

MEMORANDUM

To: Lexington Township Planning Commission
From: Michael Deem, Senior Planner
Date: January 11, 2017
Subject: **Public Act 281 Medical Marihuana Facilities Licensing Act**

On September 21, 2016, Governor Snyder signed three bills legalizing and regulating medical marijuana edibles and regulating the growth, processing, transport, and provisioning of medical marijuana. It is our opinion that the potential impacts of this legislation warrant discussion and a determination should be made about these uses.

Public Act 281 creates the Medical Marihuana Facilities Licensing Act to license and regulate the growth, processing, transport and provisioning of medical marijuana.

The State will issue licenses for five types of uses:

- i. **A grower:** A commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.
- ii. **A processor:** 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.
- iii. **A secure transporter:** A commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.
- iv. **A provisioning center (“dispensary”):** 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 the patients’ registered primary caregivers.
- v. **A safety compliance facility:** A safety compliance facility license authorizes the facility to receive marihuana from, test marihuana for, and return marihuana to only a marihuana facility.

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

Taxes and Fees

A tax is imposed on each provisioning center at the rate of 3% of the provisioning center’s gross retail receipts. Distribution of this tax is as follows:

- 25% to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality.

- 30% to counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county.
- 5% to counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county to support county Sheriffs
- 30% to the state, for deposit in the first responder presumed coverage fund
- 5% to the Michigan commission on law enforcement standards for training local law enforcement officers.
- 5% to the department of state police

A municipal ordinance may establish 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.

Public Act 281 of 2016 went into effect on December 20, 2016. The State of Michigan will not begin issuing state operating licenses until December 15, 2017, giving the Township time to decide if these uses are appropriate for the community.

Considerations

To help facilitate discussion on an ordinance to regulate Medical Marihuana Facilities, we have prepared a few questions for the Planning Commission to consider.

1. Which facilities does the Township wish to authorize or prohibit?

Per Public Act 281, a municipality **does not** have to allow any of the five types of Medical Marihuana Facilities in their community. If the Township decides that these uses are not appropriate, there are two options. The first is to do nothing. Public Act 281 states that a municipality may adopt an ordinance to authorize one or more types of marihuana facilities within its boundaries and to limit the number of each type of marihuana facility. The concern with this approach is that an argument may be made that Medical Marihuana Facilities are similar to other approved uses in the Township. For instance, a grower is similar to an agriculture use or a provision center is similar to retail. An applicant could appeal to the Zoning Board of Appeals for an interpretation on these uses.

Should the Township wish to prohibit Medical Marihuana Facilities, we recommend that the zoning ordinance is amended to clearly state this fact to remove any potential confusion.

Potential Language

Pursuant to Section 205(1) of Public Act 281, the Township prohibits the following state-licensed medical marihuana facilities from operating within the municipality:

1. Growers
2. Processors
3. Secure Transporter
4. Provisioning Center
5. Safety Compliance Facilities

Should the Township find that Medical Marihuana Facilities are appropriate for the community, it is important to remember that each type of facility has their own impacts that have not been fully researched. Some communities have considered authorizing only Secure Transporters and Safety Compliance Facilities. Others have considered only authorizing Provisioning Centers.

Potential Language

Pursuant to Section 205(1) of Public Act 281, the Township authorizes the following state-licensed medical marihuana facilities for operation within the municipality:

1. Growers
2. Processors
3. Secure Transporter
4. Provisioning Center
5. Safety Compliance Facilities

2. What should the location requirements be?

Many communities that are considering authorizing Medical Marihuana Facilities are limiting the uses to their Industrial zoning districts. The Township may wish to consider allowing Medical Marihuana Facilities in other zoning districts that are similar in nature to the proposed use. For instance, Provisioning Centers are retail in nature and may be appropriate in the C- Commercial District. Again, these potential uses are still new and research is currently being conducted on the long term impact they have on a community.

Potential Language

1. Growers, Processors, Secure Transporter, and Safety Compliance Facilities must be located in the following zone within the Township: I- Industrial District
2. Provisioning Centers must be located in the following zones within the Township: C, Commercial District and I-Industrial District.
3. No permit may be issued to any applicant on a parcel of land the lot line of which is fewer than 500 feet from the lot line of any non-residential, state-licensed, child care facility, elementary school, secondary school, public park, or other Medical Marihuana Facility.
4. The Applicant location shall meet all applicable written and duly promulgated standards of the Township and, prior to opening, shall demonstrate to the Township that it meets the rules and regulations promulgated by the Medical Marihuana Licensing Board.
5. The Facility location shall conform to all standards of the zoning district in which it is located.
6. No person shall reside in or permit any person to reside in or on the premises of a Permit Holder.

3. What should the Operational Requirements be?

Public Act 281 allows a local community to place restrictions on Medical Marihuana Facilities. The Township should continue to utilizing the restrictions they have on Medical Marihuana Facilities to help protect the health, safety, and welfare of the community. Specially, the Planning Commission should consider the hours of operation, security, and environmental safety of each facility.

Potential Language

1. **Hours of Operation:** No Permit Holder may operate after 10:00 pm or before 7:00 am.

2. **Security:** Security cameras shall be installed, maintained and approved by the Township Police Chief. All security cameras shall have at least 120 concurrent hours of digitally recorded documentation. The security cameras shall be in operation 24 hours a day, seven days a week, and shall be set to maintain the record of the prior 120 hours of continuous operation. An alarm system is required that is operated and monitored by a recognized security company.
3. **Waste Water:** All Permit Holders must ensure that any water emanating from the Permitted Facility meets or exceeds all applicable state and local environmental standards.
4. **Inspections authorized:** All Permit Holders shall be subject to period inspection, and shall make their Facilities available to any and all authorized state and local building inspectors, environmental inspectors, and law enforcement personnel.
5. Drive-through facilities shall be prohibited.
6. A conspicuous sign(s) shall be posted stating that “No loitering is permitted” on such property.
7. Exterior lighting shall be required for security purposes, but in accordance with the provisions of this chapter.

4. Proposed Application Procedure

The application process is key to ensuring that the Township is permitting a quality facility. Medical Marihuana Facilities should be considered a Special Land Use in the zoning districts that they are authorized to be located in. In addition to following the Township’s standards for a Special Land Use, an application must also comply with Public Act 281.

Potential Language

1. If approved for a Special Use, and after payment of a fee to be determined by the Township Board, Medical Marijuana Facilities shall be issued an Operating License. The Operating License must be renewed annually, through the payment of a fee to be determined by the Township Board and through compliance with the requirements of the State of Michigan and this Ordinance as demonstrated through an inspection by the Building Official or his or her designee. The Operating License and State Medical Marihuana Facility License must be displayed in plain view clearly visible to Township officials and Medical Marihuana Licensing Board authorized agents.
2. Within 30 days after Special Use Approval, the Township shall provide the following to the Medical Marijuana Licensing Board:
 - a) A copy of this Ordinance
 - b) A copy of any zoning regulations that apply to the Applicant Facility
 - c) A description of any violation of this Ordinance or applicable zoning regulations committed by the applicant, but only if those violations related to activities licensed under Public Act 281 of 2016.
3. No person who has opened or operated a facility doing business or purporting to do business under this Section without first obtaining a Special Use Permit and a State Operating License shall be eligible for an Operating License under this Ordinance.

4. Licensed medical marijuana caregivers authorized by the State of Michigan under Initiated Law 1 of 2008 shall not be required to receive Special Use Approval to conduct legal activities in any zoning district, but must comply will all applicable Township ordinances, including those governing odor, and all applicable State laws.
5. Permit issued under this Section may be revoked by the Township Board for any of the following:
 - a) Knowing fraudulent or material misrepresentation contained in the Application
 - b) A pattern of knowing violations of this Section, after reasonable notice and opportunity to cure
 - c) A loss after final determination of the State Medical Marihuana Licensing Board of the Permit Holder's State Medical Marihuana Facility License
 - d) Failure or refusal to pay the Annual Fee.

5. Consideration to the Fee Schedule

Outside of the Zoning Ordinance, the Township should add "Medical Marijuana Operating License" to its fee schedule, and should charge the State-permitted maximum (\$5,000) for the initial license and for each annual renewal. The Township may also consider adding a "Medical Marijuana Operating License Inspection Fee" as well to cover the costs of the required annual inspection.