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CITY COUNCIL COMMITTEE OF THE WHOLE AGENDA
NOVEMBER 20, 2017 @ 5:30 PM

1. CALL TO ORDER; ROLL CALL

2. APPROVAL OF THE AGENDA

3. CITIZEN DISCUSSION FOR ITEMS NOT ON THE AGENDA

   IF YOU WISH TO ADDRESS AN AGENDA ITEM, PUBLIC COMMENT FOR EACH ITEM WILL OCCUR AFTER THE INITIAL INFORMATION IS SHARED ON THE MATTER AND INITIAL DELIBERATIONS BY THE PUBLIC BODY. PUBLIC COMMENT WILL OCCUR BEFORE A VOTE ON THE AGENDA ITEM OCCURS

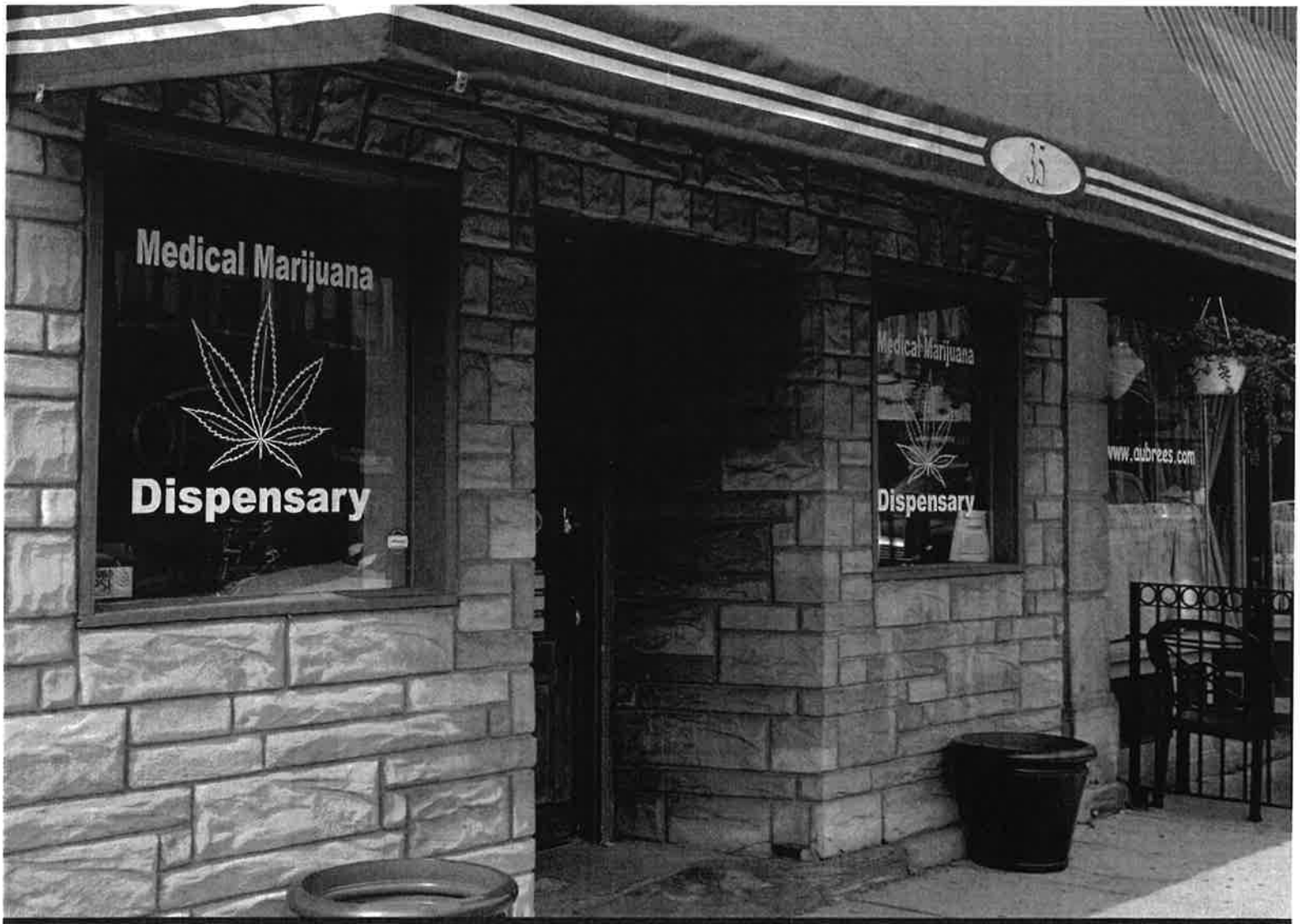
4. PUBLIC HEARING - DISCUSSION REGARDING MEDICAL MARIHUANA

5. COUNCIL AND BOARDMEMBER COMMENTS

6. ADJOURNMENT

NOTE: Any person who wishes to speak on an item included on the printed meeting agenda may do so. Speakers will be recognized by the Chair, at which time they will be required to state their name and will be allowed five (5) minutes maximum to address the Council. A speaker representing a subdivision association or group will be allowed ten (10) minutes to address the Council.

michigan municipal league



Medical Marihuana Facilities - Opt In/Opt Out

November 15, 2017

CONSIDERATIONS FOR THE MUNICIPAL LAWYER

This publication is for municipal lawyers whose clients are considering "opting in" to allow medical marihuana uses under Public Act 281 of 2016, the Medical Marihuana Facilities Licensing Act (MMFLA). It will not address most of the substantive requirements of that law, or of its companion laws, Public Acts 282 and 283, or how they operate to establish the new "seed-to-sale" state regulatory scheme. It assumes that by now most municipal attorneys have familiarized themselves with the basics of how those laws operate to authorize the five kinds of facilities under consideration (grow operations, processing centers, testing facilities, secure transporters, and provisioning centers).

Rather, the purpose of this publication is to assemble some thoughts on advising municipalities about the sorts of things that they should consider when evaluating their options under the new state regulatory scheme. Collected below are some of the concerns to be addressed first in deciding whether to opt in to authorize the medical marihuana uses now allowed, and second, if your municipality chooses to do so, what sort of things should be in the regulatory ordinance(s) that must be adopted in order to do so.

The state's Department of Licensing and Regulatory Affairs has begun issuing Advisory Bulletins and other information that is relevant and useful as this process unfolds, and that needs to be regularly monitored for updates. The "home page" for the Bureau of Medical Marihuana Regulation (BMMR), which is responsible for oversight of medical marihuana in Michigan, is found at www.Michigan.gov/medicalmarihuana.

In a bulletin issued on October 26, 2017, the BMMR has confirmed that "municipalities are not required to 'opt out' or prohibit marihuana facilities within their boundaries. If municipalities do nothing, marihuana facilities will be unable to be licensed at the state level to operate in their locality." http://www.michigan.gov/lara/0,4601,7-154-79571-450903--,00.html. The bulletin also implicitly confirms that there is no deadline to opt in. So, a community that decides to wait beyond the December 15, 2017 date on which applicants may begin submitting applications to the state, may do so without waiving any future opt-in rights. What follows is intended for use by those who might want to opt in.

This paper is being provided by the Michigan Municipal League (MML) to assist its member communities.

The MML Legal Defense Fund authorized its preparation, by Thomas R. Schultz of Johnson, Rosati, Schultz & Joppich. The document does not constitute legal advice and the material is provided as information only. All references should be independently confirmed.

The information contained in this paper might become outdated as additional materials are released by LARA and the BMMR and administrative rules are put in place.

The spelling of "marihuana" in this paper is the one used in the Michigan statute and is the equivalent of "marijuana."

OTHER RESOURCES

The Michigan Municipal League has compiled numerous resource materials on medical marihuana. They are available via the MML web site at: www.mml.org/resources/information/mi-med-marihuana.html

DECIDING WHETHER TO OPT IN

What sorts of arguments have been made in favor of opting in?

FILLING A NEED

An argument that your clients will hear frequently from the industry is that allowing medical marihuana facilities will fill a need in the community and provide easier access to medical marihuana for people who are in chronic pain due to a debilitating medical condition. This argument assumes the medical benefits of marihuana and focuses on the pain-relieving aspects of it. There are some effective advocates on the industry side on this point, and you may see some very personal messaging at your meeting.

IT'S WHAT THE PEOPLE WANT

A similar argument is that the authorization of medical marihuana use in a community reflects the attitude of a majority of a particular locality. Proponents regularly point out the healthy margin by which the initial medical marihuana law passed in 2008, and the number of states where marihuana uses have been authorized over the years since then. This is obviously something that each community will need to evaluate and address; some areas seem "all in" on the issue, while others have met substantial opposition.

REVENUE GENERATION

Proponents argue that medical marihuana facilities can generate revenue for a community. The act allows a municipality to charge a nonrefundable fee in an amount "not more than" $5,000 annually to help "defray administrative and enforcement costs." MMFLA, Section 205(3). Of course, the fees charged probably do need to approximate those costs, so this fee might end up a wash.

Arguments have also been made that the uses can possibly fill vacant buildings or lots and thereby increase property tax revenues. Some jobs will likely be created—i.e., provisioning centers will require retail workers, large grow operations could employ multiple people to engage in plant cultivation, etc.

EASIER MONITORING

Proponents also argue that allowing commercial medical marihuana activities, and regulating them through ordinances that focus production and distribution into fewer sites, could make law enforcement monitoring easier.

AVOIDS LEGISLATION BY CITIZEN "INITIATIVE"

Some municipal lawyers and others have pointed out the practical concern that would exist if a local elected body determines to "opt out" by not enacting an ordinance to allow marihuana facilities, only to have the initiative provisions of its charter be used to draft an ordinance to place before the voters without any input by that legislative body. Adopting an ordinance limiting the number of facilities and their location through study and debate might be preferable to leaving that task to the industry or your local residents by the initiative process where available.

Generally, the initiative process for local legislation (ordinance amendments) is available to cities under the Home Rule City Act (HCRA), MCL 117.4i(g) where a city charter permits it. There is no specific statutory authority for townships or general law villages to use the initiative process to amend ordinances, although it may be available in a charter village. There is probably no right in any municipality to amend a zoning ordinance by initiative. See Korash v Livonia, 388 Mich 737 (1972). Charter amendments by voter-initiative are permitted in home rule cities (MCL 117.18-25) and charter villages (MCL 78.14-18).

SERVE AS A "TEMPLATE" FOR RECREATIONAL MARIHUANA?

It seems likely that "recreational" marihuana will eventually get on the ballot in Michigan as it has elsewhere in the country. Current expectations are that this could be as early as November 2018. Having a regulatory scheme in place if and when that happens—even if it might need to be changed or revisited—could put the community in a better position to react than if the policymakers have never addressed the issue.

EARLY APPLICANTS THE BEST APPLICANTS?

An argument can be made that delay just means that your community is only missing out on the best, most reputable industry members—those who might be more likely to cooperate with the community as part of an early approval process. If you assume that everyone will have to opt in eventually, what could be left by the time you do might not be the best local partners.

What are the reasons to be cautious/skeptical?

FEDERAL LAW ISSUE

All of these uses are still illegal under federal law, and we don't know for sure what the federal government will do in the future with regard to these specified uses. The status quo is that federal attention is diverted away from uses that are "authorized" by and operated generally in compliance with state laws—but who knows if that will last? Attorney General Jeff Sessions has made his view clear: "Good people don't smoke marihuana."

On the other hand, the industry seems to be growing at a pace that exceeds the federal government's ability (time/resources) to do much about it. The likelihood that a community (or its elected officials) that is complying with this state regulatory scheme will face federal criminal sanctions for colluding or cooperating with individuals engaged in the violation of federal laws seems small and getting smaller. That said, there are no guarantees and your clients should be made aware of that.

In October, the National League of Cites presented a very thorough webinar "Marijuana Federalism" for state municipal leagues. It was conducted by Professor Robert Mikos of Vanderbilt University Law School. Articles and books written by Professor Mikos can be found at: https://law.vanderbilt.edu/bio/robert-mikos; also within the resource materials available from the Municipal League, as referenced at the bottom of Page 2.

Some providers are dangling significant amounts of cash to local government officials (on top of the fees and taxes allowed by the new law) to be used at the municipality's discretion for things like police services, patrol vehicles, etc. Those sorts of monetary exchanges, which don't have the official "cover" of a state law allowing them, seem dangerous to get involved in.

COSTS MIGHT OUTWEIGH FEES AND TAX-SHARING

A community might be required to hire additional police and/or code enforcement personnel to ensure that medical marihuana facilities are in compliance with existing laws, and to protect those facilities from theft, vandalism, and other crimes. While $5,000 as an annual fee might seem like a significant amount of money, by the time a municipality has had an application reviewed by staff and consultants and conducted hearings (if required under an ordinance), and performed any background checks that it might want to do, the amount might not seem so generous.

Nor are most communities likely to see substantial revenue from the tax provided for in the statute. Assume for this discussion gross retail sales throughout the state of one billion dollars ($1,000,000,000.00). The state's 3% excise tax on provisioning centers would raise $30,000,000. Under the MMFLA, only 25% ($7,500,000) of that would go to Michigan municipalities. That amount is split among municipalities "in proportion to the number of marihuana facilities within the municipality." Assume your city gets 1% of that revenue—that's $75,000. For many municipalities, that amount may not justify the increased costs that result from opting in (and for many smaller communities considering one or two provisioning centers, the 1% number seems high).

PROPERTY TAXES MAY TAKE SOME TIME TO SHOW UP

Under our state's property tax system, communities might not start seeing significant property tax revenue just because buildings are suddenly occupied. Headlee and Proposal A could dampen the economic benefits that might otherwise occur, and assessments are certainly subject to challenge.

Moreover, some kinds of uses may actually have a negative effect on a local tax base. For example, if a formerly industrial property becomes classified as "agricultural" as a result of a grow operation, the valuation might actually go down, as opposed to up.

LOSS OF CONTROL

Once it "opts in," a community is at the mercy of the BMMR. The language of the MMFLA is unfortunately not as clear as it could be on the state's obligation to deny a license if the applicant does not meet the requirements of a local ordinance. While we know what happens if your municipality does not opt in—no license can be issued—once an ordinance is drafted to allow a particular use, the language of the statute is unfortunately fuzzy as to whether the state has to follow it. What happens if the state does not follow it? The municipality could well find itself in court seeking to enforce its ordinance.

NUISANCE/SAFETY ISSUES

Many of these large uses do emit significant odors that some find objectionable. In addition to odors, there are noise (generators), heat, and lighting issues (either with regard to the use itself or for security). The MMFLA does allow municipalities to regulate these effects, though.

CIVIL LIABILITY

Like any land use decision, approval of these sorts of uses can be challenged. Neighbors may claim everything from nuisance to diminution in land values.

ENVIRONMENTAL EFFECTS UNKNOWN

There will be environmental effects from some of these uses, particularly the grow and processing operations: pesticides, fertilizers, energy consumption, water consumption, and disposal of waste products are all certain to result from these uses. As new uses, there may not be sufficient regulation at the state level, so these matters may fall to local governments to monitor, which may or may not be possible in every community.

COMMUNITY STAKEHOLDER OPPOSITION

Some communities have reported hearing from significant community stakeholders—e.g., large employers, health care providers, community foundations, influential business leaders, etc.—who have made known their specific opposition to the presence of marihuana facilities in the community, and corresponding intentions to react in some way if they are allowed. At a minimum, these stakeholders should be invited to participate in the discussion at the outset, so that all interests are heard.

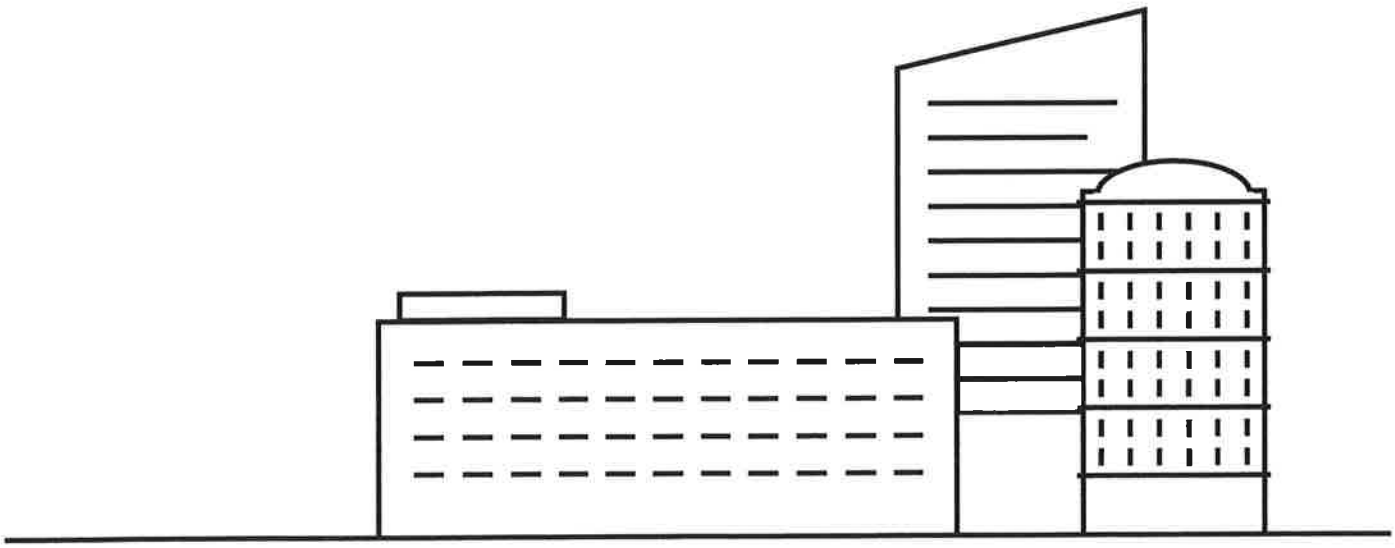
Should you just...wait a bit?

NO FINAL/BINDING LARA REGULATIONS YET

The MMFLA requires LARA to draft rules to govern the issuance of licenses at the state level. Those regulations are not yet complete. Emergency (or temporary) rules will be in place soon, but they are likely to be modified and updated on an on-going basis, until the full administrative rules process is completed. It might be prudent to wait to craft your municipal regulatory scheme until you better know how the state intends to regulate these facilities and review and issue its state licenses. In particular, the two-step process at the state level currently being discussed (see below) could affect the timing of local reviews and approvals, and right now the state seems uninterested in doing much more than vetting applicants and leaving the local governments to decide who gets to operate (which is the hard part).

RECREATIONAL COMING?

There may also be a ballot question for 2018 to simply legalize even recreational marihuana. An initiative question in Michigan requires just over 250,000 valid signatures on a petition to qualify for the state-wide ballot. People inside the marihuana industry are actively working to secure those signatures. Depending on how this question is framed, any regulations that are adopted now will likely need to be revisited/revised—probably through the same public process for adopting ordinances now. Does your community want to do that twice in the span of a couple years?



Opting In? Here Are the Kinds of Things You Should Think About in Drafting Your Local Regulatory Framework

Section 205(1) of Public Act 281 currently provides:

> *A marihuana facility shall not operate in a municipality unless the municipality has adopted an ordinance that authorizes that type of facility. The municipality may adopt an ordinance to authorize 1 or more types of marihuana facilities within its boundaries and to limit the number of each type of marihuana facility.*
>
> *The 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 the licensing of marihuana facilities.*

State BMMR Confirms Substantial Local Regulatory Authority

On October 26, 2017, the BMMR issued an advisory bulletin affirming the need for a local ordinance process to be in place before a state license can issue:

The Bureau intends to rely on the local municipality's authorizing ordinance to determine if an applicant is in compliance with certain provisions of the MMFLA, including:

- The types of...[facilities] permitted.
- The maximum number, if applicable of each type of...facility permitted.
- Any local zoning regulations that apply... including whether or not licensees may apply for special use permits.

See BMMR link at http://www.michigan.gov/lara/0,4601,7-154-79571-450903--,00.html.

As of this writing, the BMMR is only starting to flesh out its thoughts on how the state licensing process will proceed in light of the local authority. So far, it has outlined a process of "prequalification" of applicants by the state, which will involve screening individuals, as a first step, with the second step of the process coming after the municipality has approved the applicant under its local regulations. See October 12 Advisory Bulletin, "Medical Marihuana Facilities License Application Process." See link at http://www.michigan.gov/lara/0,4601,7-154-79571-449688--,00.html. Having to choose the successful applicants from a list of candidates approved by the state is not necessarily what many local government officials were hoping for as a process.

On October 20, 2017, the state issued a document entitled "MMFL Application Document Checklists," that confirmed that it is currently looking at a process that contemplates local review and approval before a state license is issued. See link at michigan.gov/lara/0,4601,7-154-79571-450302--,00.html.

Note that the "checklist" document provides additional helpful information as to what the state will be reviewing in issuing individual pre-qualifications and final approvals.

The most recent bulletin issued by LARA, on November 2, 2017, addresses how the state intends to deal with existing medical marihuana facilities. It indicates that LARA will adopt some "emergency rules" for the purpose of confirming that a facility's active operation, before securing a valid license from the state, will not adversely affect that facility's right to a state license, so long as:

1. The applicant's proposed marihuana facility is in a municipality that has adopted an authorizing ordinance prior to December 15, 2017, and the municipality is pending adoption of an ordinance under Section 205 of the MMFLA; or
2. The applicant's proposed marihuana facility is in a municipality that has adopted an authorizing ordinance pursuant to Section 205 of the MMFLA prior to December 15, 2017.

http://www.michigan.gov/documents/lara/BMMR_Advisory_Temporary_Operation_605078_7.pdf

What Kinds of Ordinances Should You Consider?

So, other than regulating purity and pricing, or directly conflicting with the state regulations—which have yet to be adopted—we know that municipalities can regulate significant aspects of marihuana facilities within their boundaries. Most of the discussion about how to do that by both municipal attorneys and attorneys for the medical marihuana industry has focused on two separate kinds of ordinances:

- **ZONING ORDINANCE** amendments generally relating to the location of medical marihuana facilities and the development approval process.

- **CODE/POLICE POWER** ordinances relating to the number of facilities within the municipality, a licensing process that works with the state's process, and listing responsibilities and obligations of facility operators, as well as some basic safety regulations aimed at new practices (e.g., butane extraction).

What makes the regulation of these uses at the local level difficult (or at least complicated) is as much timing as anything else—timing the issuance of a local license/approval of an application with the state's licensing process, and timing the license approval process with the development approval process (i.e., getting zoning and building permits for a new/renovated facility under a different ordinance than the licensing requirements to operate within that facility).

In addition, there is the matter of deciding who gets the approval to operate a facility. In light of the likely approach by LARA/BMMR that there will be a "prequalification," by the state, with the local government in charge of "picking" successful candidates, this may be the toughest choice facing a community that has decided to opt in.

1. Zoning ordinance

Communities can consider adopting zoning ordinance amendments to provide the following:

TYPES OF FACILITIES TO BE ALLOWED

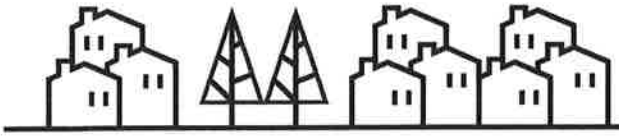
Under the MMFLA, a community can allow all five types of facilities or can pick and choose which to allow (e.g., allow grow operation and provisioning centers, but no compliance facility, processing centers, or transport facilities). This choice will vary by community, and should be made deliberately on the basis of community needs/desires.

DISTRICTS WHERE ALLOWED

The MMFLA does not specify where these facilities may be located, except to state that a grow facility must be established in an area zoned for industrial or agricultural uses or that is un-zoned. Section 501(7). Obviously, determining locations will need to be done on a community-by-community basis, depending on the master plan and land use goals and objectives.

Some uses seem to sort themselves into natural categories—e.g. processing plants in industrial or manufacturing areas, grow operations in industrial/agricultural. Some communities could elect to place even dispensaries (which arguably have a commercial/retail character) in industrial/agricultural districts that, depending on the community's zoning map or particular community characteristics, are better suited for such uses than traditional business districts on Main Street or in a strip mall.

Some communities have considered adopting an "overlay" zone for medical marihuana facilities. An overlay zone typically operates by adding an additional set of uses—and corresponding additional regulations—in certain areas of the community, without changing the underlying zoning district regulations. An overlay district could be considered if a community wants, for example, only certain industrially zoned areas in a particular part of town to be available to marihuana facilities.



USE PERMITTED OF RIGHT? SPECIAL LAND USE

The community needs to determine whether these uses will be uses permitted as of right or only as discretionary special land uses. Arguments can be made in favor of either approach.

Some communities have made them uses as of right in order to avoid requiring their planning commissions to exercise discretion in determining who will be authorized to engage in the use. The discretionary element of a special land use exposes a municipality to a challenge or litigation where an applicant is denied the use, or where one applicant is granted approval and another is not. Special land use decisions can also invite challenge from adjacent property owners alleging an improper exercise of discretion when a use is granted over substantial objections at the required public hearing.

On the other hand, the special land use process affords the municipality the greatest opportunity to impose conditions allowed under the Michigan Zoning Enabling Act. MCL 125.3504. These could include important requirements for, say, building appearance, sign size, screening, access, etc.

The community could consider the "in between" approach of a "use permitted on special condition," where the conditions are fully objective (based on physical characteristics, size, etc.)

PROXIMITY AND CO-LOCATION ISSUES

Another regulatory issue to be considered as part of the zoning ordinance amendment is a distancing requirement between marihuana-based uses. Should they be clustered or dispersed? Not unlike the question that is asked with adult/sexually oriented businesses: is it better to put these uses (to the extent possible) in one general area, for easier monitoring, or to separate them so an area does not become known for that particular characteristic. The question presents practical issues as well as fairness issues (e.g., placing provisioning centers in only one part of town).

Also, does the community want to allow different kinds of facilities —e.g., a grower and a provisioning center—to co-locate at the same site? The LARA regulations may address some of these issues, but municipalities should, under Section 205 of Act 281, have the authority to regulate these basic land use issues.

LARA has advised that it intends to allow the "stacking" of Class C grow licenses (which permit up to 1500 plants per license) in a single location, but only if the municipality's ordinance allows this to be done.

DISTANCING REQUIREMENTS FROM OTHER USES

Municipalities might also want to consider location or spacing requirements as between medical marihuana uses and other uses. For example, the ordinance provides distancing requirements from schools, parks and playgrounds, certain types of residential districts or housing types, churches, pools and recreation facilities, rehabilitation treatment centers, correctional facilities, and the like. This is a classic sort of zoning regulation and should be carefully considered. This could also be regulated in the licensing ordinance instead.

COORDINATING SITE PLAN/BUILDING PERMIT PROCESS WITH LICENSING PROCESS.

Most likely, the typical process for finalizing site plans and issuing building and occupancy permits as set forth in the zoning ordinance can be followed. Some buildings might be built new, on vacant sites; other uses might occupy existing buildings, with little or no site work.

Either way, the *timing* of these zoning approvals with the local and state licensing processes will need to be decided and addressed. The zoning ordinance should probably acknowledge a separate process under the licensing ordinance, and make some appropriate conditions requiring that approval.

OTHER PROVISIONS

The ordinance should contain the other usual elements:

- A statement of purpose/intent—which, as explained further below, should refer to the applicable state laws as the basis for inclusion of these uses.
- A definitions section that matches the terms from the state laws.
- A section dealing with nonconforming sites/uses. This may be particularly relevant if there are currently some marihuana-based facilities operating in the community, which the community may or may not want to assist in continuing under the new regulatory scheme.
- Provisions relating to application review fees (for planners, engineers, landscape architects, etc.).

2. Police Power/Code of Ordinances amendment to deal with licensing facilities at the local level

Again, the most difficult aspect of crafting a licensing ordinance for most communities will be timing the local license approval with the state's licensing process and the zoning/building occupancy approval process. If the state BMMR continues down its current path of "pre-qualification" and then waiting for municipal approval, there will likely need to be some sort of "conditional" aspect to the local license—i.e., it becomes effective only upon securing the state license and all zoning/land use approvals.

A related complication arises when the local regulatory scheme limits the number of a type of use. The first concern is how those applicants are chosen (special land use? first come, first served? random?). Problems can also result if a conditional license is granted, but then conditions are not in fact met. Should the ordinance have provisions to deal with choosing an alternative applicant?

Among the things a municipality will want to consider in its licensing/general regulatory ordinance:

PURPOSE AND INTENT CLAUSE

If nothing else, in addition to describing the general goals and objectives as relates to the particular facilities and licensing applicants regulated, a community might want to consider some explanation that the ordinance is being enacted specifically pursuant to an invitation in the state law, and with the recognition that the state law may be at odds with the federal regulatory scheme relating to marihuana. The clause should also include a recognition that if the legislative body does not act, then someone else might act in its stead (through the initiative process, assuming it is applicable).

DEFINITIONS

These need to match up with the state law, particularly as to the uses allowed. Additional definitions may be needed depending on the nature of local regulations.

LIMITATIONS ON THE NUMBER OF FACILITIES ALLOWED IN THE COMMUNITY, BY TYPE

Act 281 does not describe how a community arrives at a limitation, just that it can. Limitation criteria can be found by way of population (e.g., x number of dispensaries per y number of residents in the community) or by area and location. Some explanation during the process (or in the purpose section) would be appropriate.

It should also address successor uses. Once the limit is reached, will no further applications be accepted? Or will they be held in order received if/when license becomes available again?

In addition, where the number of facilities is limited, the community might want to consider imposing a time frame in which the use must be established and a certificate of occupancy issued (e.g., 6 to 9 months), with an obligation to surrender the license if the use is not established. This would limit the possibility of issuing a license to someone who wants to obtain a license but not use it (for purposes of limiting the market, or precluding a use) or, if a community allows license transfers, as an investment to transfer to another entity.

LOCATION CRITERIA

This should be cross-referenced to the zoning ordinance (assuming there is one); or the location criteria can be established in the licensing ordinance itself.

FEES

The MMFLA allows "not more than" $5,000 per licensed facility as an annual non-refundable fee. However, because the purpose is stated as helping to defray actual costs of enforcement/oversight, a community should take care to justify the fee based upon what the community expects the actual costs to be.

REQUIRED INFORMATION

The community can get as specific as it wants. Information required can include:

- Personal information about the applicant.
- Information about the applicant's professional experience.
- Proof of ownership or other occupancy rights for the property at issue.
- Information about the facility and operations plan.
- Proof of interest in land.
- Proof of adequate insurance (describe).

CRITERIA FOR ISSUING OR DENYING THE LICENSE

- Who issues the license: The city/village/township clerk? Some other officer or body?
- What is the process? Should there be a hearing? Public input allowed?
- Standards for issuing:
  - First come, first served?
  - Lottery/pick from hat?
  - Evaluation on the basis of discretionary criteria?

    This is the step with the most "exposure" to the municipality as noted above. The more subjective the process is or seems, the greater the likelihood of challenge.

- Do existing facilities get priority?

STANDARDS FOR DENYING

These could incorporate the state laws, and could include additional limitations if appropriate.

- Conditioned on all other appeals—state licenses, zoning/site plan review, occupancy permits. This contemplates a record documenting the "provisional" or "conditional" approval and specific requirements for a "final" approval.
- Denial at state level revokes local approval.

OCCUPANCY PERMITS

The practice of allowing occupancy before all aspects of the building and use are finalized, by issuing a "temporary certificate of occupancy," or TCO, is typical in many communities. Doing so with these uses—which will likely be limited in number, and are essentially a "new" use with which we are not yet completely familiar—seems unnecessary. Consideration should be given to withholding occupancy rights until a final certificate of occupancy can be issued. Note that ADA compliance will be required for provisioning centers.

APPEAL OF DENIAL OF A LICENSE

As a police power (as opposed to zoning) ordinance, the Zoning Board of Appeals may not be an ideal appellate board; however, many township boards and city councils might not relish the thought of having to be the deciding body. While the ZBA would need to be informed of its slightly different reviewing role, it is one that they are generally used to. Alternatives could also include a separate body or commission to hear appeals.

SALE OR TRANSFER OF A LICENSE

Given the nature of the review process and the approvals given, the best practice would likely be to indicate that the license is personal to the applicant—no transfers allowed. The license should be clearly made "personal" to the applicant.

RENEWAL

The annual fee assumes a renewal of businesses that remain in compliance with the local ordinances.

REVOCATION (BY LOCAL ORDINANCE)

Revocation of a license should be a permissible result in the event of things like failure to comply with the licensing ordinance or any other ordinance of the City; change in ownership; change in operational plan; conviction of certain crimes; etc. Similar to a licensing revocation for liquor license.

"PERFORMANCE STANDARDS" RELATING TO THINGS LIKE:

- Noise
- Odor
- Heat
- Light
- Continued compliance with all other ordinances, including zoning ordinance.

While a local code of ordinances might already contain some general standards in these areas, medical marihuana uses have unique aspects that merit particular attention. There are resources available to communities to confirm the ability of these facilities to mitigate—with appropriate capital investments—many of these adverse effects.

ENVIRONMENTAL CONCERNS

Information about the environmental effects of these sorts of uses is limited at this point. But municipalities should at least be aware of the likely use of fertilizer and pesticides with regard to a grow operation in particular, and the ordinance could at least provide for basic standards for storage and use in accordance with other laws and regulations. Water and energy consumption may be significant with these uses as well. Both the grow operations and the processing centers raise waste disposal concerns. These areas are all fair game under the limits set forth in Section 205(1) of the MMFLA, and the community should require information on all these aspects of all permitted uses before setting its regulations.

SECURITY/PRIVACY

Fencing. Lighting. Access controls. Video surveillance. All these should be addressed in the ordinance or as part of any approval. Due consideration for the effects of these on neighboring properties should be taken into account in crafting regulations and approvals, and perhaps in determining permitted locations under the zoning ordinance.

SIGNAGE

Signage for these uses could be offensive to some. While commercial signage is subject to greater regulation than non-commercial speech, there are obvious limitations, particularly under the Reed v Gilbert case. This is an important aspect of any of these uses, and the community will need to carefully research its options and closely draft its sign regulations.

INSPECTION PROVISIONS

These provisions should be comprehensive and rigorous. Consideration should be given to those including:

- A statement that the premises are subject to inspection during business hours for purposes of determining compliance with state and local laws, without a search warrant.
- An acknowledgement that the application of a facility license constitutes consent to routine inspections of the premises and examination of surveillance and security camera recordings for purposes of protecting the public safety.
- Significant penalty provision for failure to comply.

ADDITIONAL REQUIREMENTS ON THE BASIS OF THE SPECIFIC TYPE OF FACILITY

- For example, the community may want to regulate hours of operation or the physical appearance of buildings.
- List of specific prohibited acts by use (e.g., no consumption on premises at provisioning centers; requirement for all activities to occur indoors).
- Consider limitations on use of butane, propane, and other flammable products and require compliance with state and local laws for such products.

VIOLATIONS AND PENALTIES SECTION

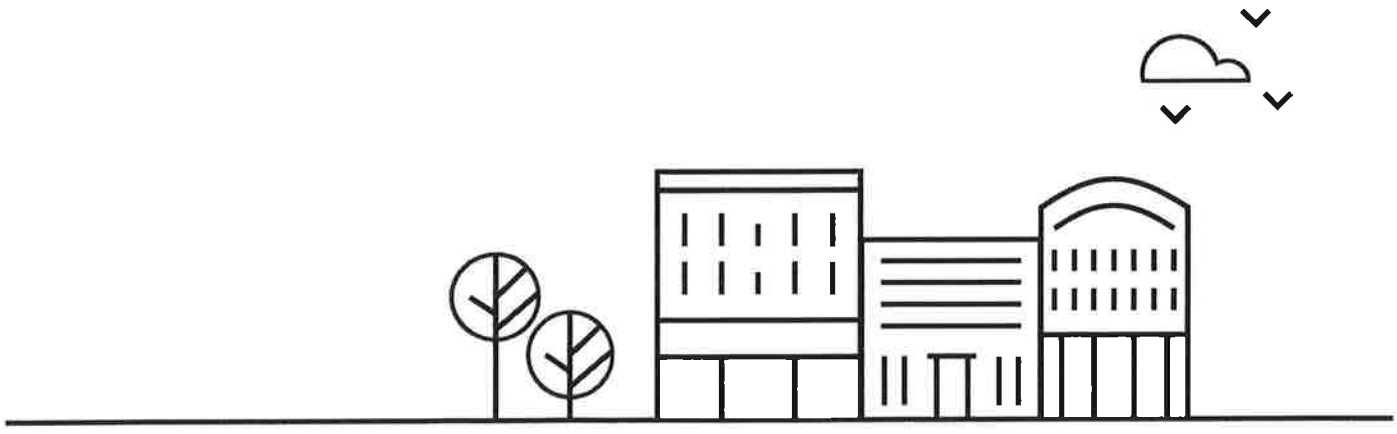
- Civil infraction, not misdemeanor.
- Each day a separate offense.

INDEMNIFICATION

Given the nature of this use, the applicant/licensee could be required to indicate that it will hold the local municipality and its officials harmless, and indemnify them against claims related to the use.

RIGHT TO FARM CONSIDERATIONS

There is a question whether the Right to Farm Act, MCL 286.473, et seq., will apply to grow operations. While it is good to have the law in mind, it seems unlikely at this time, since to date no Generally Accepted Agricultural and Management Practice (GAAMP) regulation has been issued for medical marijuana.



Michigan Municipal League
1675 Green Rd,
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SCIENCE

We took a scientific look at whether weed or alcohol is worse for you — and there appears to be a winner

Erin Brodwin Nov 13, 2017, 6:24 PM ET

Which is worse for you: weed or whiskey?

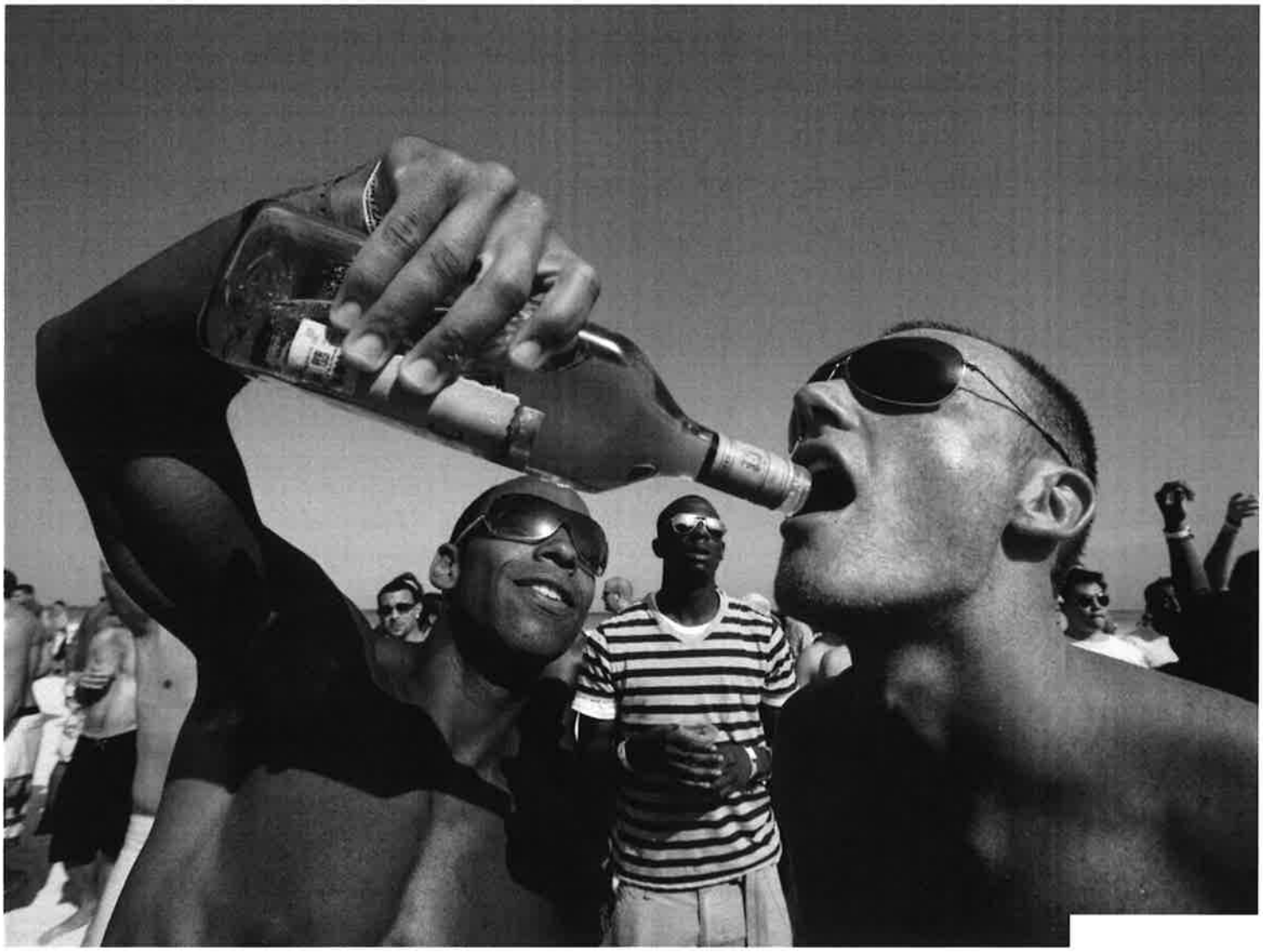
It's a tough call, but based on the science, there appears to be a clear answer.

Keep in mind that there are dozens of factors to account for, including how the substances affect your heart, brain, and behavior, and how likely you are to get hooked.

Time is important, too - while some effects are noticeable immediately, others only begin to crop up after months or years of use.

The comparison is slightly unfair for another reason: While scientists have been researching the effects of alcohol for decades, the science of cannabis is a lot murkier because of its mostly illegal status.

More than 30,700 Americans died from alcohol-induced causes in 2014. There have been zero documented deaths from marijuana use alone.



In 2014, 30,722 people died from alcohol-induced causes in the US - and that does not count drinking-related accidents or homicides. If those deaths were included, the number would be

closer to 90,000, according to the Centers for Disease Control and Prevention.

Meanwhile, no deaths from marijuana overdoses have been reported, according to the Drug Enforcement Administration. A 16-year study of more than 65,000 Americans, published in the American Journal of Public Health, found that healthy marijuana users were not more likely to die earlier than healthy people who did not use cannabis.

Marijuana appears to be significantly less addictive than alcohol.

Close to half of all adults have tried marijuana at least once, making it one of the most widely used illegal drugs - yet research suggests that a relatively small percentage of people become addicted.

For a 1994 survey, epidemiologists at the National Institute on Drug Abuse asked more than 8,000 people from ages 15 to 64 about their drug use. Of those who had tried marijuana at least once, roughly 9% eventually fit a diagnosis of addiction. For alcohol, the figure was about 15%.

To put that in perspective, the addiction rate for cocaine was 17%, while heroin was 23% and nicotine was 32%.

Marijuana may be harder on your heart, while moderate drinking could be beneficial.

Unlike alcohol, which slows your heart rate, marijuana speeds it up, which could negatively affect the heart in the short term. Still, the largest-ever report on cannabis from the National Academies of Sciences, released in January, found insufficient evidence to support or refute the idea that cannabis may increase the overall risk of a heart attack.

On the other hand, low to moderate drinking - about one drink a day - has been linked with a lower risk of heart attack and stroke compared with abstention. James Nicholls, a director at Alcohol Research UK, told The Guardian that those findings should be taken with a grain of salt since "any protective effects tend to be canceled out by even occasional bouts of heavier drinking."

Alcohol is strongly linked with several types of cancer; marijuana is not.

In November, a group of the nation's top cancer doctors issued a statement asking people to drink less. They cited strong evidence that drinking alcohol - as little as a glass of wine or beer a day - increases the risk of developing both pre- and postmenopausal breast cancer.

The US Department of Health lists alcohol as a known human carcinogen. Research highlighted by the National Cancer Institute suggests that the more alcohol you drink - particularly the more you drink *regularly* - the higher your risk of developing cancer.

For marijuana, some research initially suggested a link between smoking and lung cancer, but that has been debunked. The January report found that cannabis was not connected to any increased risk of the lung cancers or head and neck cancers tied to smoking cigarettes.

Both drugs may be linked with risks while driving, but alcohol is worse.

A research note published by the National Highway Traffic Safety Administration (PDF) found that, when adjusting for other factors, having a detectable amount of THC (the main psychoactive ingredient in cannabis) in your blood did not increase the risk of being involved in a car crash. Having a blood-alcohol level of at least 0.05%, on the other hand, increased that risk by 575%.

Still, combining the two appears to have the worst results.

"The risk from driving under the influence of both alcohol and cannabis is greater than the risk of driving under the influence of either alone," the authors of a 2009 review wrote in the American Journal of Addiction.

Several studies link alcohol with violence, particularly at home. That has not been found for cannabis.

It's impossible to say whether drinking alcohol or using marijuana *causes* violence, but several studies suggest a link between alcohol and violent behavior.

According to the National Council on Alcoholism and Drug Dependence, alcohol is a factor in 40% of all violent crimes, and a study of college students found that the rates of mental and physical abuse were higher on days when couples drank.

On the other hand, no such relationship appears to exist for cannabis. A recent study looking at cannabis use and intimate partner violence in the first decade of marriage found that marijuana users were significantly *less* likely to commit violence against a partner than those who did not use the drug.

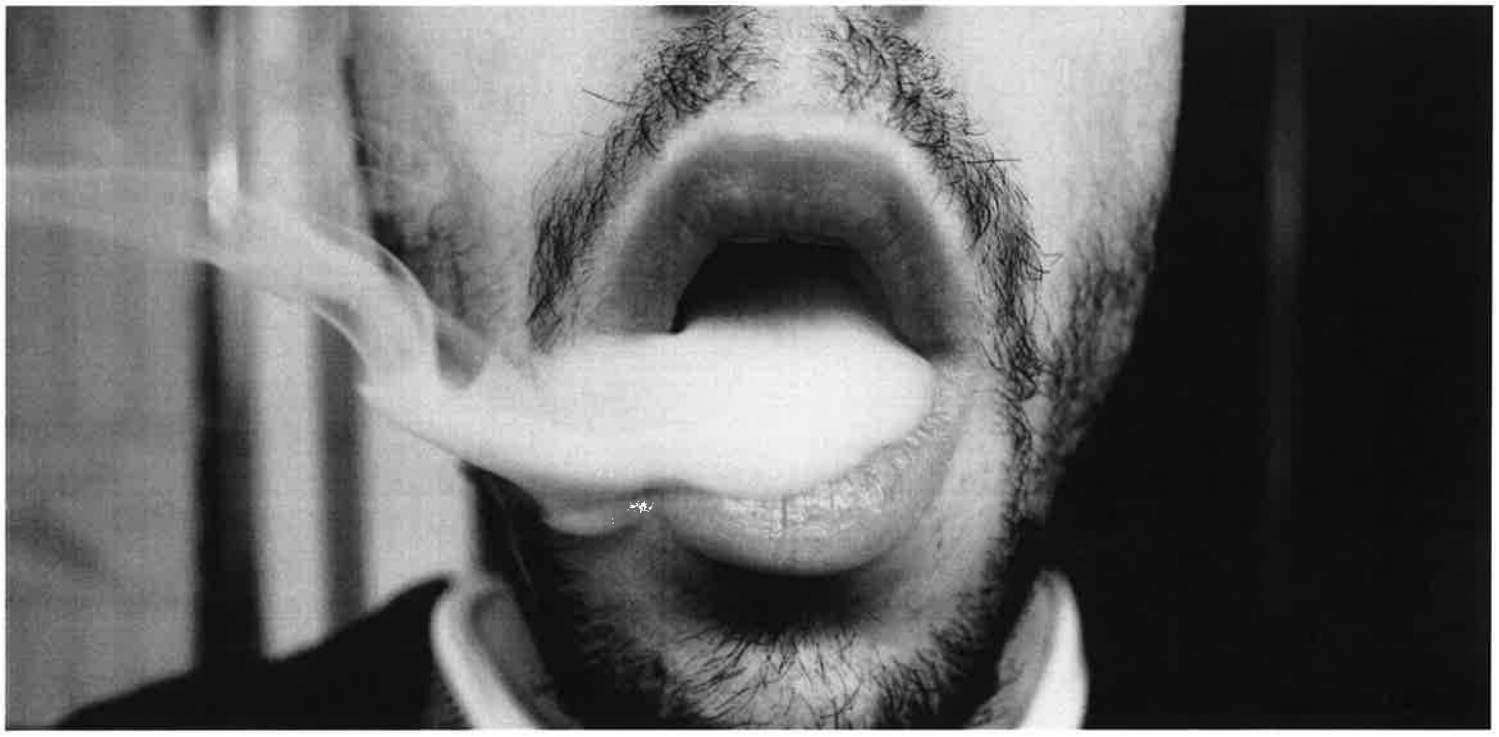
Both drugs negatively affect your memory — but in different ways. These effects are the most common in heavy, frequent, or binge users.

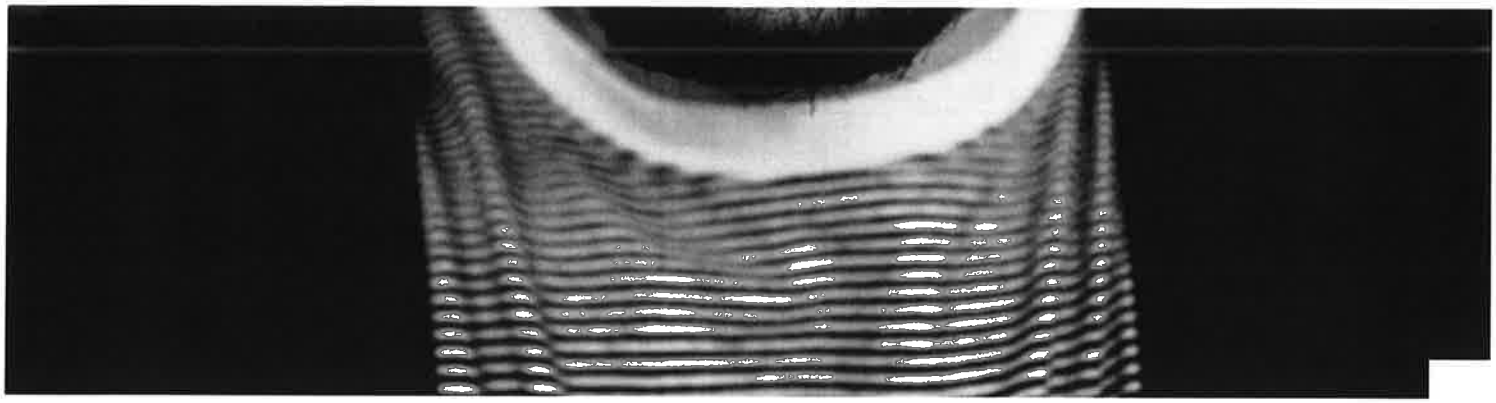
Both weed and alcohol temporarily impair memory, and alcohol can cause blackouts by rendering the brain incapable of forming memories. The most severe long-term effects are seen in heavy, chronic, or binge users who begin using in their teens.

Studies have found that these effects can persist for several weeks after stopping marijuana use. There may also be a link between daily weed use and poorer verbal memory in adults who start smoking at a young age.

Chronic drinkers display reductions in memory, attention, and planning, as well as impaired emotional processes and social cognition - and these can persist even after years of abstinence.

Both drugs are linked with an increased risk of psychiatric disease. For weed users, psychosis and schizophrenia are the main concern; with booze, it's depression and anxiety.





The largest review of marijuana studies found substantial evidence of an increased risk among frequent marijuana users of developing schizophrenia - something that studies have shown is a particular concern for people already at risk.

Weed can also trigger temporary feelings of paranoia and hostility, but it's not yet clear whether those symptoms are linked with an increased risk of long-term psychosis.

On the other hand, self-harm and suicide are much more common among people who binge drink or drink frequently. But scientists have had a hard time deciphering whether excessive alcohol use causes depression and anxiety or whether people with depression and anxiety drink in an attempt to relieve those symptoms.

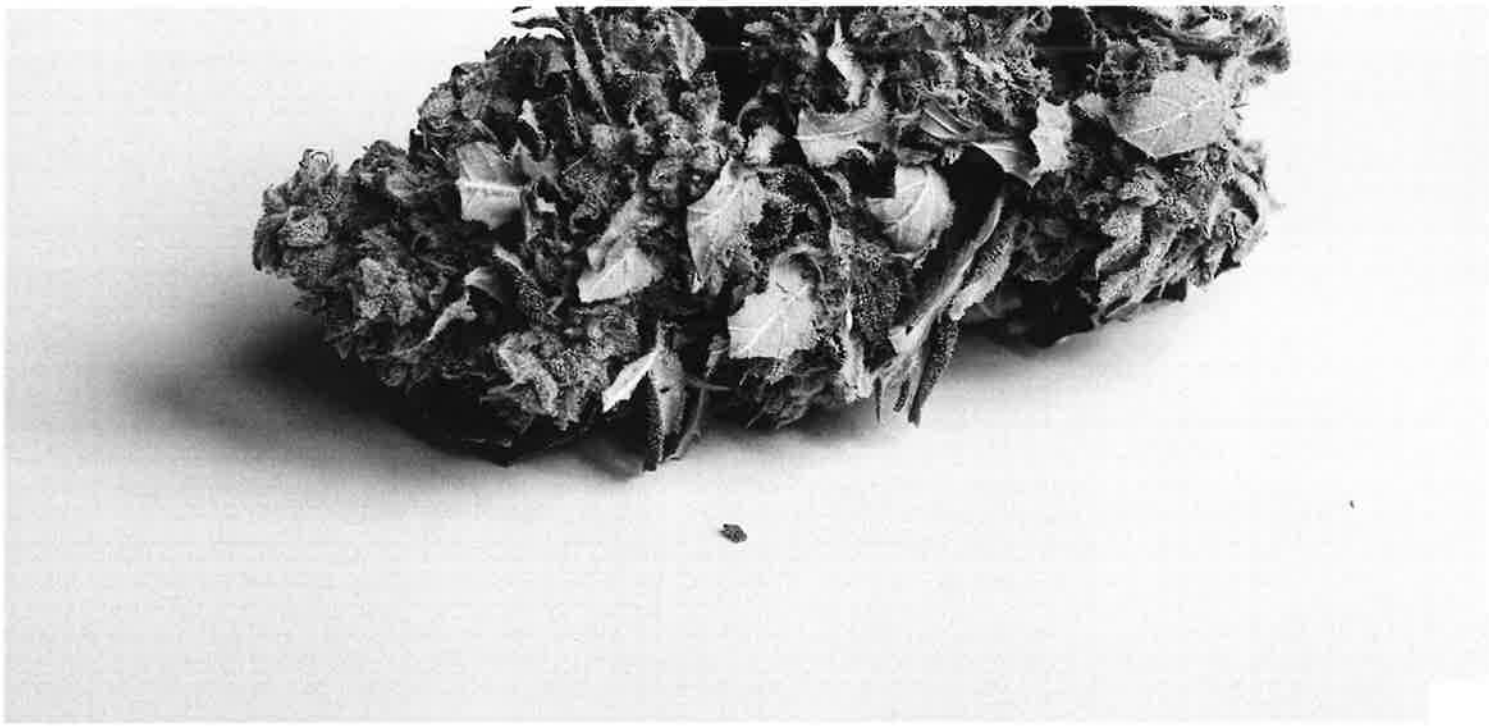
Alcohol appears to be linked more closely with weight gain, despite weed's tendency to trigger the munchies.

Weed gives you the munchies. It makes you hungry, reduces the natural signals of fullness, and may even temporarily make food taste better.

But despite eating over 600 extra calories when smoking, marijuana users generally don't have higher body-mass indexes. In fact, studies suggest that regular smokers have a slightly reduced risk of obesity.

Alcohol, on the other hand, appears to be linked with weight gain. A study published in the American Journal of Preventative Medicine found that people who drank heavily had a higher risk of becoming overweight or obese. Plus, alcohol itself is caloric: A can of beer has roughly 150 calories, and a glass of wine has about 120.

All things considered, alcohol's effects seem markedly more extreme — and riskier — than marijuana's.



When it comes to addiction profiles and risk of death or overdose combined with ties to cancer, car crashes, violence, and obesity, the research suggests that marijuana may be less of a health risk than alcohol.

Still, because of marijuana's largely illegal status, long-term studies on all its health effects have been limited - meaning more research is needed.

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Marijuana — medical or otherwise — a hazy issue for employers

By Dustin Walsh

Pixabay

How to deal with marijuana, especially its quasi-legal status, has become a tough issue for employers.

The opioid epidemic is pervasive and its costs to business established, but another drug is also confounding employers.

Marijuana, medical and otherwise, is driving employers mad with indecision. Historically, most employers test candidates for drugs before hiring them, and sometimes do spot tests during employment or following a safety incident. But as more and more workers are card-carrying medical marijuana users and with legalized

recreational use getting closer to a public vote in the state, Southeast Michigan employers are faced with whether to maintain zero-tolerance drug policies or create more progressive rules.

I moderated a panel last month at the Greater Detroit Area Health Council in Bingham Farms titled "Medical Marijuana vs. Opioids." While opioids were a focus, nearly all the attention was paid to marijuana and how employers are attempting to navigate its use among the workforce.

Tony Behrman, general director of human resources at Auburn Hills-based Nexteer Automotive Corp., is worried the steering systems supplier's quest for talent is going up in smoke due to an stringent drug screening policy — on that is outdated compared with the company's peers, he believes.

Nexteer performs a hair test for marijuana that detects any pot used in the previous 90 days. Behrman said up to 20 percent of applicants fail the initial screening.

"If 10 percent or 20 percent that come into an interview fail the test, that tells me there are a lot of people that didn't even apply because of the test," Behrman told me an interview later. "I'm growing more and more concerned how we are automatically dismissing any candidate that fails a test."

The reasoning is that an employee could very well be a responsible worker who uses marijuana on the weekends or after work, the same way many use alcohol. As long as they aren't intoxicated at work, should it be the concern of the employer?

Behrman's labor concerns are real. The region is experiencing a labor shortage — there are roughly 66,000 open jobs in Michigan right now and as many as 6 million in the U.S. Nexteer, like so many of its peers, struggles to find qualified and eager candidates to fill its ranks. The company has 46 open jobs in Michigan right now.

Many of these open jobs are for entry-level workers, and the region's employers are pulling out all the stops to attract them, but drug testing remains a barrier to entry.

Labor attorney Jacqulyn Schulte, who also sat on the GDAHC panel, said it's not as easy as just relaxing your drug screening process. Because legally speaking, the jury is still out.

In 2010, the American Civil Liberties Union sued Wal-Mart for wrongful termination on behalf of a man in Battle Creek after he failed a drug test. The courts sided with the employer.

Because Michigan is an at-will state, employers don't really need a reason to fire employees. But the courts sided with three employees of Walker-based Challenge Manufacturing Co. in 2014 who were denied unemployment benefits following termination for failing a drug test.

But courts are turning a new leaf more recently. Courts in Rhode Island, Massachusetts and Connecticut ruled in 2017 that employers may not discriminate against employees for using medical marijuana.

Schulte recommends employers sit down with qualified candidates who fail pre-screening drug tests, even those with a legal medical marijuana card, and draft up a contract that states they will be terminated if they fail any subsequent testing, either routine or following an incident.

This protects the employer from any liability, as well as allows the candidate to make the determination whether it's really worth working for that employer.

The issue hasn't gone away in states that have legalized recreational marijuana. According to a February Colorado State Employer Council survey, 62 percent of businesses still require drug tests, down from 77 percent in 2014. Colorado legalized marijuana use in January 2014.

At Nexteer, Behrman and his colleagues are re-evaluating the company's drug screening policies in hopes of finding new talent. It's likely other employers will do the same.

But it will remain a gray area for employers as more employees turn to the green until state or federal legislation is enacted.