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CITY COUNCIL/PLANNING COMMISSION JOINT MEETING AGENDA
JANUARY 22, 2019 5:30 P.M.

1. CALL TO ORDER; ROLL CALL

2. APPROVAL OF THE AGENDA

3. CITIZEN COMMENTS 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. REGULATION OF RECREATIONAL MARIHUANA

5. COUNCIL/PLANNING COMMISSION 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.

RECREATIONAL MARIHUANA MEMORANDUM

To: Lowell City Council and Planning Commission

From: Richard Wendt, City Attorney

Date: January 2, 2019

Re: Regulation of Recreational Marihuana

The Michigan Regulation and Taxation of Marihuana Act (MRTMA, MCL 333. 27951 *et. seq*) went into effect on December 6, 2018. Not to be confused with the Michigan Marihuana Facilities Licensing Act (MMFLA, MCL 333. 27101 *et. seq*.) or the Michigan Medical Marihuana Act (MMMA, MCL 333.26421 *et. seq*), the MRTMA authorizes the possession and nonmedical use of marihuana by individuals 21 years of age and older and establishes a regulatory framework for the commercial production and distribution of recreational marihuana.

The MRTMA allows municipalities to require recreational marihuana establishments to obtain local licenses, as long as the local licensing requirements do not conflict with the MRTMA or with any rules promulgated by LARA with respect to the MRTMA.

A municipality that does not prohibit marihuana businesses (defined as "establishments" in the MRTMA, and including, but not limited to, retail businesses, growers and processors), may regulate them, however, a municipality cannot prohibit individual use of marihuana by people 21 years of age and older, subject to certain potential restrictions on place as discussed below.

A. A Municipality MAY:

1. Limit the Number. A municipality may adopt an ordinance allowing the existence of recreational marihuana establishments, and provide limits on the number of establishments within the municipality.

2. Establish Competitive Process for Applicants. If a municipality allows a certain number of establishments, and a greater number of applicants for state licenses wish to locate in that municipality, the MRTMA requires the municipality to decide by a competitive process which applicants are best suited to comply with the MRTMA.

3. Provide Reasonable Restrictions on Establishments. A municipality may provide reasonable time, place and manner restrictions with respect to such establishments, and provide restrictions on signage. A municipality may also provide for a civil infraction and penalty of not more than $500 for a violation of an ordinance by a recreational marihuana establishment. Note: the MRTMA is, notably, silent with respect to violations of individual use restrictions (e.g., in public places.)

4. Limit Locations Through Zoning Ordinance. As a follow up to 3, above, a municipality may adopt reasonable zoning regulations to limit the location of recreational marihuana establishments, except that a municipality that otherwise allows recreational marihuana establishments cannot prohibit different types of establishments (e.g., a processor and a retailer) from operating at a single location

Zoning regulations can be adopted to provide additional buffers on school and other properties, e.g., to require marihuana establishments be located at least 1,000 feet from schools, child care centers, public parks, libraries or other types of properties.

5. Prohibit Use in Public Places. A municipality may prohibit the use of marihuana in public places. Section 4(1)(e) of the law provides that the law does not authorize consuming marihuana in a public place. As that language does not specifically prohibit use in public places, it is recommended that a municipality that desires to prohibit the use of marihuana in public places (and considering the challenge in limiting public places to people 21 years of age and older,) adopt an ordinance specifically prohibiting such use in public places. The law does not specifically prohibit use in public places, nor does it define public (or private) place. A municipality may, as discussed in this memo, prohibit use in governmentally owned or operated places (e.g., public parks,) but a municipality's authority to prohibit use in privately owned but publicly accessible places (e.g., restaurants, theaters) is less clear. The owners and operators of such places can ban marihuana use, but it is not clear under the law that local governments can. By way of analogy, Michigan's smoking ban, 2009 PA 188, bans the smoking of, specifically, "tobacco product" and defines public places broadly, to include, among other places, any place that is a place of employment, unless otherwise exempt under 2009 PA 188 (e.g., a cigar bar, but not a restaurant.)

6. Allow Use in Designated Areas. Notwithstanding the authority in 3, above, allow the use of marihuana in designated areas and at designated times, for example at special events – as long as any such area is off limits to people under 21 years of age.

B. A Municipality CANNOT:

1. Prohibit Individual Cultivation or Possession. A municipality cannot prohibit individual cultivation or possession (up to 2.5 ounces) of marihuana by people 21 years of age and older.

2. Prohibit Sale of Marihuana Accessories.

3. Prohibit Individual Use on Private Property. A municipality cannot prohibit use by a person 21 years of age and older within that person's property, and cannot prohibit use of marihuana on private property where the owner, occupier or manager has not prohibited its use – and that is not accessible to people under 21 years of age. For example, a business that sells marihuana accessories, as discussed in 2, above, but is not licensed to sell marihuana, would, as long as the business is restricted to people 21 years of age and older, be able to allow people to bring and use personal supplies of marihuana. Under the MRTMA, the municipality in which such a business located would not be able to prohibit such use.

4. Prohibit Transportation of Marihuana. Prohibit the transport of marihuana through the municipality – regardless of whether the municipality completely prohibits or allows other recreational marihuana establishments from locating in the municipality.

City of Lowell, Michigan

Marihuana Facilities - Eligible Properties

Legend

1,000 ft. radius from schools

Key Frontages (pertains only to MU district)

Zoning Districts

Districts zoned for residential or public use

C2, Central Business District

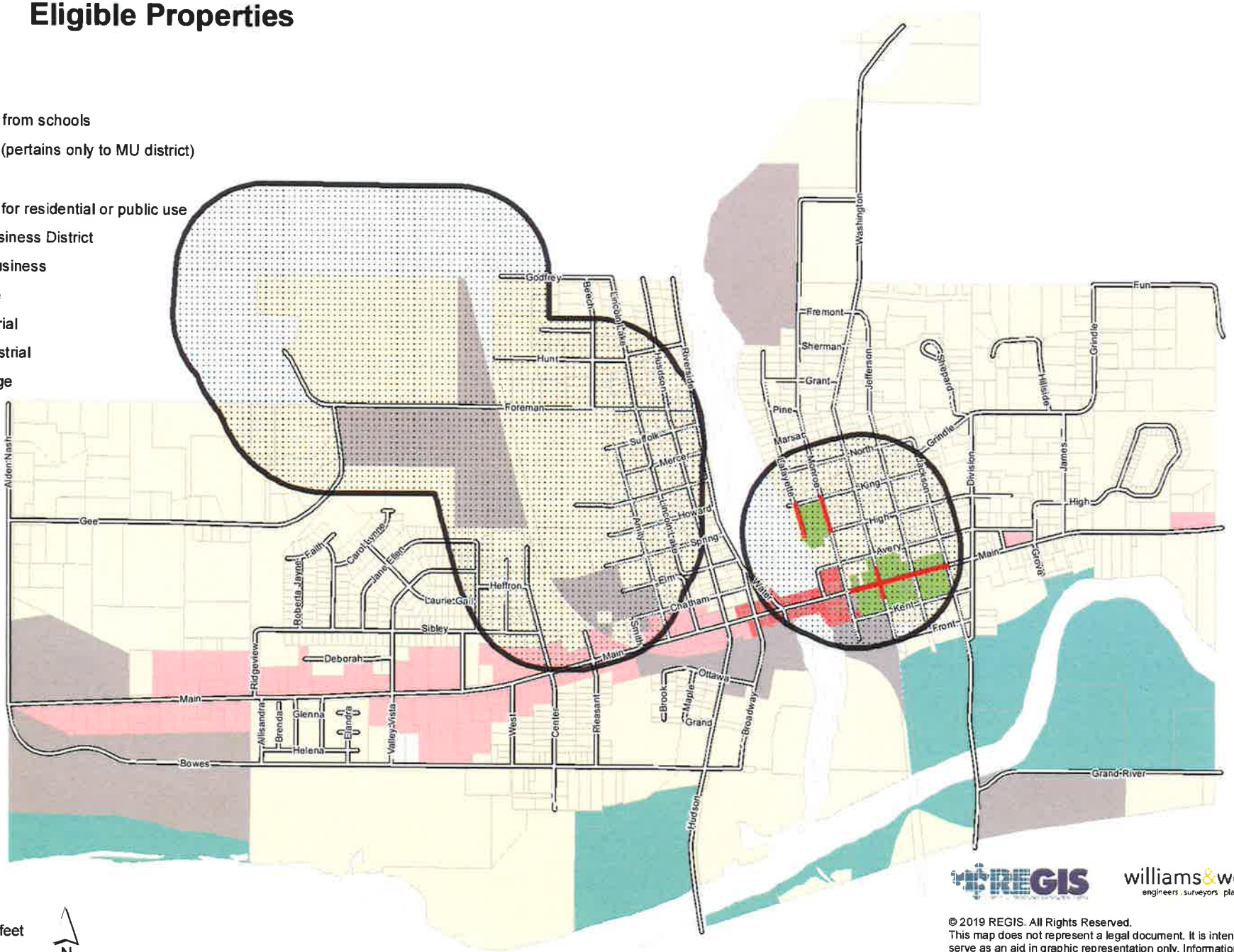
C3, General Business

MU, Mixed Use

LI, Light Industrial

I, General Industrial

RE, River's Edge



1 inch = 1,500 feet

N

0 750 1,500 3,000 Feet

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MEMORANDUM

To:	Lowell City Council & Planning Commission
Date:	January 17, 2019
From:	Andy Moore, AICP Whitney Newberry
RE:	**Recreational Marihuana Planning/Zoning Considerations**

As you know, the possession and use of recreational marihuana for adults 21 and over in Michigan was approved by Michigan voters on November 6, 2018 and became effective in December 2018. Known first as Proposal 1 (2018), the new law (the Michigan Regulation and Taxation of Marihuana Act) has several implications for municipalities. The Act allows individuals to possess and use marihuana for recreational purposes, and it also further provides for the establishment of commercial business operations that could grow, process, sell, and/or distribute marihuana to consumers for recreational purposes. As with the 2016 Medical Marihuana Facilities Licensing Act (MMFLA), the new Act allows municipalities to retain some control over whether they will allow these types of "marihuana establishments" in their jurisdiction. Because Lowell has decided to allow marihuana establishments in the City, the City should determine which locations are appropriate for these establishments and create regulations for them through the zoning ordinance and/or a general law ordinance. Therefore, the purpose of this memorandum is to understand the background and provisions of the Act as it relates to land use and zoning in the City. This memorandum is not intended to provide legal advice to the City, nor should it be construed as such. Development of an ordinance(s) related to recreational marihuana should be thoroughly reviewed by the City's legal counsel prior to adoption.

Background

Prior to the passing of the Act, it was only legal for Michigan residents to possess marihuana with a physician's approval. This was approved in 2008 under the Michigan Medical Marihuana Act (MMMA), which allowed qualifying patients to possess 2.5 ounces of marihuana and 12 marihuana plants for medical use, only if prescribed by a licensed physician. This proposal permitted marihuana sales to those who were seriously ill, and many communities interpreted the MMMA to disallow dispensaries or other types of commercial operations (although some communities permitted them anyway).

In order to clarify the law and address some of the uncertainties in the MMMA, the legislature passed legislation in 2016 that allowed regulation and licensing for five types of medical marihuana establishments: (1) growers, (2) processors, (3) provisioning centers, (4) secure transporters, and (5) safety compliance facilities. This provided a framework for licensing

different commercial operations related to medical marihuana. Users of medical marihuana still needed a state-issued card that allow them to possess marihuana.

The approval of Proposal 1 in 2018 now allows individuals 21 years or older to grow and possess marihuana for personal use and for sales to occur through state-licensed retailers. One no longer needs to suffer from a "debilitating medical condition" in order to lawfully possess or use marihuana, as long as such possession or use is within the parameters of the Act. It also legalizes the cultivation, processing, distribution, and sale of industrial hemp. Specifically, the Act permits the following:

- The possession of 2.5 ounces of marihuana and 0.5 ounces of marihuana concentrate on an individual 21 years or older.
- A 10-ounce limit for marihuana kept at residences.
- Individuals to give away, but not sell, up to 2.5 ounces of marihuana to people 21 years or older.
- Up to 12 marihuana plants grown in individual residences.
- The ability for local municipalities to ban/limit marihuana establishments within their boundaries.
- A 10 percent excise sales tax levied on sales at retailers and microbusinesses.
- Revenue directed to local governments, K-12 education, and road and bridge maintenance.

The approval of the Act regards the consumption or smoking of marihuana in a public place as a crime, except in areas specifically designated for its consumption that are not accessible to individuals under 21 years of age. If an individual decides to cultivate marihuana plants, such cultivation may not be plainly visible from a public place or outside of an enclosed area that has locks or security devices restricting access. A person is not allowed to possess, consume, or have any marihuana-related accessories on public or private schoolgrounds, a school bus, or any correctional facility. It also does not allow the use of marihuana within 1,000 feet of a school. Workplaces and landlords may also decide whether they allow recreational marihuana use on the premise, and adopt their own drug policies, which may include the prohibition of marihuana possession and/or use.

Most relevant to this memorandum, the Act also establishes several defined terms relating to marihuana facilities. Those include the following:

- Marihuana grower – may cultivate marihuana and sell or transfer it to marihuana establishments. Three classes of growers are defined by the Act: Class A growers (up to 100 plants, Class B growers (up to 500 plants), and class C growers (up to 2,000 plants).

- Marihuana microbusiness – may cultivate up to 150 plants, process and package marihuana, and sell or transfer it to individuals who are 21 or older or to a safety compliance facility (but not to other marihuana establishments).
- Marihuana retailer – may obtain marihuana from marihuana establishments and sell or transfer it to establishments or individuals who are 21 or older.
- Marihuana processor – may obtain marihuana from marihuana establishments, process and package it, and sell or transfer it to marihuana establishments.
- Marihuana safety compliance facility – may test marihuana for potency and contaminants.
- Marihuana secure transporter – may obtain marihuana from, and transport it to, other marihuana establishments.
- Marihuana establishment – any of the six listed facilities above, or any other marihuana facility licensed by LARA pursuant to the Act.

Under this proposal, a municipality may limit the total number of marihuana establishments in the City. Our interpretation of the Act is that the City cannot specifically prohibit certain types of marihuana establishments while permitting others, but it is unclear if this is correct.

The municipality may also adopt other ordinances that are not unreasonably impracticable and do not conflict with the Act. These ordinances may include:

- Restrictions on public signs related to marihuana establishments. It is not clear if this extends to regulating sign content, but the City should be careful in this regard.
- Regulation of the time, place, and manner of operation of marihuana establishments, along with production, manufacturing, sale, and display of marihuana accessories.
- Allocation of designated areas not accessible to individuals under 21 years or limited areas for a limited time at special events.
- Designating a violation of an ordinance that involves a civil infraction penalty with a fine of not more than $500.
- Requiring marihuana establishments to obtain a municipal license, as long as it does not impose qualifications that conflict with the Act.
- Charging an annual fee of not more than $5,000 for application, administrative, and enforcement costs associated with marihuana operations in the municipality.

The Department of Licensing and Regulatory Affairs (LARA) is responsible for administering the Act and controlling the commercial productions and distribution of the marihuana by granting state licenses.

LARA is not allowed to limit the number of any type of state licenses that may be granted. Although the municipality may adopt ordinances to control commercial establishments and require an additional municipal license, it is possible that a municipality cannot pick and choose what license type it authorizes. The municipality may completely prohibit all license types, or it may allow all license types and limit the total number of establishments in the community. If the City opts to limit the number of marihuana establishments in the community, it may have the effect of preventing LARA from issuing a license to all applicants who wish to locate in Lowell. In this case, the municipality would decide which of the competing applicants would receive the license.

Implications for Lowell

The City should consider whether the number of marihuana establishments should be limited or not. Our interpretation of the Act is that the City may only limit the total number of "marihuana establishments" (which can be any of the six types listed on pages 2-3), but cannot permit certain types of establishments while prohibiting others.

Additionally, if the City decides to limit the number of marihuana establishments and these limits prevent LARA from issuing licenses to all applicants, the City is responsible for deciding which applicants are approved to have an establishment in the City. The City should consider drafting criteria that would be applied to the list of candidates, so that there is an objective basis for the decision, instead of arbitrarily deciding who is approved and who is not, or applying different standards to different applicants. The City should be prepared to defend its choices for which candidates are chosen if this scenario presents itself.

The City may require potential marihuana establishments to apply for a separate municipal license in addition to the state license. The municipal license must be compatible with the Act, but could provide further regulations for marihuana establishments. The City may also charge marihuana establishments up to $5,000 annually for application, administrative, and enforcement costs. If a licensing ordinance is considered, the City should work closely with its legal counsel in drafting a licensing ordinance.

The City may further regulate marihuana establishments through zoning, as it would any other land use. Therefore, the City should discuss which zoning districts would be most appropriate, whether marihuana establishments should be permitted by right or by special land use, and if by special land use, what types of additional zoning regulations should imposed on marihuana facilities. These establishments must be placed 1,000 feet from all schools and may not be constructed in residential areas. The City will need to be careful to ensure that any regulations adopted, either through a zoning ordinance or a regulatory ordinance, are not "unreasonably impracticable" as defined by the Act.

The map included with this memorandum helps visualize viable options for marihuana establishments based on the exclusion of residential areas and the 1,000-foot buffer from schools (K-12, whether public or private). Based on these criteria, the most compatible zoning

district in Lowell appears to be the C-3, General Business district. The C-3 district permits a variety of land uses that are not necessarily in downtown style buildings. It also intends to accommodate automobile-related uses that would be incompatible with residential districts and much of this district is well outside the 1,000-foot radius for school properties. The IL Light Industrial or Industrial districts may also be appropriate, though available land is limited.

Aside from siting of establishments, the City may also consider regulating signs, the "time place, and manner of operation," any define any permitted areas where marihuana could be consumed. Presumably, regulations on the "time, place, and manner of operation" would include provisions such as limitations on hours of operation; limitations to certain zoning districts or sites of a certain size; site lighting; control of noise, odors, fumes, smoke, etc; and any other regulations on the operation that are not in conflict with the Act and are not "unreasonably impractical."

The Act requires that LARA begin taking applications for recreational marihuana establishments by November 2019, and applications must be approved or rejected within 90 days. If LARA misses the one-year deadline, the applicant can seek a license from the local municipality where the business would be located. This local license would have the same force and effect as a state-issued license, but the business would not be subject to LARA regulations. Therefore, the municipality would become the sole licensing and regulatory body for the marihuana business in this scenario.

Discussion Questions

The following list is intended to generate discussion regarding recreational marihuana establishments so that we can begin drafting a regulatory framework for a zoning ordinance for marihuana establishments.

- The City should discuss whether the number recreational marihuana establishments should be limited, and if so, to what extent. If the City decides to limit the number of establishments, it is recommended that the City develop guidelines that would help determine the most qualified candidates if forced to choose which applicants can receive a license.
- The City should discuss a desired outcome for recreational marihuana establishments in order to guide regulatory ordinances, such as signage, manner of operation, display of accessories, and violations.
- Consider whether an additional municipal license is desired and if marihuana establishments should be charged annual fees to cover the administration and enforcement costs, and if so, determine how much is appropriate.
- The City should discuss which zoning districts are most appropriate for marihuana establishments in light of the limitations present in the Act. The attached map shows the areas that would qualify under the Act because they are (1) not zoned exclusively for residential use, and (2) are not within 1,000 feet of a school. Realistically, properties

within the C-2, C-3, LI, and I districts are the most feasible locations, and regulations drafted by the City may further limit the number of available properties if minimum lot size, lot width, or other locational regulations are enacted. (We do not believe that the River's Edge district is a viable location for marihuana establishments as they are generally undevelopable due to the floodplain/floodway).

We are planning to attend the meeting on January 22 and look forward to discussing this memorandum with you. As always, please feel free to contact me if there are any questions.

c: Mike Burns, City Manger
Dick Wendt, City Attorney