuana

A very important issue is that there can be no municipal regulation on those individual amounts that we have already discussed

This will only apply to the regulation of commercial recreational marihuana



# Municipal Regulation of Commercial Recreational Marihuana



\*Unlike the MMFLA, for which municipalities had to “opt-in”, municipalities must “opt-out” of MRTMA.

\*If opting out, it is recommended to do so by ordinance, not resolution; may completely prohibit or “limit the number of marihuana establishments within (municipal) boundaries”.



# Municipal Regulation of Commercial Recreational Marihuana



If city/village council does not act to opt-out, citizens may petition to initiate an ordinance to “provide for the number of marihuana establishments” or “completely prohibit”.

There is no rush to “opt-out” since the State has one year to assemble regulatory framework so as to begin accepting applications for licensure



# Municipal Regulation of Commercial Recreational Marihuana



However, if the State does not put regulatory framework in place within one year, licensure will, by default under the MRTMA, fall to local municipalities. (We all remember how long it took for the State to pass the MMFLA).

Municipality, not the State, becomes the regulatory body for the period of the license; must issue a license within 90 days of receiving application unless the applicant is not in compliance with local ordinance.





# Municipal Regulation of Commercial Recreational Marihuana



\*Local ordinances may not be “unreasonably impracticable”, or conflict with MRTMA or rules issued under the MRTMA. *(This term almost begs to be litigated.)*

\*May establish reasonable restrictions on public signs related to establishments *(Caution, see Reed v. Town of Gilbert and consult your attorney)*



# Municipal Regulation of Commercial Recreational Marihuana



\*May regulate time, place and manner of operation of establishments  
*(Caution, this is a First Amendment test; speak with your attorney)*  
*(Does this permit local regulation of purity/pricing under the MRTMA?)*

\*May authorize sale of marihuana for consumption in designated areas not accessible to persons under 21 years of age or at special events in limited areas and for a limited time. (Hash Bash? Restaurants selling marihuana-infused food and drink?)



# Municipal Regulation of Commercial Recreational Marihuana



\*May reduce school drug free zone to less than 1000 feet.

\*Violations of ordinances must be a civil infraction and not more than \$500 fine

\*May require local licensure to operate a marihuana establishment



# Municipal Regulation of Commercial Recreational Marihuana



\*May charge an annual fee of not more than \$5000 to defray administrative and enforcements costs associated with establishment

\*May not restrict transportation of marihuana through the community

\*May not prohibit grower, processor and retailer from operating within a single facility or from a location shared with a MMFLA licensee





# Municipal Regulation of Commercial Recreational Marihuana



If the number of applicants for licensure exceed the number of allowed establishments, then municipality must use a “competitive process” to select applicants “who are best suited to operate in compliance” with the MRTMA.



# Municipal Regulation of Commercial Recreational Marihuana



For the first 24 months of applications,

- Only Michigan residents may receive a Class A grower or microbusiness license
- Only MMFLA licensees may receive Class B or Class C grower, processor, secure transporter or retailer license.



# Municipal Response: Preparation of ordinances



- 1) Adopt or Amend any applicable ordinance provisions to bring language up to date due to changes in MRTMA to address refining by methods other than butane
- 2) Amend Zoning Code to define where various types of marijuana establishments may lawfully locate



# Municipal Response: Preparation of ordinances



- 3) Amend General/Police Powers Code
  - a. To permit and perhaps limit number of marihuana establishments in the City/Village
  - b. To create a licensing process complementary to that of the State and MMFLA
  - c. Set forth the responsibilities and obligations of marihuana establishment operators, taking care that such are not “unreasonably impracticable”





# Problems to think about ... and no, we don't have the answers yet



\*Marihuana businesses traffic in a Schedule 1 substance and can be heavily cash-oriented, thereby making facilities an attractive crime target

\*Large amounts of growing/stored marihuana can have an unpleasant odor

\*May have to retire current drug-sniffing dogs on your police force



# Problems to think about ...



Processing can involve use of flammable materials to extract resin from plant

Issues associated with waste disposal; safety, accessibility

Firearms and security pose questions under federal ATF rules



# Problems to think about ...



Should the City/Village determine who gets a license? And if so, how?  
“Compleitive process” (This may invite litigation)

Other public health, safety, & welfare issues? What needs to be in  
your ordinance?



# A few more things to think about...



- Employers may still keep their workplace drug policies in place (do employees know of this provision?)
- The immunities of the Michigan Medical Marihuana Act (MMMA) are still in force





# A few more things to think about...



- The MRTMA does not permit the consumption of 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 on the public way
- A landlord may prohibit the smoking of marihuana but not the possession of marihuana or use of edibles





**“There’s always cash when we sell drugs.  
That’s why we sell drugs.”**

--Nancy Botwin (Character from the Showtime series “Weeds”)



We love where you live.

