


**"AND JUSTICE FOR ALL"**

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"I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion."

— Thomas Jefferson

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**Regulating Medical Marijuana Facilities: A Workshop for Local Government**

February 2017

**MICHIGAN STATE UNIVERSITY | Extension**

**Today's Presenter**

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### What We Will Cover

- A. The Regulatory Context
- B. Introduction to the New Laws
- C. Application to Zoning
- D. Sample Ordinances
- E. Implementation
- F. Next Steps
- G. Questions Remain
- H. Additional Resources

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### A. The Regulatory Context


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### Handouts

**PLANNING & ZONING NEWS**

- PowerPoint handout
- *Planning and Zoning News* – Sept. 2016 Issue
- Medical Marijuana Facilities Licensing Act (PA 281 of 2016)
- "Health Effects of Cannabis & Cannabinoids: Committee's Conclusions." *National Academies*. 1/17.
- Sample Ordinances; Sample Resolution
- Sample Process Flowchart; Municipalities Taking Action
- *Spartanville* Exercise handouts
- 'To do' list
- Evaluation; Civil Rights sheet (please return)

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### Federal Controlled Substances Act of 1970

The manufacture, distribution, or possession of marijuana is a felony.


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### Disclaimer

*The information presented in this program is for educational purposes only and should not be interpreted as legal advice. Local officials are strongly encouraged to consult with a municipal attorney who is highly experienced in Michigan planning and zoning law.*

**Michigan State University does not endorse or oppose medical marijuana.**

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### Schedule 1 Drug

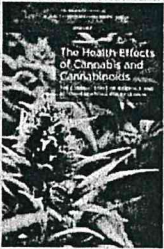
- High potential for abuse
- No currently accepted medical use in treatment
- Lack of accepted safety for use under medical supervision



**Recent Medical Study**

National Academies of Sciences, Engineering and Medicine study published in January 2017 found:

- There is "conclusive or substantial" evidence that marijuana is an effective treatment for chronic pain, chemotherapy-induced nausea, and multiple sclerosis spasticity symptoms.




<http://nationalacademies.org/CannabisHealthEffects>

*www.nationalacademies.org/  
Cannabis Health Effects*

**No state marijuana law has been invalidated under federal preemption.**

- Decriminalizing use and possession under state law does not bar federal law enforcement.
- States cannot be compelled to enforce federal law.




*Unclear what the new Administration will do!*

**Recent Medical Study**

Also warns of dangers from use:

- increased risk of car crashes;
- lower birth weight babies;
- problems with learning, memory, attention; and more.


It also found a strong connection between frequent cannabis use and the development of schizophrenia and other psychoses.



<http://nationalacademies.org/CannabisHealthEffects>

**Tribal Government and Marijuana**

- Oct. 2014 U.S. DOJ Memo: Policy Statement Regarding Marijuana Issues in Indian Country
- Extended "Cole Memo" policy to marijuana activities on tribal lands
- Recognizes sovereignty; Government to government relations




**2008 Michigan Medical Marijuana Act (MMA)**

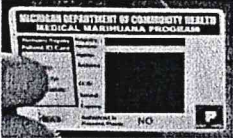
"A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act."

MCL 333.26424

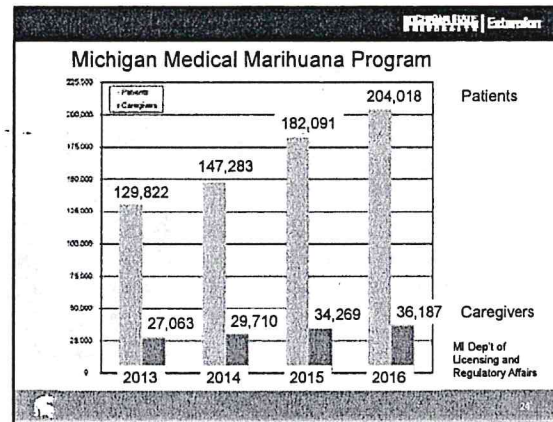


**2008 Michigan Medical Marihuana Act**

Qualifying patient - a person who has been diagnosed by a physician as having a debilitating medical condition.



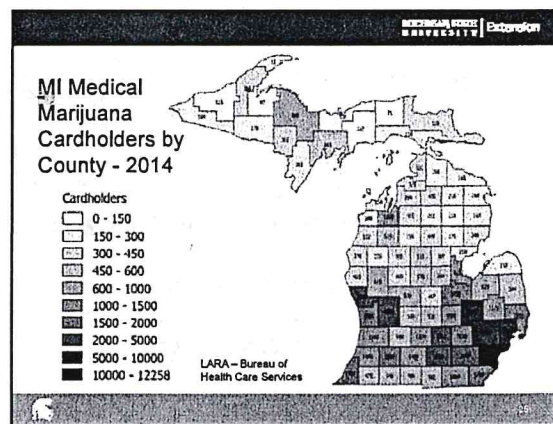
MCL 333.26423



**2008 Michigan Medical Marihuana Act**

A qualifying patient can:

- Possess up to 2.5 ounces of usable marihuana
- Cultivate 12 marihuana plants kept in an enclosed, locked facility
  - If the qualifying patient has not specified a primary caregiver



Branch - 486  
17.16/1000 - 548  
Culpeper - 1483  
57.200 - 592

**2008 Michigan Medical Marihuana Act**

For each of up to 5 qualifying patients, a registered primary caregiver may:

- Possess up to 2.5 ounces of usable marihuana
- Cultivate 12 marihuana plants kept in an enclosed, locked facility

**Challenges Under MMMA**

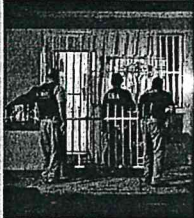
- Access - delayed or poor harvest
- Excess - disposal
- Facilities -
  - compassion care clubs and clinics
  - dispensaries
  - cooperative grow facilities



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### Uneven Regulation and Enforcement

- Moratoria
- Prohibiting as illegal uses under zoning
- Closing dispensaries
- Ignoring or acting only on complaints



Pixabay.com

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### *People v. Bylsma* (2012)

Holding: Cooperative grow operations not allowed under MMMA.

Each patient's plants must be grown and maintained in a separate, enclosed, locked facility only accessible to one person at a time (the patient or the patient's caregiver).

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### Uneven Regulation and Enforcement

- Welcoming dispensaries as retail use
- Treating caregivers as home occupation or commercial use
- Allowing cooperative grows as agricultural or industrial use



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### *State of Michigan v. McQueen* (2013)


Holding: Consignment model dispensaries not protected under MMMA.

Operators deemed to possess the marijuana stored in the dispensary's lockers and held to be engaged in patient-to-patient sales not authorized by MMMA.

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### Lack of Direction

- State legislature
  - Voter initiated law
  - Can only be amended by  $\frac{3}{4}$  vote of both houses
- MI Department of Community Health
  - Limited role



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### *People v. Carruthers* (2013)

Holding: Edible containing THC extract from marijuana resin is not "usable marihuana" under the MMMA.

A substance must contain plant material to be considered "usable" under Section 4 of the MMMA.



***Ter Beek v. City of Wyoming (2014)***

Holding: Communities cannot enact ordinances banning medical marijuana within their borders.

City ordinance is preempted by MMMA, i.e., cannot prohibit what a state statute permits.

**B. Introduction to the New Laws**

PA 281, 282, and 283 of 2016

**EXERCISE**

Turn to one of your neighbors and talk through some of the pros and cons of allowing medical marijuana facilities in your community.

Consider the varied perspectives on this issue.

**PA 281 of 2016 - Medical Marijuana Facilities Licensing Act**

- Creates a licensing and regulatory structure for five types of medical marijuana facilities
- Provides immunity from criminal and civil prosecution, penalties, and sanctions under state law or local ordinances
- Does not change existing immunity for qualifying patients and registered caregivers

**Questions?**


**PA 282 of 2016 - Marijuana Tracking Act**



- Requires statewide internet-based system for seed-to-sale tracking of commercial marijuana and products
- Requires licensees to interface with statewide system via secure third-party inventory system that tracks all activity



**PA 283 of 2016 - MI Medical Marijuana Act amendment**



- Amends the MMMA to regulate the manufacture and transport of marijuana-infused products
- Adds extraction and marijuana-infused products to definition of medical use of marijuana

**Processor License**

Commercial entity that purchases marijuana from a grower and extracts the resin or creates a marijuana-infused product for sale in packaged form to a provisioning center



- MCL 333.27102(q)

Phoenix New Times

**Grower License**

Commercial entity that cultivates, dries, trims, or cures and packages marijuana for sale






- MCL 333.27102(f)

wfmz.com  
inc.com

**Processor – What are Similar Land Uses?**

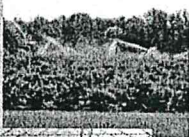

- In your community, what zoning districts allow similar types of land uses?

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**Grower – What are Similar Land Uses?**


- Statute requires **growers** be in areas zoned for industrial or agricultural uses.
- In your community, which zoning districts does that include?

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**Provisioning Center License**

Commercial entity that purchases marijuana from a grower or processor and sells or provides marijuana to registered qualifying patients, directly or through the patients' registered primary caregivers.



- MCL 333.27102(r)

indhereof.com



## Kurt Schindler

**CBS Denver**

**Cannabaceutical™ Facts**

**CC** Issued On January 1, 2011

**YOUR LOVED  
HEART** **Blue Cream**

**Extra Slip**

Safety Screen	
Anti-radiation	✓
Antibacterial	✓
Anti-fungal	✓
Anti-viral	✓
Anti-inflammatory	✓
Anti-oxidant	✓
Anti-cancer	✓
Anti-aging	✓
Anti-wrinkle	✓
Anti-brown spots	✓
Anti-redness	✓
Anti-itch	✓
Anti-dryness	✓
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**CNN Money**

## USDA

Kurt Schindl

## WMU



André-Pierre du Plessi




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### Local Regulation

Prohibits a marijuana facility in a municipality that has not adopted an ordinance authorizing that facility type

- **To say no, do nothing**
  - Statute does not require action
- **Or, adopt a resolution or policy statement saying 'No'**
  - Makes your intent clear



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### Setting the Fee

To defray administrative and enforcement costs associated with facilities. Can include:

- Attorney costs
- Legal defense
- Consultant costs
- Planner/ZA costs
- Cost of office space
- Meeting costs
- Noticing, mailing, publishing costs
- Cost of keeping files
- Mileage costs
- Printing costs
- Enforcement costs
- Other?

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### Sample Resolution

- 4 paragraphs
- References MMFLA
- Municipality has decided it shall NOT adopt an ordinance to authorize any facilities
- Municipality hereby makes a record of its decision to prohibit any facilities

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### Questions?

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### Local Regulation

A municipality may adopt an ordinance:

- Authorizing 1 or more facility types
- Limiting the number of each type
- Establishing an annual license fee not exceeding \$5,000




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### C. Application to Zoning



**Source of Zoning Authority**


- Derived from state's sovereign police power to protect health, safety and welfare
- The state chooses to delegate some of that authority to local units of government through enabling acts.



*Constitution of the State of Michigan*

**Partial Preemption**


- MMLFA is closer to partial preemption in that the state is setting the rules by which medical marijuana facilities can be allowed in the jurisdiction.



University of Florida Levin College of Law

**Michigan Zoning Enabling Act**

- Michigan grants all local general purpose governments the ability to independently develop and adopt zoning ordinances.
- Cities, villages, townships and counties: MZEA, PA 110 of 2006, as amended, MCL 125.3101 *et seq.*



**Zoning vs. Other Police Power Regs**

- Generally, three types of ordinances:
  - Police power ordinance
  - Zoning ordinance
  - Budget or appropriations ordinance
- Cities, villages and townships have general police power ordinance authority
- Counties do not

**State and Federal Preemption**


The state legislature modifies, from time to time, local governments' authority to regulate certain uses:

<ul style="list-style-type: none"> <li>Manufactured homes</li> <li>Animal agriculture regulations</li> <li>Foster care homes</li> <li>Group homes</li> <li>Daycare centers</li> <li>Public schools</li> <li>Wetlands</li> <li>Mineral resources</li> </ul>	<ul style="list-style-type: none"> <li>Home fine arts and crafts instruction</li> <li>Sanitary landfills</li> <li>Hazardous waste facilities</li> <li>Gun clubs</li> <li>Prisons</li> <li>Oil and gas wells</li> <li>And more ...</li> </ul>
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[http://msue.ans.msu.edu/topic/planning/planning\\_and\\_zoning](http://msue.ans.msu.edu/topic/planning/planning_and_zoning)

**Police Power Regulations**

- Zoning is a valid application of a community's police power.
- The right to adopt regulations reasonably designed to protect public health, safety and welfare
  - Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926)
  - Alderton v. City of Saginaw*, 367 Mich. 28 (1962)



David Louton



**Zoning vs. Other Police Power Regs**

- Do not mix elements of each together.
  - Adoption of zoning has more due process and property rights protections
- Attempting to regulate land use with a separate police power ordinance may not be upheld in court
  - Square Lake Condo Assn v. Bloomfield Twp*, 437 Mich 310 (1991)
  - Forest Hill Energy-Fowler Farms, LLC v. Township of Bengal*, Mich App (unpublished, No. 319134, Dec. 4, 2014)


**In a City, Village, or Township with Zoning**

- Decide to prohibit or allow:
  - Adopt resolution stating position to prohibit (STOP HERE); or
  - Adopt police power ordinance to allow, then...
- Prepare and adopt zoning ordinance amendment regulating the location of facilities and establishing standards for approval

*See Sample process flowchart...*

**What the MMFLA Allows**

- A municipality may adopt an ordinance authorizing 1 or more facility types
  - Separate police power ordinance
- Limiting the number of each type of facility

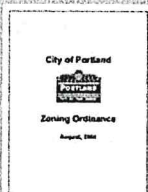


**Townships Subject to County Zoning**

- "Municipality" means a city, township, or village in MMFLA
- Only a city, village, or township can pass a police power ordinance to authorize facilities.
- A county with zoning may be asked by a municipality to amend zoning to allow facilities.


**What the MMFLA Allows**

- A municipality may adopt other ordinances relating to marihuana facilities, including zoning (Sec. 205(1)).
  - Cannot regulate purity or pricing or conflict with statutory regulations for facility licensing
  - Recall, partial preemption framework



**Application of County Zoning**

- Townships are subject to county zoning, if county zoning exists.
- Cities/villages are not subject to county zoning.
- Township zoning supersedes county zoning, if both exist.





**In a Township with County Zoning**

1. **Township decides to prohibit or allow:**
  - Adopts resolution stating position to prohibit (STOP HERE); or
  - Adopts police power ordinance to allow, then...
2. **Discusses with County which zoning districts to allow facilities and standards**
  - Handled as a special land use where one of the standards for approval is location in a township that has adopted an ordinance authorizing such facilities.

*See Sample process flowchart...*

**What the MMFLA Requires**

- Provide the state with copies of:
  - Police power ordinance authorizing the facility
  - Zoning regulations that apply
  - Any ordinance violations by the applicant
- Municipality's failure to submit the information can't be used against applicant
- Applicant information is exempt under FOIA

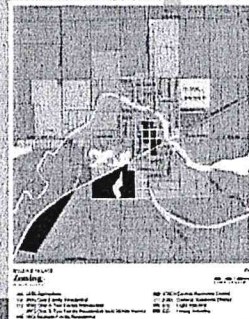
**OR, In a Township with County Zoning**

1. **Township decides to prohibit or allow:**
  - Adopts resolution stating position to prohibit (STOP HERE); or
  - Adopts police power ordinance to allow, but...
2. **County refuses to amend zoning to regulate the location of facilities**
  - Township can not have zoning regulations in a police power ordinance (*Forest Hill, LLC. v. Twp of Bengal, Mich App*)
  - Would not be able to regulate placement of facilities – they are simply allowed.

*Talk to your municipal attorney!*

**Location and Nature of Facilities**

- **Growers** are only allowed in areas zoned for industrial or agricultural uses
- Or unzoned areas that otherwise meet the municipality's police power ordinance on the subject



**In a City or Village without Zoning**

- Decide to prohibit or allow:
  - Adopt resolution clearing stating prohibition position (STOP HERE); or
  - Adopt police power ordinance to allow, but...
- Not likely to be able to regulate placement of facilities.
  - County zoning does not apply

*Talk to your municipal attorney!*

**Nature of Licenses**

- Sec. 409 makes a license a revocable privilege
- Requires approval of MMLB and municipality before a license is transferred, sold, or purchased
- A license is not a property right – Implications for nonconformities






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### Nonconforming Uses, Structures

- Presumably, facilities must be allowed to continue if a regulation is changed; as long as it is operated in the same manner and to the same extent as it was when it became nonconforming.
- May not amortize (sunset) nonconformities under zoning
  - *De Mull v. City of Lowell*, 368 Mich. 242 (1962)



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## SPARTYVILLE

### Exercise – Spartyville Goes ‘Green’

Challenge

- What views matter?
- Which districts to allow?
- What are the standards?

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### Nonconforming Uses, Structures


- How about a facility that operates for some time after a regulation is changed, but then closes?
- Must a new facility of the same type be allowed to open in that same location?
- ‘Yes’ but would have to conform to new standards, otherwise not permitted

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## SPARTYVILLE

Spartyville Zoning Map



- Read the scenario and background information.
- As a small group, talk through questions 1-3.
- Time: 20 mins.

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## Questions?

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## D. Sample Ordinances

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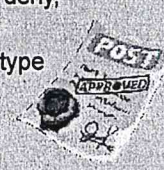
**Sample Police Power Ordinance**

- Purpose – health, safety, welfare
- Definitions – primarily facility types
- Authorizes facility type(s) and numbers
- Authorizes fee
- Creates process – requires state license first then allows applicant to proceed to zoning approvals
- Provides renewal process

**Facility Licenses**

**Medical Marijuana Licensing Board (MMLB):**

- Exclusive authority to grant, deny, suspend, or revoke licenses
- May not limit the number or type of licenses granted



**Sample Zoning Ordinance Amendments**

- Adds facility type definitions
- Identifies zoning districts for each type
- Adds special use standards generally and for each type
- Addresses nonconformities

**Facility Licenses**

**Licensee eligibility criteria include:**

- Criminal backgrounds prohibited
- Residency requirements until June 30, 2018
- Exclusions from holding elective office and specified government employment

**E. Implementation**


**MMLB Oversees Facilities**

- Investigating applicants and employees
- Inspecting overall safety, security, and integrity of operations
- Ensuring marijuana-infused products meet health and safety standards
- Conducting periodic audits
- Certifying revenue
- Receiving public complaints




**Enforcement**

- A facility and all property in it are subject to examination at any time by state or local police
- Warrantless searches, without notice, authorized by MMLB through its investigators, agents, auditors, or the state police



Reuters/Jonathan Ernst


**State Excise Fund**



**New 3% tax on gross retail receipts of provisioning centers**

PA 281 creates medical marijuana excise fund in state treasury for taxes, fees, fines, and charges

**Enforcement**



MMLB may suspend, revoke, or restrict a license and require the removal of a licensee or a licensee's employee for a violation of the act, rules, the marijuana tracking act, or any local ordinance

**State Excise Fund**

- 25% to municipalities with facilities
- 30% to counties with facilities
- 5% to counties with facilities to support county sheriff and not to replace other funds
- 30% to the state's general fund\*
- 5% to the state police
- 5% for local law enforcement training

**Local Enforcement**

- Municipalities may enforce own local ordinances as usual
  - misdemeanors
  - civil infractions
- Municipalities cannot take any state license actions, i.e., suspend, revoke, or restrict a facility license



**Michigan's medical marijuana market is projected to generate \$711.4 million in annual retail sales and 10,000 new jobs**

Based on Senate Fiscal Analysis and "The Economic Impact of a Strong Regulatory Framework for Medical Marijuana in Michigan" by Dr. Gary Wolfram, Hillsdale College



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**Municipalities with facilities will share an estimated \$5.3 million in annual revenue**

Medical Marijuana Excise Fund Earmark	Percentage	Amount
First Responder Presumed Coverage Fund (GF/GP prior to 10/1/2017)	30%	\$6,402,600
Counties	30%	6,402,600
Municipalities	25%	5,335,500
Sheriffs	5%	1,067,100
MCOLES	5%	1,067,100
State Police	5%	1,067,100
<b>TOTAL</b>	<b>100%</b>	<b>\$21,342,000</b>

Senate Fiscal Analysis

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**So, what to do?**

- Do not underestimate this as an *'unimportant'* topic in your community.
- As a group of local officials, you have to make **THE** right decision for **YOUR** community.
  - There is no correct answer that applies to all
  - Have to be prepared to live with the outcomes of the decision


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**Questions?**

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**So, what to do?**

- ***Start the conversation in your community!***
- ***Do not do this in a vacuum!***
- ***Failure to act decisively may have undesired results!***



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**F. Next Steps**

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**Engage the Public**

- ***It is important to hear from all perspectives on the issue:***
  - Medical
  - Law enforcement
  - Caregivers
  - Cardholders
  - Youth advocates
  - Downtown property owners
  - Prospective facility operators
  - Who else?




*www.proton.org  
review public participation  
plan*

**HEAR THE PROS AND CONS**

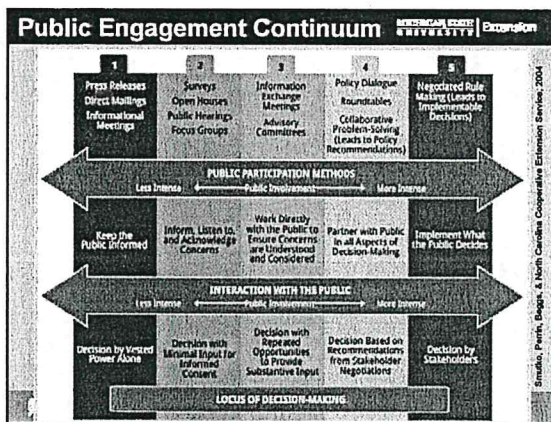
- Engage diverse interests to hear and assemble the pros and cons of the issue in your community
  - Will need to determine what is fact vs. fiction
  - Not everyone will agree, but this is what public policy is all about
- Eventually, will need to make a decision

**FACILITATE THE CONVERSATION**

- Will need to select a process and format to hear the issues and allow for dialogue while being able to engage in constructive conversation.



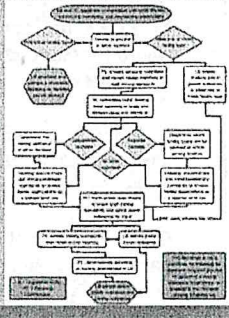
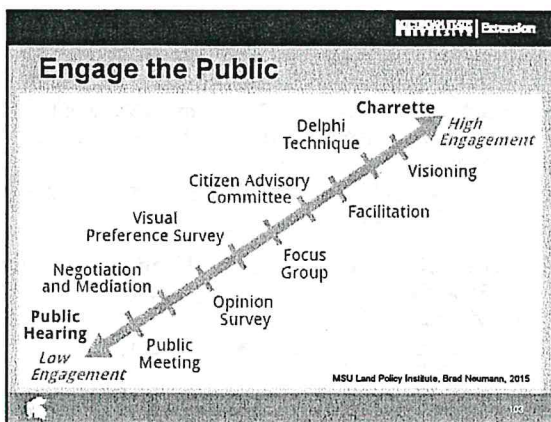
Rachel R. Smolinski



**How to proceed?**

- Based on community and neighbor feedback, decide to prohibit or allow.
- Time is a critical dimension:
  - 'No' now and 'Yes' later vs. 'Yes' now and 'No' later

See sample flowchart

**G. Questions Remain**



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### Additional questions will be raised

- Can a community change its mind?
- If so, at what point?
- Is there a right of petition or referendum on the action of the community to allow or not allow the facilities?
- When would this occur?

*Talk to your municipal attorney!*

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### Still, start the conversation!


State licensing starts  
in December 2017

DECEMBER  
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### Will recreational marijuana become legal?

- New laws look similar to those in states where recreational marijuana is legal
  - Will that be Michigan's future?
- If 10% of MI population partakes at levels similar to patients today, revenues could be much larger.
- Communities that allow now could have a foot in the door.




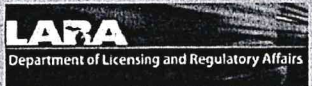
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### H. Additional Resources

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### Rules Not Yet Written

LARA responsible for rulemaking necessary to implement, administer, and enforce the act, including operating regulations for each license category generally.



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### Additional Resources

- **White Paper: A Local Government View of the Michigan Medical Marihuana Act** by Gerald A. Fisher. October 5, 2010.
  - <https://www.mml.org/pdf/fisher-med-marihuana-white-paper8-5-10.pdf>
- **Fact Sheet and Q&A - Medical Marihuana Facilities Licensing Act** by the Michigan Municipal League. Oct. 2016
  - [http://www.mml.org/resources/publications/one\\_pager\\_s/onepagers.htm](http://www.mml.org/resources/publications/one_pager_s/onepagers.htm)



**Additional Resources**

- **New Medical Marijuana Laws Q&A** by the *Michigan Townships Association*. Oct. 16, 2017
  - [https://www.michigantownships.org/downloads/medical\\_marijuana\\_qa.pdf](https://www.michigantownships.org/downloads/medical_marijuana_qa.pdf)
- **Clearing the haze on medical marijuana.** *Township Focus – Michigan Townships Association*. Feb. 2017

**Thank you**

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**What We Covered**

- The Regulatory Context
- Introduction to the New Laws
- Application to Zoning
- Sample Ordinances
- Implementation
- Next Steps
- Questions Remain
- Additional Resources

**“AND JUSTICE FOR ALL”**

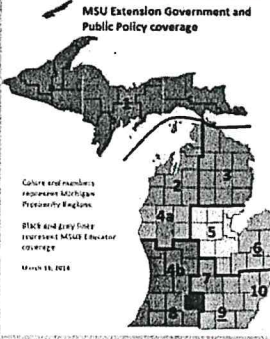
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Culture and numbers represent Michigan's 17 counties. Black and gray tones represent MSU Extension coverage. March 15, 2018



