

New Medical Marijuana Laws Q&A

By Catherine Mullhaupt, MTA Staff Attorney

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Note: This guidance has been written for townships, but the statutes discussed apply to cities, villages and townships in the same way. A county cannot adopt an ordinance allowing any of the facilities authorized by these statutes.

Q. Has marijuana been legalized?

A. No. Marijuana has not been legalized in Michigan. It is still an illegal drug under federal and state law.

The [Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421, et seq.](#), allows qualified patients and registered caregivers identified with those patients to use marijuana for specified medical conditions. That law did not legalize marijuana, but it prohibits prosecuting or penalizing qualified patients and registered caregivers who use marijuana for those purposes as long as they comply with the MMMA.

Subsequent court opinions clarified that only those persons who were qualified patients and registered caregivers (and persons who met the requirements of Section 8 of the MMMA, even if not registered with the state) could exchange or use medical marijuana. A third party--a person providing or selling marijuana to a qualified patient who is not that person's registered caregiver--does not have the protection from prosecution under the MMMA. Any arrangement outside of the patient-caregiver relationship, including "dispensaries," does not comply with the MMMA and is illegal.

Q. Don't you know how to spell "marijuana"?

A. Yes, but for some reason, that is how the word is spelled in the Michigan Medical Marihuana Act and in the Medical Marihuana Facilities Licensing Act and Medical Marihuana Licensing Act. But everyone else, including the courts, uses the more common spelling with the "j".

Q. What is legal today?

A. Only a patient-caregiver relationship conducted in compliance with the Michigan Medical Marihuana Act is legal today. Note that the MMMA was recently amended by PA 283 of 2016 to include certain marijuana-infused products, or "edibles," and to clarify what plants and parts of plants are allowed within the limits imposed by the Act.

Q. What is illegal today?

A. Anything that is not authorized by the Michigan Medical Marihuana Act is illegal today.

Q. So how come we see medical marijuana dispensaries all over?

A. Because the local jurisdiction has chosen to not enforce state or federal laws that make marijuana illegal outside of the patient-caregiver relationship protected by the MMMA. In most cases, the city, village or township has "decriminalized" certain uses of marijuana and/or chosen to not utilize enforcement resources for small amounts or certain levels of activity. But that is a forbearance, not legalization.

Q. Wait a minute—didn't a law just get passed that makes marijuana dispensaries legal?

A. No. Marijuana "dispensaries" or grow operations or any other activity involved with marijuana that does not comply with the Michigan Medical Marihuana Act are still unlawful.

Q. No, it did—the Medical Marihuana Facilities Licensing Act. The Governor signed it!

A. Yes. But the [Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101, et seq.](#), does not take effect until December 20, 2016.

And the MMFLA includes an additional delay in implementation of 360 days to enable the Michigan Department of Licensing and Regulatory Affairs (LARA) to establish the licensing system required by the Act. *A person cannot apply to the state for a license of any kind under the MMFLA until December 15, 2017.*

And no one can apply to the state for a license of any kind under the MMFLA UNLESS the township has already adopted an ordinance that authorizes that type of facility.

So even after December 15, 2017, any marijuana provisioning center or other activity involving marijuana that does not comply with the Michigan Medical Marihuana Act *will still be illegal*, unless that township has adopted an ordinance that authorizes that type of facility under the Medical Marihuana Facilities Licensing Act.

(Note that the word "dispensary" has been commonly used to refer to a variety of medical marijuana activities, but the new laws do not refer to "dispensaries." Under the MMFLA, "provisioning centers" are what many people would describe as a "dispensary.")

Q. What if an applicant comes to our meeting now and demands that we adopt an ordinance or approve their license?

If a township is approached by an applicant stating that the board must adopt an ordinance, then that applicant has misunderstood the law.

A township cannot be required to adopt an ordinance to allow facilities authorized under the MMFLA now or at any time.

If a township is approached by an applicant demanding that the township consider their application or stating that the board must authorize their facility:

- Before December 15, 2017, no township can be required to consider an application. Even if a township adopts an ordinance to allow the facilities authorized by the MMFLA, the licensing system is not in place, and no applications will be considered by LARA until December 15, 2017.
- After December 15, 2017, if a township has not adopted an ordinance allowing any of the facilities authorized by the MMFLA, then the township is not required to consider any applications for MMFLA licenses, because no licenses will be approved by LARA.
- After December 15, 2017, if a township has adopted an ordinance allowing any of the facilities authorized by the MMFLA, and the application involves one of the type(s) of facilities that the township allows in its ordinance, and the cap on the number of that type of facility imposed by the township's ordinance has not been reached, then the township will be asked to provide information to LARA as part of the licensing approval process.

Q. What do we need to do if we do NOT want any of the facilities authorized under the new Medical Marihuana Facilities Licensing Act in our township (or city or village)?

A. Do nothing. Literally. Do. Nothing. Period.

You do not need to adopt an ordinance to prohibit the types of facilities authorized under the MMFLA. They are already prohibited by state and federal law, unless the township adopts an ordinance to allow them ("opt in") under the MMFLA.

You would only adopt an ordinance dealing with the types of facilities authorized under the MMFLA if the township WANTS to allow one or more type of facilities authorized under the MMFLA.

A township cannot be required to adopt an ordinance allowing the facilities authorized by the MMFLA.

You do not have to consider any application for any facilities currently because no application will be considered by the state until December 15, 2017. And even after that date, if the township has not adopted an ordinance allowing that type of facility, that application will not be considered by the state.

Note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What do we need to do if we DO want any of the facilities authorized under the new Medical Marihuana Facilities Licensing Act in our township (or city or village)?

A. Any time before December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township could adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marihuana Facilities Licensing Act. ***Note that adopting such an ordinance before December 15, 2017 does NOT make a facility lawful!***

December 15, 2017 is the earliest an applicant may submit an application to the Medical Marihuana Licensing Board (MMLB) for consideration.

Any time after December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township would adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marihuana Facilities Licensing Act.

The ordinance should specify which type(s) of facilities—and how many of each type—the township is choosing to allow. If a township "opts in" with an ordinance that does not specify a cap on the type(s) or number of each, applications for any of the types and any number of a type within the township will be considered by LARA.

But a license from the state is still required before a specific facility is authorized to legally operate under the MMFLA. The township board's adoption of the ordinance allowing medical marijuana facilities does not automatically make all facilities lawful.

Also note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What types of facilities may be authorized under the new Medical Marihuana Facilities Licensing Act if a township allows them by ordinance?

A. The following types of medical marijuana facilities are authorized by the MMFLA. One or more types may be allowed by a township ordinance:

Class A, B, or C Grower—“A licensee that is a commercial entity located in this State that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.”

Class A: 500 plants -- Class B: 1,000 plants -- Class C: 1,500 plants

Processor—“A licensee that is a commercial entity located in this State that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana infused product for sale and transfer in packaged form to a provisioning center.”

Provisioning Center—“A licensee that is a commercial entity located in this State that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through their registered primary caregivers. The term includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the marihuana registration process of the Department of Licensing and Regulation in accordance with the Michigan Medical Marihuana Act will not be a provisioning center for purposes of the Licensing Act.”

Secure Transporter—“A licensee that is a commercial entity located in this State that stores marihuana and transports it between marihuana facilities for a fee.”

Safety Compliance Facility—“A licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, returns the test results, and may return the marihuana to the facility.”

Q. Why would a township consider allowing one or more of the types of facilities authorized under the new Medical Marihuana Facilities Licensing Act?

A. Some communities accept medical marijuana use for compassionate reasons, and believe that the Medical Marihuana Facilities Licensing Act will better facilitate the spirit and the actual practice of the patient-caregiver relationship authorized by the statewide initiative that created the Medical Marihuana Act in 2008.

Other communities may be responding to a real demand or broad support locally for providing medical marijuana facilities and business opportunities.

And it may be a revenue source:

- **Annual administrative fee:** Once a township adopts an ordinance allowing one or more of the types of facilities authorized by the Medical Marihuana Facilities Licensing Act, the township may in that ordinance require “an annual, nonrefundable fee of not more than \$5,000.00 on a licensee to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality.” (“Nonrefundable” as in not returned if the application is not approved by the state or if a license is not renewed.)
- **Property tax revenues:** These facilities are businesses and may actually be quite profitable. And in some communities medical marijuana facilities will utilize commercial properties that are currently vacant or even off the tax roll due to foreclosure.

- **State shared revenues, as appropriated:** A state tax will be imposed on each provisioning center at the rate of 3% of the provisioning center's gross retail receipts, which will go to the state Medical Marihuana Excise Fund. The money in the fund will be allocated, *upon appropriation*, to the state, counties and municipalities in which a marihuana facility is located, with "25% to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality."

Q. How will the state manage this licensing system and track compliance?

A. The MMFLA requires licensees to "adopt and use a third-party inventory control and tracking system that is capable of interfacing with the statewide monitoring system to allow the licensee to enter or access information in the statewide monitoring system as required under this act and rules." Yes, there already are such third-party software systems commercially available.

The [Marihuana Tracking Act, Public 282 of 2016, MCL 333.27901, et seq.](#), enacted at the same time as the MMFLA, requires LARA to establish a confidential statewide internet-based monitoring system for integrated tracking, inventory, and verification. It will be a system "established, implemented, and maintained directly or indirectly by the department [LARA] that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:

- (i) Verifying registry identification cards.
- (ii) Tracking marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.
- (iii) Verifying in a commercially reasonable time that a transfer will not exceed the limit that the registered qualifying patient or registered primary caregiver is authorized to receive under section 4 of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26424."

Q. The information on who is a qualified patient or a registered caregiver is currently confidential and exempt from public disclosure under the MMMA. How will the license process be treated—is that information going to be confidential?

A. The MMFLA requires that:

"Except as otherwise provided in this act, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board [MMFL Board] are subject to the freedom of information act, ..., except for the following:

- (i) Unless presented during a public hearing or requested by the licensee or applicant who is the sole subject of the data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the board related to background investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants.
- (ii) All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board that have been received from another jurisdiction or local, state, or federal agency under a promise of confidentiality or if the release of the information is otherwise barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement.
- (iii) All information in the statewide monitoring system."

So the Medical Marihuana Facility Licensing Board's records **are** subject to the FOIA and public disclosure, with some specific exceptions.

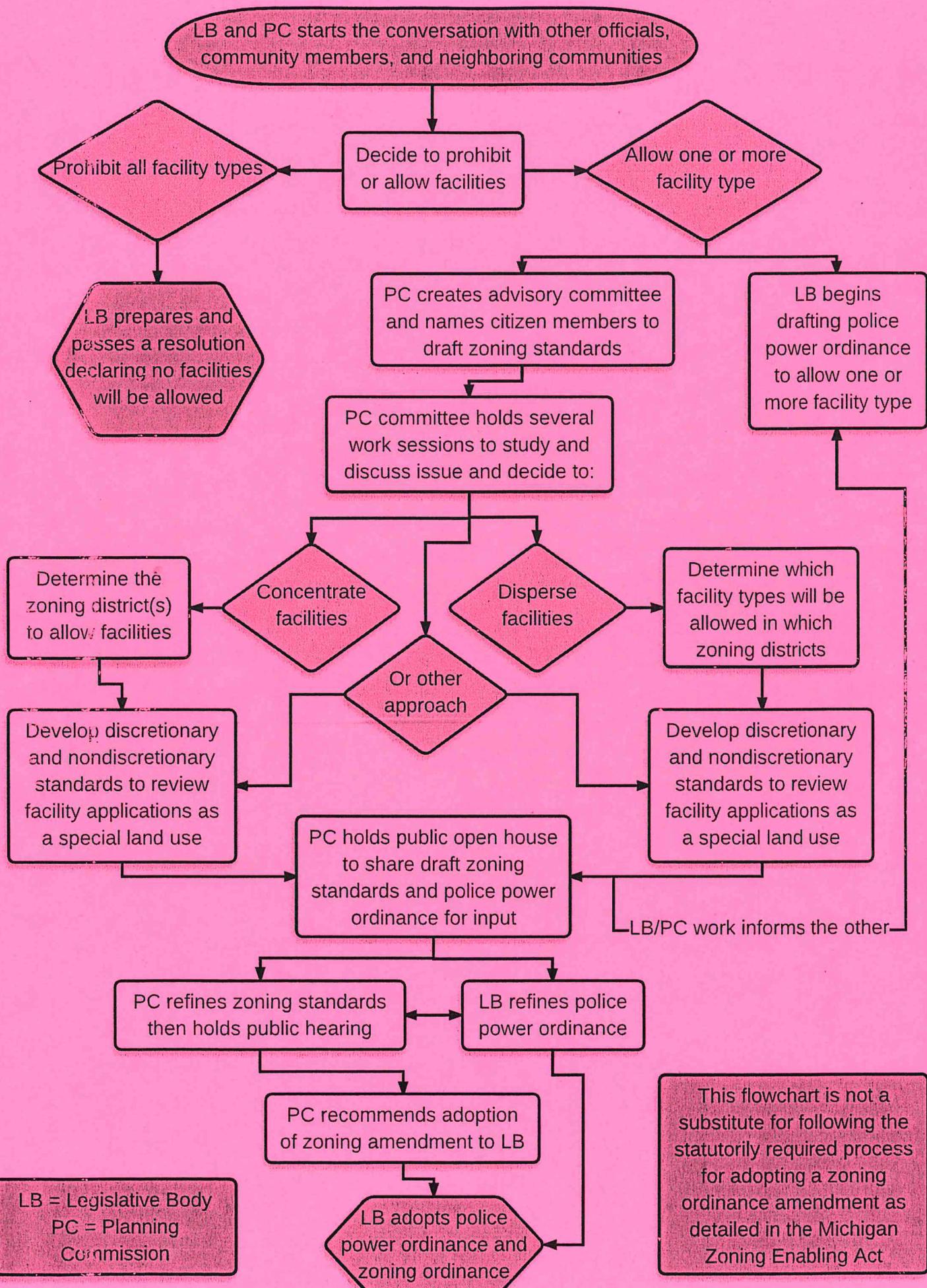
Here are the records that will be **exempt** from disclosure:

- The data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the board *related to background investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants* is **exempt from disclosure, UNLESS:**
 1. That data, information, record, etc. was presented during a public hearing (of the MMFLB), in which case it is NOT exempt from disclosure.
OR
 2. The licensee or applicant who is the sole subject of that data, information, record, etc. requests it, in which case it may be released to that licensee or applicant.
- All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the MMLFB that have been received from another jurisdiction or local, state, or federal agency (including a township) is **exempt from disclosure BUT ONLY IF:**
 1. The other jurisdiction or local, state, or federal agency (including a township) supplied it to the MMFLB *under a promise of confidentiality.*
OR
 2. The release of the information is otherwise *barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement.*
- All information in the statewide monitoring system is **exempt from disclosure.**

The Marihuana Tracking Act states that "the information in the system is confidential and is exempt from disclosure under the freedom of information act. Information in the system may be disclosed for purposes of enforcing this act; the Michigan medical marihuana act; and the medical marihuana facilities licensing act."

For more information on the three Michigan laws governing medical marijuana use, see the statutes online (click on the linked titles of the Acts in this fact sheet) or review the [Senate Fiscal Analysis of September 23, 2016](#), which outlines all the provisions of the three bills as they were enacted.

This fact sheet is not intended as a legal opinion, and a township should consult with its attorney before taking any steps to adopt an ordinance under these statutes, and for specific legal guidance on how the Acts interact with the individual township's other ordinances, including a zoning ordinance.



RESOLUTION REGARDING THE MEDICAL MARIHUANA FACILITIES LICENSING ACT

At a regular meeting of the *[council/board]* of the *[municipality]*, *[county]*, Michigan, held in *[location]* on *[date]*, at *[time]* *[a.m./p.m.]*.

PRESENT: _____

ABSENT: _____

The following preamble and resolution was offered by *[name]* and supported by *[name]*:

WHEREAS the State of Michigan enacted the Medical Marihuana Facilities Licensing Act, Mich. Comp. Laws § 333.27101, et seq. (2016), to license and regulate certain commercial entities identified in the Act as growers, processors, provisioning centers, secure transporters, and safety compliance facilities; and

WHEREAS the Medical Marihuana Facilities Licensing Act provides that a marihuana facility shall not operate in a municipality unless the municipality has adopted an ordinance that authorizes that type of facility; and

WHEREAS, being duly informed and advised, the *[council/board]* has decided it shall NOT adopt an ordinance to authorize the location of any medical marihuana facilities within the *[municipality]* as provided by the Medical Marihuana Facilities Licensing Act;

NOW THEREFORE BE IT RESOLVED that the *[council/board]* of the *[municipality]* hereby makes a record of its decision to NOT adopt an ordinance to authorize within the *[municipality]* the location of any medical marihuana facilities as identified in the Medical Marihuana Facilities Licensing Act, Mich. Comp. Laws § 333.27101, et seq. (2016).

AYES:

NAYES:

ABSTAINED:

ADOPTED/REJECTED

CERTIFICATION

I, the undersigned *[title of office]* of the *[municipality]*, *[county]* County, Michigan, certify that the foregoing is a true and complete copy of a resolution adopted by the *[council/board]* of the *[name of municipality]* at a regular meeting held on *[date]*.