



Medical Marijuana in Michigan

WHAT HASN'T CHANGED?

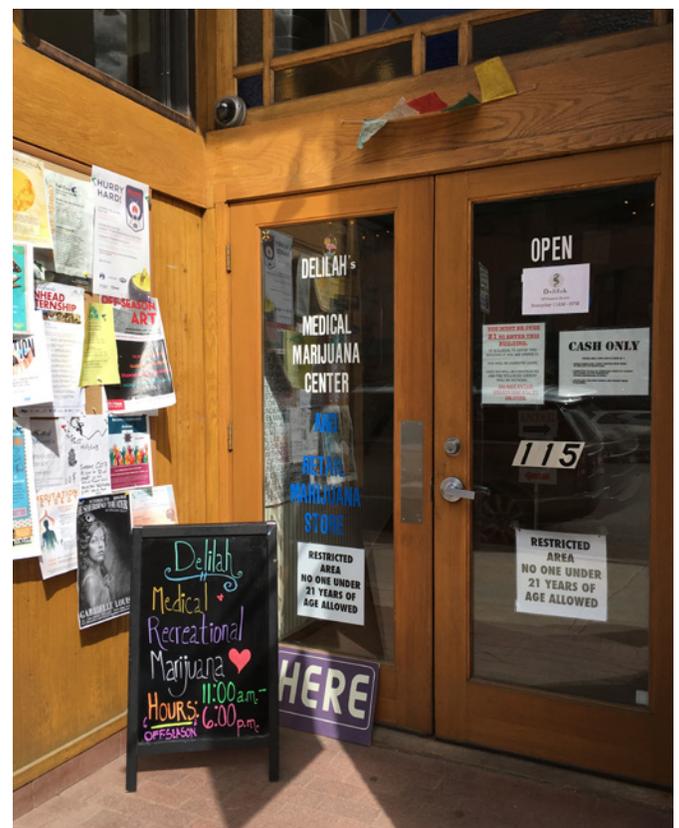
Initiated Law 1 of 2008, the Michigan Medical Marijuana Act, MCL 333.26421 *et seq.*, is unaffected by the new legislation. Patients and qualifying caregivers, as defined by the Act, continue to be protected from “arrest, prosecution, or penalty in any manner, or denial of any right or privilege, including, but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau for medicinal use or possession of marijuana.” Medicinal use means:

The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

Nonetheless, marijuana continues to be classified as a Schedule 1 drug under the Michigan Public Health Code, i.e. one that has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. Federal law continues to construe the possession and/or distribution of marijuana as a crime. The United States Supreme Court has ruled that, under the Constitution's Commerce Clause, Congress may ban the use of cannabis, even where states approve of its use. However, the current Department of Justice targets marijuana distributors only when they violate state and federal law.

WHAT HAS CHANGED?

On September 22, 2016, Governor Snyder signed three new bills that expand the regulatory framework affecting medical marijuana in Michigan. These are Public Acts 281-283 of 2016, which provide, respectively, for the licensing of “marijuana facilities,” as defined therein, for the creation and use of marijuana-infused products (such as “edibles” and oils), and the tracking of medical marijuana from seed to sale. Of these, PA 281, the Medical Marijuana Facilities Licensing Act, MCL 333.27101 *et seq.*, is the one which will be of particular interest to local units of government, both because it provides a range of land uses that the state will be licensing, which a municipality may choose to allow within its jurisdiction, and because there are license fees, and potential tax-sharing revenue, available to municipalities related to those facilities. PA 281 will become effective on December 20, 2016, and it provides that licensing of marijuana facilities, by the State, will begin 360 days after its effective date, i.e. in December of 2017. Thus, municipalities also have about that long to consider what actions they would like to take in response to it, though proprietors will certainly want to be securing sites in anticipation.



MARIJUANA FACILITIES

PA 281 authorizes five kinds of marijuana facilities:

1. Class A-C Growers (500-1,500 plants);
2. Processors;
3. Secure Transporters;
4. Provisioning Centers (commonly called dispensaries); and
5. Safety Compliance Facilities (testing labs).

LOCAL REGULATION

A municipality may adopt an ordinance to authorize one or more of the five types of marijuana facilities within its boundaries and to limit the number of each type of marijuana facility, but shall not impose regulations regarding the purity or pricing of marijuana or interfering or conflicting with statutory regulations for licensing marijuana facilities.

TAXES AND FEES

Act 281 imposes a 3% excise tax on the retail sale of medical marijuana by licensed provisioning centers. This tax goes into a single fund administered by the State Treasury, with 60% being returned to municipalities and counties as follows:

- 25% to municipalities in which a marijuana facility is located;
- 30% to counties in which a marijuana facility is located;
- 5% to counties in which a marijuana facility is located, to be used exclusively to support the county sheriffs.

The “shared funds” to a municipality or county will be allocated in proportion to the number of facilities within its boundaries compared to the total number of facilities in the state, without regard for the size or sales of each facility.

Based upon the estimates of the Senate Fiscal Agency, municipalities in Michigan are expected to receive \$5.3 million annually in revenue from the excise tax, shared in proportion to the relative number of facilities that they have. In addition, the State has indicated its intention to apply the sales tax to the retail sales of medical marijuana.

Municipalities that choose to regulate marijuana facilities are also authorized to charge up to a \$5,000 annual license fee per facility to administer their regulatory program.

POLICY CONSIDERATIONS

Michigan municipalities face a host of policy considerations in response to the new law. The medical marijuana industry is likely to generate a great deal of economic activity. Communities must consider whether any of the newly licensed land uses fit the character of the community, and the values of its residents and other key stakeholders. Are there facilities in your community that might be rehabilitated if they are made available for marijuana facilities, which would otherwise not? Do you, as a community, feel that medical marijuana products should be readily accessible, at retail, to qualifying patients and caregivers in your community? Do you want to share in the excise tax revenue that the state will collect?

At the same time, there are unanswered questions regarding the interrelationship between the new law and the Michigan Zoning Enabling Act. Under the latter’s exclusionary zoning prohibitions, will municipalities have a duty to provide for marijuana facilities if there is a demonstrated need? Regardless, if those facilities are to be allowed, where do they belong?

We are recommending that communities have an informed policy discussion regarding the approach they will take to the regulation of land uses associated with the new medical marijuana distribution system. Our planners are considering thoughtful ways for communities to address this new legislation and will assist you with that process. Contact Greg Elliott, AICP, or your McKenna planner for more information.

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