

MEDICAL MARIJUANA



MICHIGAN TOWNSHIPS ASSOCIATION
ON THE ROAD 2017

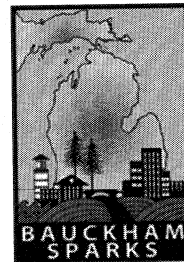
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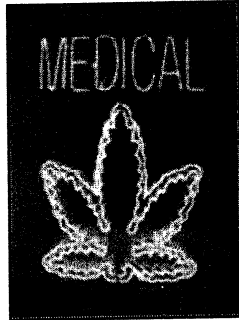
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Michigan Medical Marihuana Act (2008)

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Michigan Medical Marihuana Act

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- Michigan Medical Marihuana Act – November 2008
 - MCL 333.26421, et seq.
 - Voter Initiated (Law 2008-1)
 - Provides:
 - ✦ Physician approved use of marihuana by registered patients with certain, debilitating medical conditions.
 - ✦ Permits individuals to grow limited amounts of marihuana for qualifying patients.
 - ✦ Authorizes patient and/or caregiver growing, use of medical marijuana within prescribed limits (remains unchanged).
 - ✦ Protects those using marijuana within the parameters of the law from arrest and prosecution under state or local law.

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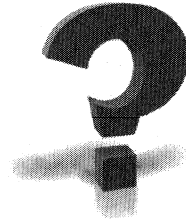
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Michigan Medical Marihuana Act

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- Michigan Medical Marihuana Act – November 2008

- Issues arising over last 8 years
 - ✦ How do qualifying patients and/or caregivers get marijuana?
 - ✦ What if a patient could not grow marijuana or could not find a caregiver?
 - ✦ How did law enforcement know if a patient/caregiver was operating in compliance with law?
 - ✦ How did municipalities enforce zoning, building and safety codes against caregivers if they didn't know where they were?



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Michigan Medical Marihuana Act

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- Michigan Medical Marihuana Act – November 2008

- Issues arising over last 8 years.
 - ✦ What about dispensaries?
 - Are they illegal? If so, then why are they allowed in some places?
 - What does a municipality have to do if one is established?
 - Why did some cities give licenses to dispensaries?
 - ✦ What about compassion clubs?
 - ✦ What about joint grow facilities?
 - ✦ What about a testing facility?



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Medical Marihuana Case Law

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- Further defining extent/scope of medical marijuana use
 - *Ter Beek v City of Wyoming*, 495 Mich 1 (2014)
 - ✦ City's zoning ordinance amendment that prohibited any land use that was in violation of federal law was in conflict with MMMA and was invalid.
 - ✦ Cannot prohibit what MMMA allows.
 - ✦ Footnote: *TerBeek* does not hold that the MMMA forecloses all local regulation of marihuana.



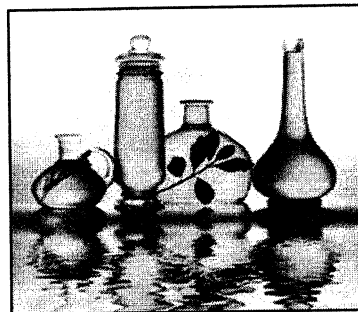
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2016 Amendments to MMMA

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- Amendments by PA 283 to include reference to marihuana equivalents (edibles, oils, etc.)
- Amendments to MMMA effective 12/20/16.



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MMMA 2017

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- MMMA still in effect – has not been replaced.
- Qualifying patient can still grow marijuana for his/her own use.
- Primary caregivers can still grow and provide marijuana to their registered patients.
- Interrelationship between licensed facilities (MMFLA) and patients/caregivers.

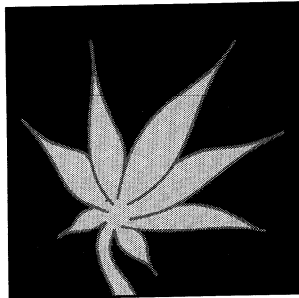


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PA 281, 282 and 283 of 2016

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New Laws - 2016

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- PA 281 of 2016 - Medical Marihuana Facilities Licensing Act (effective 12/20/16).
 - Authorizes 5 types of facilities: grow facilities, processor, transporters, provisioning centers (dispensary), safety testing facility.
 - Establishes a Medical Marihuana Licensing Board (MMLB) – 5 member.
 - Limits cross ownership of different types of facilities.
 - Requires seed to sale tracking (MCL 333.27207).
 - Imposes taxes and fees on medical marihuana facilities.

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New Laws - 2016

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- PA 281 of 2016 - Medical Marihuana Facilities Licensing Act (effective 12/20/16).
 - Grower – cultivates, dries, trims or cures and packages marijuana (MCL 333.27501).
 - License levels: 500/1,000/1,500 plants.
 - Only in agricultural or industrial zoning districts or unzoned areas.
 - Processor – Extracts resin or creates packaged marijuana infused products (MCL 333.27502).
 - May only transfer to provisioning centers.

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New Laws - 2016

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- PA 281 of 2016 - Medical Marihuana Facilities Licensing Act (effective 12/20/16).
 - Safety Compliance Facility – provides safety and quality testing of marijuana (MCL 333.27505)
 - May receive marihuana from primary caregiver or any facility, but may only transfer to a marihuana facility. No cross ownership.
 - Provisioning Center – Acquires marihuana from grow or processing facility - for sale or transfer to qualifying patient or primary caregiver (MCL 333.27504).
 - Secure Transporter – provides secure transport between licensed facilities (MCL 333.27503).
 - No cross ownership.

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New Laws - 2016

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- PA 281 of 2016 - Medical Marihuana Facilities Licensing Act (effective 12/20/16).
 - Impose fees and taxes on facilities (MCL 333.27601, *et seq*).
 - Three percent (3%) tax on provisioning centers gross receipts to be allocated:
 - 25% to local municipalities in proportion to number of facilities in the municipality;
 - 30% to counties in proportion to number of facilities in county;
 - 5% to county sheriffs in proportion to number of facilities in the county;
 - 30% to the State;
 - 5% to MCOLES; and
 - 5% to Michigan State Police.

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New Laws - 2016

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- PA 281 of 2016 –Medical Marihuana Facilities Licensing Act (effective 12/20/16).
- Impose fees and taxes on facilities (MCL 333.27601, *et seq*).
 - License application fee to be set by LARA (MCL 333.27401).
 - Annual regulatory assessment on each facility established by LARA to cover administrative costs.
 - Annual licensing fee by local municipality of *up to \$5,000*, cover cost of administration and enforcement [MCL 333.27205(3)].



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New Laws - 2016

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- PA 281 of 2016 –Medical Marihuana Facilities Licensing Act (effective 12/20/16).
- Grants power to municipality to regulate (MCL 333.27205).
 - Township authorizes facilities.
 - Limit to number and types of facilities.
 - Police power ordinances.
 - Zoning ordinance.
- OPT IN– Township has to affirmatively adopt an ordinance to allow medical marihuana facilities.
 - Municipality may choose not to allow any facilities OR may choose to allow one or more types.
 - Township may specify numbers of facilities permitted.
 - MTA Sample Opt In Ordinance.

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New Laws - 2016

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- **PA 281 of 2016 – PA 281 of 2016 - Medical Marihuana Facilities Licensing Act (effective 12/20/16).**
 - Applications for licenses accepted by LARA beginning 360 days after effective date of Act (ie., 360 days after 12/20/16 = 12/15/17).
 - If a municipality receives notice from applicant that they have submitted an application for a license to MMLB, municipality shall provide the following information within 90 days:
 - Copy of the local ordinance authorizing the marihuana facility.
 - Copy of any zoning regulations that apply to the facility.
 - Description of any violations by applicant related to these ordinances.
 - Draft Bill may change process.
 - If municipality fails to respond, failure cannot be held against applicant.

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New Laws - 2016

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- **MMLB grants the license, not the Township.**
 - ✦ Township authorizes the number and type of facilities.
 - ✦ Avoid 10 potential licensees going through the zoning approval process (ie. special use) if only three licenses authorized. Use conditional authorization by the Township.
 - ✦ If an applicant gets a license from the State, then final local zoning/building approval.
- Township does not get to pick who will get state license; all applicants apply to MMLB; MMLB issues license.

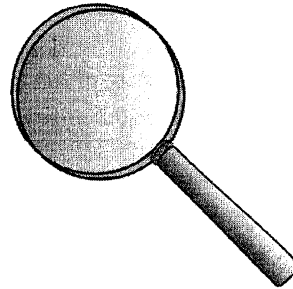
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New Laws - 2016

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- PA 281 of 2016 Medical Marihuana Facilities Licensing Act (effective 12/20/16).
- FOIA – information obtained from applicant as part of application is exempt from FOIA.



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Local response to PA 281 of 2016

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- What does a municipality do (if anything)?
 - Begin discussions at municipal level – does the municipality want to allow any facilities?
 - If interested, determine what types of facilities the municipality might want and where they should be located.
 - ✦ Consult local law enforcement.
 - ✦ Consult Health Department.
 - ✦ Consider public meeting or survey to gauge citizen input.
 - Consider ordinances/regulations – consult Planning Commission.
 - Be aware that a municipality has to “OPT IN” to allow facilities to locate within their boundaries.
 - Make sure township staff and officials understand opt in.

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Local response to PA 281 of 2016

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- **Things to consider:**
 - ✦ Which types of facilities in your municipality (if any)?
 - Is there a need for a facility?
 - Are there appropriate areas for these land uses?
 - Are such land uses consistent with the master plan for the municipality?
 - ✦ How many of each facility is appropriate or is there a need for?
 - ✦ Locational criteria:
 - Growers in agricultural or industrial zoning districts.
 - Provisioning centers – commercial districts?
 - Safety testing facilities – office or industrial?
 - Required separation distances?
 - Permitted use/special use.
 - County zoning - hole in the donut.

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Local response to PA 281 of 2016

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- **What does a municipality do (if anything)?**
 - Can a facility be required to get special use approval? ie., regulate hours of operation, etc. (due process considerations – arbitrary and capricious?)
 - If municipality does not have zoning, consider adopting police power ordinances to regulate impact (nuisance, noise, etc.)
 - If municipality wants facilities, adopt an ordinance describing types and numbers of facilities allowed. Adopt companion zoning ordinance and police power regulations. (MTA sample ordinance.)

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Local response to PA 281 of 2016

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• What does a municipality do (if anything)?

- If municipality does not want facilities – DO NOTHING
 - ✦ Check existing ordinances to make sure there is nothing that authorizes any type of medical marihuana facility (except qualifying patient/primary caregiver).
 - ✦ Some municipalities are adopting a resolution that stating that the Township does not want any facilities – not required but very clear statement (MTA sample).
- If any facilities have been illegally established over time, the municipality may want to move to shut them down (avoid non conforming argument).
- Consider what other ordinances may need to be revised to deal with facilities (noise, nuisance, etc.).

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Local response to PA 281 of 2016

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• What does a municipality do (if anything)?

- Keep in mind – the facility should fit the township, not the other way around That's why it is OPT IN.
 - ✦ A township is not obligated to allow a marihuana facility in a particular zoning district or location – specify in the Zoning Ordinance what works for the TOWNSHIP – not for a property owner/potential licensee.
 - ✦ A township is not obligated to rezone property to allow a marihuana facility at a particular location – but can if it makes sense and complies with the Master Plan.
 - ✦ A township is not obligated to revise spacing requirements or change setbacks, etc., to accommodate one proposed licensee's property.

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Local response to PA 281 of 2016

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• What does a municipality do (if anything)?

- Keep in mind – the facility should fit the township, not the other way around That's why it is OPT IN.
- Do not get pressured by a potential licensee into changing ordinances to accommodate a particular situation (ie., primary caregiver wants to become licensed grower or provisioning center and already has facility at a specific location, so township has to rezone) – think broader in terms of the best fit for the Township as a whole



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Local response to PA 281 of 2016

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• Information picked up along the way:

- ✦ Many municipalities that do not want any facilities are adopting resolutions to clarify that intent (NONE.)
- ✦ Anecdotal information that medical marihuana facilities will be highly financed, corporate sponsored, franchised, etc.
- ✦ Anecdotal information that developers are targeting areas within 20 miles of a university . . . hubs may develop.
- ✦ Anecdotal information that if local municipality has decriminalized use of marihuana the area may be receptive to facilities (City of Kalamazoo/Portage.)

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Local response to PA 281 of 2016

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- Information picked up along the way:
 - ✦ Anecdotal information that the push will be for co-location for grow, processing and provisioning centers.
 - ✦ Anecdotal information that license application fee will be \$10,000 to \$30,000.
 - ✦ Anecdotal information that growers want inside facilities.
 - ✦ Shut down dispensaries now? (Why are there even ANY dispensaries operating at this point? Illegal until state license, based on local municipal approval.)
 - ✦ LARA regulations are being developed now.

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New Laws - 2016

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- PA 282 (effective 12/20/16) – Marihuana Tracking Act (MTA):
 - Requires establishment of statewide internet system that will:
 - Verify medical marihuana ID cards;
 - Track marihuana products in commercial trade by licensee including transferee, date, quantity, price;
 - Determine if transfer exceeds permissible MMMA limits;
 - Monitoring of seed to sale tracking; and
 - Receive and integrate information from third party inventory control and tracking systems.
 - Such system will be available to state, law enforcement and licensees to enforce MMMA and MMFLA.
 - Exempt from FOIA production.

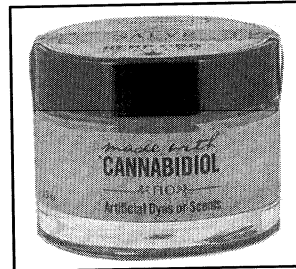
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New Laws - 2016

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- PA 283 (effective 12/20/16) – Edibles.
 - Adds the process of extraction to as medical use.
 - Allows use of marihuana infused products intended for human consumptions.
 - Allows topical use of marihuana infused products as a medical use of marijuana.
 - Amends MMMA to allow use of edibles and topical products.



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Additional Considerations

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Additional Considerations

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• Federal Law

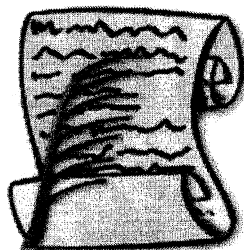
- Marihuana is a Schedule I controlled substance under federal law. 21 USC §812(c).
 - ✦ A Schedule I controlled substance “lacks any accepted medical use.”
 - ✦ Federal law prohibits manufacture, distribution and possession of marihuana.
- Cole Memorandum (2013) – allocate federal prosecution resources to federal priorities, ie., will not federally prosecute if someone is in compliance with state medical marihuana law.
- Impact of new U.S. Attorney (Jeff Sessions) unknown.
 - ✦ Some indicators of more rigorous treatment of marihuana.

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MTA Sample Ordinance and Resolution

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MTA Sample OPT IN Ordinance

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- **MTA Sample OPT IN ordinance – police power ordinance.**
 - Authorizes numbers and types of facilities that will be allowed.
 - Provides for annual fee for renewal/continuation of township approval.
 - Clarifies no vested rights and/or that ordinance may be rescinded.
 - Requires compliance with zoning and all applicable regulations/codes.
 - Streamlined – can be more detailed if your township wants.
 - Follow required ordinance adoption procedure, including publication of notice of ordinance adoption.
 - Consider other police power regulations – noise, nuisance, etc.

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MTA Sample OPT IN Ordinance

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- **DON'T FORGET TO ADOPT ZONING ORDINANCE AMENDMENTS TOO**
 - If the Township has its own zoning ordinance, we recommend adopting zoning ordinance amendments to address the following issues:
 - ✦ Specify zoning districts for authorized marihuana facilities;
 - ✦ Specify if the marihuana facilities are permitted or special land uses; and
 - ✦ If special land use, include appropriate review standards ;
 - Will co-location of facilities be allowed.
 - Issue of County Zoning – work with County Planning Commission.
 - MMFLA – growers in industrial, agricultural or unzoned areas only.

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MTA Sample OPT OUT Resolution

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- MTA has also provided sample OPT OUT resolution.
 - Not required under MMFLA – but many townships are adopting the resolution in order to “take the pressure off”.
 - Many potential licensees are lobbying municipalities hard to adopt authorizing ordinances.
 - Opt Out Resolution provides clarity to potential licensees of a Township’s decision to say NO.
 - Township can forward OPT OUT Resolution to LARA for clarity purposes.

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To sum it up. . . .

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- MMMA will still allow qualifying patients and caregivers scheme.
- A Township does not have to do anything if it does not want a facility.
 - Can adopt OPT OUT resolution, but not required.
- If the Township wants facilities, needs to adopt an ordinance stating types and numbers (zoning too).
- Heavy push is on from developers to line up locations.
- Illegal establishment of facility under different use – counseling center, etc.
- Watch for administrative rules.

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