Village of Oxford Planning Commission Agenda
Tuesday, June 16, 2020 7:00 P.M. – Teleconference ONLY
To Participate in Meeting: Call-in access number (701) 802-5176
Meeting Code: 1531799
22 W Burdick Street, Oxford, MI
Tel: 248-628-2543

This meeting is being held remotely per Governor Whitmer's Executive Order 2020-75

Public input will be allowed during Item 9, Public Comment. Public may voluntarily state their name and address for the record. In adherence to the Open Meetings Act, this time is for commissioners to hear comments from the public and not to engage in discussion with the public. Each person will be allowed an opportunity to speak for no more than 3 minutes. All comments will be addressed to the Chairman.

1. Call to Order by Chair Justin Ballard at 7:00pm

2. Respects to the Flag

3. Roll Call: Rose Bejma, Jack Curtis, Gary Douglas, Maureen Helmuth, Justin Ballard, Leslie Pielack, Michelle McClellan

4. Approval of Agenda: June 16, 2020

5. Approval of Minutes: June 2, 2020

6. Correspondence:

7. Old Business: Adult Use Marijuana Information from Attorney

8. New Business:
   a. Gourmet Guys Grill-Outdoor Seating Review, 74 N Washington St. Parcel ID# 04-22-456-001, C-1 Transition

9. Public Comment:

10. Consultant & Administration Comments:

11. Commissioner Comments:

    Oxford Township Planning Commission Update- Jack Curtis:
    ZBA update- Rose Bejma:
    DDA update- Pete Scholz

12. Adjournment:

VILLAGE OF OXFORD

PLANNING COMMISSION
REGULAR TELECONFERENCE MEETING MINUTES

Meeting conducted via video/teleconference due to the health concerns of COVID-19
Per Governor's Executive Order 2020-75
Call-in access number: (701) 802-5176
Meeting Code: 1531799

Planning Commission Members: Justin Ballard, Rose Bejma, Jack Curtis, Gary Douglas, Maureen Helmuth, Michelle McClellan, Leslie Pielack

22 West Burdick Street Oxford, MI 48371	June 2, 2020	7:00 pm

1. **CALL TO ORDER**
   Chairman Justin Ballard called the meeting to order at 7:01 p.m.
2. **RESPECTS TO THE FLAG**
3. **ROLL CALL:** Members Present- Ballard, Bejma, Curtis, Douglas, Helmuth, McClellan, Pielack. Absent: 0. Staff Present: Village Manager Joe Madore, Recording Secretary Tere Onica, McKenna Planner Mario Ortega.
   Due to the nature of the meeting, a roll call vote was called and recorded for each motion.
4. **APPROVAL OF AGENDA: Meeting Agenda June 2, 2020.**
   MOTION: by Bejma/Helmuth to approve the June 2, 2020 meeting agenda.
   Roll Call Vote: Ayes, 7. Bejma, Curtis, Douglas, Helmuth, McClellan, Pielack, Ballard. Nays: 0. Absent: 0. Motion carried.

5. **APPROVAL OF MEETING MINUTES: May 5, 2020 Regular Meeting.**
   MOTION: by Helmuth/Pielack to approve the Village of Oxford Planning Commission May 5, 2020 Regular Meeting minutes as presented.
   Roll Call Vote: Ayes, 7. Curtis, Douglas, Helmuth, McClellan, Pielack, Ballard, Bejma. Nays: 0. Absent: 0. Motion carried.

6. **CORRESPONDENCE:**
   MOTION: by Helmuth/Bejma to receive and file the Groveland Township Public Hearing Notice regarding an ORV operation on Shields Rd.
   Roll Call Vote: Ayes, 7. Douglas, Helmuth, McClellan, Pielack, Ballard, Bejma, Curtis. Nays: 0. Absent: 0. Motion carried.

7. **OLD BUSINESS:** None.

8. **NEW BUSINESS:**
   a. **Public Hearing: Re-zoning of Parcel # 04-27-278-020, Applicants Oakland County Holdings, LLC.**
      MOTION: by Helmuth/Bejma to receive and file all correspondence received by mail, email, and phone regarding the re-zoning request for Parcel ID # 04-27-278-020.
      Roll Call Vote: Ayes: 7. Douglas, Helmuth, McClellan, Pielack, Bejma, Curtis, Ballard. Nays: 0. Absent: 0. Motion carried.

      Chairman Ballard clarified purpose of Public Hearing is for re-zoning. It is not a site plan or

design review even though the applicant submitted a concept drawing.
MOTION: by Curtis/Helmuth to open the Public Hearing at 7:15 p.m.
Roll Call Vote: Ayes: 7. Douglas, Helmuth, McClellan, Pielack, Bejma, Curtis, Ballard. Nays: 0. Absent: 0. Motion carried.

Attorney comments-the issue being considered is a change in zoning districts. Once the Public Hearing and review is completed by the Planning Commission, the re-zoning request/recommendation then goes before the Village Council as a re-zoning relates to a change in the Zoning Map. Use is not relevant to the hearing. If re-zoned, the parcel will be able to be developed for all permitted uses. Inquiry into the submitted presentations or proposed uses is not relevant at this hearing. Once re-zoned, a property can be sold, transferred.

The following email and phone calls were received by the Clerk's Office to be included into the Public Hearing record:

- Matt Strong, Minnetonka and Lincoln, opposes the re-zoning. Requested a live meeting.
- Shannon & Gilbert Strong, requested postponing until a live meeting date could be scheduled. Oppose re-zoning.
- Andrea Kitchner, 18 Lincoln, requested postponement. Cited poor property maintenance. Opposes re-zoning with many concerns.
- Jody Daenzer, 184 Minnetonka, requested meeting be rescheduled until public could be present.
- Laura Amedure, 24 Lincoln St. asked meeting to be postponed. Opposed to rezoning citing incompatibility with surrounding residential area and decrease in property value.
- Judith Martin-Opposed to rezoning citing traffic, safety, elementary school.
- Richard and Teia Kaltner, 14 Lincoln St. Oppose re-zoning citing road access, fire lane, safety, home values.
- Kathy Graham, 79 Minnetonka Dr., opposed re-zoning citing density, existing land-use, zoning.
- Emma Taylor, 208 Minnetonka Dr., opposed re-zoning with reference to May 7, 2018 meeting citing the parcel would "only allow for a single-family home…" regarding the proposed land division(Chris Khorey, McKenna Planning Consultant). Also opposes a virtual meeting. (call-in and email)
- Mark Zwayer, 196 Minnetonka Dr. opposes re-zoning and virtual meeting an unfair to public. (call-in)
- Thomas Matteson, 35 Lincoln St., opposed to re-zoning citing incompatibility with neighboring character, traffic, density, elementary school location.
- Kay Bittell, 131 Minnetonka Dr., requested meeting extension until a live Public Hearing could be scheduled.
- Robert and Susan Pagel opposed to re-zoning citing negative impact to surrounding area. Asked that virtual meeting be cancelled and rescheduled for later date.
- Brandon Wescott, (voice mail message) requested postponement of important issue until a live meeting could be scheduled. Cited public concerns.

MOTION: by Helmuth/Bejma, under advice of the attorney, to receive and file into the

record all communications received from the public via mail, e-mail, and phone into the Public Hearing.
Roll Call Vote: Yes, 6. McClellan, Pielack, Bejma, Ballard, Curtis, Helmuth. Nays: 1. Douglas. Motion carried.

Speaking at the meeting:

- Deb Loncini, 515 Mechanic- Opposed citing traffic, safety, strain on resources.
- Emma Taylor, 208 Minnetonka- expressed concern over inability to meet in person. Opposes rezoning. Submitted opposition via email.
- James and Marion Magraw, 172 Minnetonka-opposes re-zoning. Increased traffic on narrow roads, noise, Elementary school children safety, property values
- Kelly Arkles, 491 Thornhill Trail. Small area the village already has many areas zoned multi-family. Opposed.
- Shannon Strong, Lincoln Street-Opposed to multi-family, multi-level re-zoning. Development objective. PUD single family topography, parking, traffic, and emergency vehicle access.
- Mark Zwayer, Minnetonka, classified as a single-family zoning. Opposed.
- Kathy Graham, parcel too small for multi-family use. Opposed.
- Karen Patterson, 27 Lincoln Street-Opposed. Not consistent with current use.
- Jody Dunzer with Collins family- Opposed. Traffic, property values. Does not belong in the middle of a single residential neighborhood.
- Joseph, 142 Minnetonka- Opposed.
- Kevin Kadrich, 724 Woodleigh Way -Opposed.
- Adam Laskowski, 29 Lincoln Street-Opposed and agree with other comments.
- Robert Pagel, 94 Minnetonka- Opposed.
- Trisha Wasvary, 46 W. Burdick St., and son at 158 Minnetonka-Opposed re-zoning to multi-family. Dumpster and trash odor, etc.
- Michael Luca, 31 Lincoln St.-Opposed.
- John Luca, Lincoln Sr.-Opposed. Speculation. No guarantees.
- Andy Kitchner, 18 Lincoln- Opposed. Upkeep of property. No upkeep currently.
- Terrence and Kristina Molby, property owners. Driveway issue is part of easement agreement. Had nothing to do with re-zoning. Commented on trees and lawn blight.
- Brandon Wescott- Opposed rezoning. Increase in noise. Aesthetics of neighborhood.

MOTION: by Bejma/Pielack to close PH at 7:57 p.m.
Roll Call Vote: Ayes- 7. Pielack, Ballard, Bejma, Curtis, Douglas, Helmuth, McClellan. Nays:0. Absent: 0. Motion carried.

9. COMMISSIONER COMMENTS:

Commissioner cited August 2016 Master Plan. Development of single-family housing such as bungalow courts is clearly stated on page two Washington Triangle and Master Plan for Multiple Family Residential District.

McKenna Planner Mario Ortega, reiterated points made regarding re-zoning and approval

process. Any development that would occur on the site would have to go through multiple steps for development to occur. Commissioners must consider the host of uses compatible with the site, adjacent property, and Master Plan. South Washington Re-Development Plan was cited. Single family development is appropriate. Planned Unit Development Plan (PUD). Unique topology type. Physical features of area.

Concerns voiced over restricted access. No driveway options. Lack of capability to use standard buffers. In high density development would have to be carefully located. PUD is a reasonable option for development.

MOTION: by Curtis/Douglas to recommend to the Village Council to deny the request to re-zone Parcel # 04-27-278-020 from Residential-1 to Multiple Family District based on the South Washington Redevelopment plan adopted in 2016.
Roll Call Vote: Ayes -7, Ballard, Bejma, Curtis, Douglas, Helmuth, McClellan, Pielack. Nays: 0. Absent: 0. Motion carried.

10. PUBLIC COMMENTS:

Shannon Strong-Thanked commissioners.
Kelly Arkles – Thanks.
Jim & Marion Magraw -Thanks for looking out for Oxford.
Emma Taylor-Thanks for having residents' best interests at heart.
Jody - Good job of doing "Small Done Right."
Pat Wasvary-Thanks for listening.
Mark Zwayer-Thanked commissioners.

11. CONSULTANT AND ADMINISTRATIVE COMMENTS

The Village has received an Outdoor Dining Review Application from 74 N. Washington. This has been scheduled for Tuesday, June 16th at 7:00 p.m.

12. COMMISSIONER COMMENTS:

Oxford Township- Jack Curtis- Increasing size of outdoor eating permits due to Covid-19 restrictions. Double trouble in Oxford because of the M-24 road project. Oxford Township is reviewing a food truck ordinance. Meeting is at the end of the month.
ZBA-Rose Bejma-no meetings.
DDA-Pete Sholtz, Streetscape M-24 project has kicked off. Due to shutdown have had to meet by ZOOM. Working with OC and Mainstreet to get CARES Grant. Quite a few have been awarded to Village. PPE for Start up kits for local business. North bound traffic will be shut down tomorrow morning through November.
Economic Revitalization Committee working with DDA.

13. ADJOURNMENT:

MOTION: by Helmuth/Douglas to adjourn at 8:48 p.m. All in favor. Motion carried.

Respectfully submitted,
Tere Onica, Recording Secretary

STATE OF MICHIGAN

IN THE 16th JUDICIAL CIRCUIT FOR MACOMB COUNTY

PINEBROOK WARREN, LLC, a Michigan Limited liability company, et al.,

Plaintiffs,

vs.

Case No. 2019-004059-CZ
Hon. Carl J. Marlinga

The CITY OF WARREN, a Michigan Municipal corporation, et al,

Defendants,

PROPOSED INTERVENING DEFENDANT/CROSS-PLAINTIFF, SOZO HEALTH, INC.'S, MOTION TO INTERVENE PURSUANT TO MCR 2.209 AND PROOF OF SERVICE

Proposed Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., ("Sozo Health"), for its Motion to Intervene Pursuant to MCR 2.209 relies upon the attached Brief In Support.

WHEREFORE, the Proposed Intervening Defendant/Cross-Plaintiff Sozo Health, Inc. respectfully requests that this Honorable Court enter an Order:

(I) Granting the Intervening Defendant/Cross-Plaintiff Sozo Health, Inc.'s Motion to Intervene; and

(II) Granting such further relief in favor of the Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., as this Honorable Court deems just, equitable and appropriate under the circumstances presented.

By: **/s/ Robert Charles Davis**
ROBERT CHARLES DAVIS (P40155)
Attorney for Intervening Defendant/
Cross-Plaintiff Sozo Health, Inc.
10 S. Main St., Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300
(586) 469-4303 – Fax
rdavis@dbsattorneys.com

Dated: May 1, 2020

PROOF OF SERVICE

I served the **Proposed Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc.'s Motion to Intervene Pursuant to MCR 2.209** upon the attorneys of record and/or parties in this case on **May 1, 2020**. **I declare the foregoing statement to be true to the best of my information, knowledge and belief.**

☐ U.S. Mail	☐ Fax
☐ Hand Delivered	☐ Messenger
☐ Express Mail Private	**X Other: E-file**

/s/ William N. Listman
William N. Listman

STATE OF MICHIGAN

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Defendants,

PROPOSED INTERVENING DEFENDANT/CROSS-PLAINTIFF, SOZO HEALTH, INC.'S, BRIEF IN SUPPORT OF ITS MOTION TO INTERVENE PURSUANT TO MCR 2.209 AND PROOF OF SERVICE

Proposed Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., ("Sozo Health"), for its Brief In Support of Its Motion to Intervene Pursuant to MCR 2.209, states the following:

I. GENERAL INTRODUCTION

Sozo Health is a necessary party to this litigation. Sozo Health has a vested right that was the subject of revocation without any due process. Sozo Health has standing and now seeks intervention as allowed by law.

II. STANDARDS OF REVIEW

A. MCR 2.209(A) Intervention By Right.

MCR 2.209(A)(3) states that, on timely application, a person has a right to intervene in an action when the applicant **claims an interest relating to the property or transaction which is the subject of the action** and is so **situated that the disposition of the action may as a**

practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately **represented by existing parties**. **(Exhibit 1** -- MCR 2.209)

This Court's April 14, 2020 Opinion and Order ("Opinion and Order") **(Exhibit 2)** has stripped Sozo Health of its Provisioning Center License without Sozo Health being a party to those proceedings. This conflicts, as a matter of law, with Sozo Health's due process rights. Sozo Health's interest is not adequately represented by the existing parties. MCR 2.2029(A) favors and supports the intervention of Sozo Health.

B. MCR 2.209(B) Permissive Intervention.

MCR 2.209(B) provides that a party may seek permissive intervention when an applicant's claim or defense and the main action have a question of law or fact in common. The court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. **(Exhibit 1** -- MCR 2.209)

There is no question that Sozo Health's claim and the captioned matter have a question of law or fact. in common. This Court's Opinion and Order has stripped Sozo Health of its property interest/vested right in the Provisioning Center License issued to it by the City of Warren. MCR 2.209(B) favors and supports the intervention of Sozo Health.

C. MCR 2.209(C) Intervention Procedure.

MCR 2.209(C) states that a person seeking to intervene must apply to the court by motion and give notice in writing to all parties. MCR 2.2029(C) further states that the motion to intervene must state the grounds for the intervention and be **accompanied by a pleading stating the claim or defense for which intervention is sought**. **(Exhibit 1** -- MCR 2.209)

Here, Sozo Health has complied with MCR 2.209(C) by requesting intervention to the above captioned matter by motion has served all parties through this Court's e-filing system and

has attached a pleading stating the claims and the defenses. (This required Exhibit will be filed on Monday May 4, 2020.)

D. MCR 2.205 Necessary Joinder.

MCR 2.205 states that persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests. **(Exhibit 3** -- MCR 2.205) There is no question that the Sozo Health is a necessary party as this Court's actions have stripped Sozo Health of its Provisioning Center License without Sozo Health having been a party to this action in direct conflict with Sozo Health's due process and otherwise vested rights.

III. STATEMENT OF THE RELEVANT AND UNCONTROVERTED FACTS

A. The Defendant City of Warren's Code Of Ordinances.

Warren Code of Ordinances, at Section 19.5-7, states that the City of Warren authorizes provisioning centers and the City may issue up to fifteen provisioning center licenses. **(Exhibit 4** -- Ordinance at Section 19.5-7) Warren Code of Ordinances, at Section 19.5-6, states that a "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. **(Exhibit 4** -- Ordinance at Section 19.5-7)

Warren Code of Ordinances, at Section 19.5-13, states that a medical marihuana review committee ("Review Committee"), made up of the city attorney, (or a designee), the director of the public service department, (or a designee), and the members of the medical marihuana committee or alternates of the city council, as appointed by city council, shall review

applications for provisioning centers. When reviewing plans and applications, the Review Committee shall consider each applicant's submission on 17 different factors. **(Exhibit 4** -- Ordinance at Section 19.5-13)

The Warren Code of Ordinances, at Section 19.5-14, states that the Review Committee shall forward the scores and applications to the Warren City Council with "recommendations". Warren Code of Ordinances, at Section 19.5-14, expressly states that the issuance of any provisioning center license shall be approved by the City Council. The Review Committee only makes recommendations. The decision related to the issuance of any provisioning center license rests solely with the Warren City Council. **(Exhibit 4** -- Ordinance at Section 19.5-14)

B. Sozo Health's License Application Score.

Warren Code of Ordinances, at Section 19.5-14, sets up a scoring system which analyzes 17 different factors and attaches a score from 0 to 10 related to each of these factors. If an applicant were to achieve a perfect score of 10 in each of these factors, that applicant would achieve a maximum score of 170. Sozo Health received a score of 168 out of 170. **(Exhibit 5)**

C. Sozo Health, Inc.'s Provisioning Center License For 23751 Hoover.

On October 30, 2019, the City of Warren issued written and controlling correspondence to Sozo Health confirming that Sozo Health was awarded a Provisioning Center License ("Provisioning Center License") for 23751 Hoover ("Property") ("October 30, 2019 Correspondence"). This October 30, 2019 Correspondence expressly states that the "effective date" of the Provisioning Center License is October 25, 2019. **(Exhibit 6** -- Warren October 30, 2019 Correspondence) The October 30, 2019 Correspondence required Sozo Health to contact the Building Division to schedule inspections for Building, Electrical, Fire, Mechanical, Plumbing and Zoning. **(Exhibit 6** -- Warren October 30, 2019 Correspondence) The October

30, 2019 Correspondence states that license is not transferable and shall only apply to Sozo Health. (**Exhibit 6** -- Warren October 30, 2019 Correspondence)

D. Sozo Health's Actions After the City of Warren Issues The Provisioning Center License.

After the City of Warren issued the Provisioning Center License to Sozo Health, Sozo Health relied on the issuance of this Provisioning License and immediately commenced with the construction process for its facility. The Property was purchased and over $1,000,000.00 was spent on the project. Sozo Health completed substantial work in reliance on the City of Warren's issuance of the Provisioning Center License. Sozo Health has a vested right under the law.

E. This Court's April 14, 2020 Opinion And Order.

On April 14, 2020, this Court issued an Opinion And Order which granted Plaintiff, Happy Trails Group, Inc., Motion for Partial Summary Judgment ("Opinion and Order"). The Opinion and Order ruled that that the actions of the Review Committee, including its recommendations, scoring, and ranking of the applicants are vacated, invalidated, and held to be of nor force and effect. (**Exhibit 2** -- Opinion and Order at p. 11)

This Court further ruled that all actions taken by the Warren City Council awarding licenses to the 15 applicants recommended by the Review Committee, including the actions taken on October 8, 2019, and subsequent actions taken to override the mayor's veto, are vacated, invalidated and of absolutely no force and effect. (**Exhibit 2** -- Opinion and Order at p. 11) This Court's Opinion and Order effectively revoked Sozo Health's Provisioning Center License and destroyed the vested rights of Sozo Health without any due process at all.

IV. LEGAL ARGUMENTS

A. Sozo Health Meets the Requirements For Intervention By Right Pursuant to MCR 2.209(A).

1. Sozo Health Has A Distinct Interest In the Provisioning Center License Which Was Struck Down by this Court's Opinion And Order.

MCR 2.209 (A) requires a demonstration that the intervening party has an interest relating to the property or transaction which is the subject of the action. The City of Warren issued Sozo Health a Provisioning Center License. (**Exhibit 6** -- October 30, 2019 Correspondence) Sozo Health has a distinct property interest in the Provisioning Center License which, as stated in detail below, is protected by due process. The Property associated with the license has been purchased and over $1,000,000 has been spent related to the site work. Despite the fact that Sozo Health has completed substantial work in reliance on the Provisioning Center License, this Court's Opinion and Order eviscerates the actions taken by the Warren City Council awarding licenses to the 15 applicants recommended by the Review Committee, including the license awarded to Sozo Health. Sozo Health has an interest in the property or transaction which is the subject of the above captioned matter.

a. Sozo Health's Due Process Rights Have Been Impacted.

The Michigan Supreme Court, in **Bundo** v. **Walled Lake**, 395 Mich. 679, 696-697; 238 NW2d 154, 162 (1976), ruled that the United States and the Michigan Constitutions provide that no person shall be deprived "of life, liberty or property, without due process of law." (**Exhibit 7** -- **Bundo** v. **Walled Lake**, 395 Mich. 679, 696-697; 238 NW2d 154, 162 (1976).)

According to the Michigan Court of Appeals, due process enforces the rights enumerated in the Bill of Rights and includes both substantive and procedural due process. Procedural due process serves as a limitation on government action and requires government to institute

safeguards in proceedings that affect those rights protected by due process, including life, liberty, or property. (**Exhibit 8** -- **Thomas** v. **Pogats,** 249 Mich. App. 718, 724; 644 NW2d 59, 62 (2002).) According to the Michigan Supreme Court, 'Liberty' and 'property' are broad and majestic terms. (**Exhibit 7** -- **Bundo** v. **Walled Lake**, 395 Mich. 679, 690; 238 NW2d 154, 159 (1976).)

In **Bunn** v. **Michigan Liquor Control Com**., 125 Mich. App. 84, 89; 335 NW2d 913, 915-916 (1983), the Michigan Court of Appeals cited to the Michigan Supreme Court's Opinion in **Bundo** where the Michigan Supreme Court found that the holder of a **liquor license** has a property interest in that license and is entitled to due process protection.

> "The Court in **Bundo also found that the holder of a liquor license has a property interest in that license and is entitled to due process protection**. 395 Mich 695; see, also, Bisco's, Inc v Liquor Control Comm, 395 Mich 706; 238 NW2d 166 (1976)." (**Exhibit 9** -- **Bunn** v. **Michigan Liquor Ceontrol Com**., 125 Mich. App. 84, 89; 335 NW2d 913, 915-916 (1983).)

According to the Michigan Court of Appeals, the due process afforded to a liquor license holder consists of notice of the proposed action and the reasons given for the action, a hearing in which the licensee may present evidence and testimony and confront adverse witnesses, and a written statement of findings on the part of the body taking the action.

> **"The due process a liquor license holder was entitled to consisted of "rudimentary due process". Such due process [**916] consists of notice of the proposed action and the reasons given for this action, a hearing in which the licensee may present evidence and testimony and confront adverse witnesses, and a written statement of findings on the part of the body taking the action**. 395 Mich 696-697." (**Exhibit 9** -- **Bunn** v. **Michigan Liquor Ceontrol Com**., 125 Mich. App. 84, 89; 335 NW2d 913, 915-916 (1983).)

The Michigan Supreme Court, in **Bundo** v. **Walled Lake**, 395 Mich. 679, 696-697; 238 NW2d 154, 162 (1976), ruled that the plaintiff liquor license holder in that case must be afforded what

has come to be called "rudimentary due process". (**Exhibit 7 -- Bundo** v. **Walled Lake**, 395 Mich. 679, 696-697; 238 NW2d 154, 162 (1976).)

Sozo Health is entitled to due process related to its property interest in the Provisioning Center License. Sozo Health's procedural and substantive due process rights have been adversely impacted -- destroyed -- by this Court's Opinion and Order.

As noted by the Michigan Court of Appeals, the "fundamental requirement of due process" is the "opportunity to be heard **"at a meaningful time and in a meaningful manner"**.

> "**The "fundamental requirement of due process" is the "opportunity to be heard 'at a meaningful time and in a meaningful manner.'"** *Mathews, supra* at 333, quoting *Armstrong v Manzo*, 380 U.S. 545, 552; 85 S. Ct. 1187; 14 L. Ed. 2d 62 (1965)." (**Exhibit 10 -- English** v. **Blue Cross Blue Shield**, 263 Mich. App. 449, 459-460; 688 NW2d 523, 531 (2004).) (Emphasis Added)

Sozo Health has not had an opportunity to be heard at a meaningful time and in a meaningful manner. Intervention is requested accordingly.

2. The Interests Of Sozo Health Are Not Adequately Protected.

MCR 2.209 (A) requires a demonstration that the interests of the intervening party are not being adequately represented. The interests of Sozo Health relate to Sozo Health maintaining its Provisioning Center License. The City of Warren's Code of Ordinances limits the number of provisioning center license which can be granted. The current Plaintiffs before this Court have no interest in Sozo Health maintaining its Provisioning Center License as that license takes away one of the licenses which the City of Warren is able to issue. While the City of Warren may have an interest in making sure that its processes and procedures are upheld, that interest does not rise to the same level of the interest that Sozo Health has in protecting its vested property interest in the Provisioning Center License, protecting its monetary investment, and protecting its

due process rights as guaranteed by the United States Constitution and the Michigan Constitution.

3. **Sozo Health's Motion To Intervene Is Timely.**

The Prior entry of a judgment does not bar a motion to intervene under MCR 2.309(A). In **People** v **14925 Livernois**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [September 15, 2016] (Docket No. 327377), the trial court denied a motion to intervene solely because a final judgment had already been entered. **(Exhibit 11 -- People v 14925 Livernois**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [September 15, 2016] (Docket No. 327377).) The Michigan Court of Appeals reversed and ruled that, when a party seeks intervention as a matter of right under MCR 2.209(A), there is no need to consider whether a judgment has already been entered. This rule of law applies here.

> "Third, the proposed intervenors in *Dean* sought *permissive intervention* through MCR 2.209(B), **and here, IIG sought *intervention of right* through MCR 2.209(A). Under the rules for permissive intervention, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." MCR 2.209(B). Notably, under MCR 2.209(A) for intervention of right, there is no corresponding consideration**. Thus, unlike with intervention of right, when a request for permissive intervention occurs, a court must evaluate any potential prejudice to the original parties, which necessarily includes consideration of whether a judgment may have already been entered in the action." **(Exhibit 11 -- People v 14925 Livernois**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [September 15, 2016] (Docket No. 327377).) (Emphasis Added) **(Exhibit 4)**

B. Sozo Health Also Meets the Requirement For Permissive Intervention Pursuant to MCR 2.209(B).

A party may seek permissive intervention when an applicant's claim or defense and the main action have a question of law or fact in common. The Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

This Court's Opinion And Order ruled that that the actions of the Review Committee, including its recommendations, scoring, and ranking of applicants, are vacated, invalidated, and held to be of no force and effect. **(Exhibit 2** -- Opinion and Order at p. 11) This Court ruled that all actions taken by the Warren City Council awarding licenses to the 15 applicants recommended by the Review Committee, including the actions taken on October 8, 2019, and subsequent actions taken to override the mayor's veto, are vacated, invalidated and of absolutely no force and effect. **(Exhibit 2** -- Opinion and Order at p. 11) This Opinion and Order impacts Sozo Health as it wholly strips Sozo Health of its Provisioning Center License previously issued by the Warren City Council.

Sozo Health's intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. In fact, on April 15, 2020, this Court issued an Order Staying Summary Disposition Opinion and Order of April 14, 2020 ("Stay Order"). There is no question that Sozo Health's Motion to Intervene is timely brought and will not unduly delay or prejudice the adjudication of the rights of the original parties.

C. Sozo Health Has Standing.

In 2010, the Michigan Supreme Court ruled that Michigan standing jurisprudence should be "restored" to a limited, prudential doctrine where a litigant will have standing whenever there is a legal cause of action. This applies here. For example, only, the Michigan Supreme Court ruled that a litigant who otherwise meets the requirements of MCR 2.605 will have standing to seek a declaratory judgment. This applies here.

> "We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing.[FN19] **Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.**[FN20]

(**Lansing Schools Educ. Ass'n** v. **Lansing Bd. of Educ,**. 487 Mich. 349, 372, 792 N.W.2d 686, 699 (2010).)

According to this Michigan Supreme Court, an actual controversy, pursuant to MCR 2.605, will exist if the plaintiffs plead and prove facts which indicate an **"adverse interest"** necessitating the sharpening of the issues raised. This test applies here. (**Lansing Schools Educ. Ass'n** v. **Lansing Bd. of Educ.,** 487 Mich. 349, 372, 792 N.W.2d 686, 699 (2010).)

Sozo Health has an interest in protecting its property interest in the Provisioning Center License, protecting its monetary investment, and protecting its due process rights as guaranteed by the United States Constitution and the Michigan Constitution. These interests are unquestionably adversely impacted by this Court's Opinion and Order. Sozo Health clearly has an adverse interest necessitating the sharpening of the issues raised. Given the substantial work done by Sozo Health in reliance on the issuance of the Provisioning Center License, Sozo Health, as stated in detail below, has a vested right.

1. **Sozo Health Has A Vested Right As A Matter Of Law.**

The Michigan Court of Appeals has ruled that a vested right is defined as an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice.

> "**A vested right is defined as: "an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice."** *Detroit v Walker*, 445 Mich. 682, 699; 520 N.W.2d 135 (1994)." (**Exhibit 12** -- **Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August 26, 2004] (Docket No. 244389).) (Emphasis Added)

The Michigan Court of Appeals has ruled that, in order to determine whether a right has vested, the Court examines whether the holder possesses what amounts to be a title interest in the right asserted.

> **"To determine whether a right has vested this Court examines whether "the holder possesses what amounts to be a title interest in the right asserted."** *Id.*" **(Exhibit 12 -- Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August 26, 2004] (Docket No. 244389).) (Emphasis Added)

In **Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August 26, 2004] (Docket No. 244389), the Michigan Court of Appeals examined vested rights. The Michigan Court of Appeals looked to the Michigan Supreme Court's Opinion in **Dingeman Advertising** v **Algoma Twp**, 393 Mich. 89; 223 NW2d 689 (1974). The Michigan Court of Appeals stated that the Michigan Supreme Court's Opinion in **Dingeman** stands for the proposition that **the issuance of a valid permit and substantial reliance thereon creates a vested right in the permit**. **(Exhibit 12 -- Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August 26, 2004] (Docket No. 244389).) The Michigan Court of Appeals also noted that, in **Expert Steel Treating Co** v **Clawson**, 368 Mich. 619, 621-622; 118 N.W.2d 815 (1962), the plaintiff was found to have acquired a vested right to complete an addition to his heat-treating plant, even though he was in violation of a setback provision in the Clawson City Ordinance. The Court took into consideration, that in reliance on the City building permit, the plaintiff purchased materials, spent thousands of dollars on labor, and commenced construction, all before the City Manager revoked his permit. **(Exhibit 12 -- Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August 26, 2004] (Docket No. 244389).) The Michigan Court of Appeals, in **Schenden,** ruled that the plaintiffs in that case had acquired a vested right in a Township building permit, having conducted substantial work in reliance on the acts of the Township officials and the issuance of the permit. **(Exhibit 12 -- Schenden** v. **Addison Township**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [August

26, 2004] (Docket No. 244389).) Here, Sozo Health has a vested right in the Provisioning Center License.

D. The Ruling That The Review Committee Is A Public Body Requires Additional Judicial Review.

Although not binding, the following opinions of the Michigan Attorney General provide guidance on the key issue presented in this case. In analyzing the key legal issue, the following facts should be closely considered.

- The applicable Ordinance is the result of an unchallenged public process;
- The applicable Ordinance established the Review Committee;
- The applicable Ordinance established the review criteria;
- The applicable Ordinance established the total number of licenses to issue.
- The applicable Ordinance made it clear the Review Committee was a recommending committee only;
- The applicable Ordinance reserved all decision making to the City Council and all 65 candidates were presented to the City Council.

1. Michigan Attorney General Opinion No. 6935. (Exhibit 13)

In Opinion No. 6935, the Michigan Attorney General was asked if the OMA was violated when a committee formed by the Ionia Board of Education to study eligibility standards for participating in athletics excluded the public from a committee meeting. The committee was charged with gathering information, reviewing existing school district policy and making recommendations to the board of education regarding eligibility standards for athletic participation. The committee was not given authority to alter existing district policy. Instead, decisions regarding the school district policy would be made by the board of education in an open meeting after the board evaluated the committee's recommendations. At its initial meeting, the committee barred a local newspaper reporter from attending. The Michigan Attorney

General starts this opinion by noting that prior opinions of the Michigan Attorney General have consistently concluded that the definition of "public body" does not include advisory boards or committees of a public body that do not exercise governmental or proprietary authority.

> "Although the definition of public body is broad, it is limited to bodies that are empowered by law to exercise governmental or proprietary authority. **Prior opinions of this office have consistently concluded that the definition of public body does not include advisory boards or committees of a public body that do not exercise governmental or proprietary authority**. OAG, 1993-1994, NO 6799, pp 147, 148 (May 18, 1994); OAG 1981-1982, No 6053, p 616, supra OAG, 1979-1980, No 5505, pp 221, 222 (July 3, 1979); OAG, 1977-1978, No 5183, pp 21, 40 (March 8, 1977)." (**Exhibit 13** -- OAG Opinion No. 6935) (Emphasis Added)

The Attorney General then relies on Michigan Attorney General Opinion 1977-1978, No 5183, wherein the Michigan Attorney General concluded that, based on the wording of the OMA, the Act does not apply to committees and the subcommittees of public bodies which are merely advisory or only capable of making "recommendations concerning the exercise of governmental authority". The Michigan Attorney General notes that these bodies are not legally capable of rendering a "final decision". **According to the Michigan Attorney General, a subcommittee which can only make recommendations to the public body for final decision is not required to hold its committee meetings in public hearings.**

> "OAG, 1977-1978, No 5183, supra, at 40, concluded that:
>
> Based on the wording of the enacted version of the [Open Meetings] Act and the intent of the legislature as indicated by the changes from the original form, **it is my opinion that the Act does not apply to committees and the subcommittees of public bodies which are merely advisory or only capable of making "recommendations concerning the exercise of governmental authority". These bodies are not legally capable of rendering a "final decision". In other words, a subcommittee which can only make recommendations to the public body for final decision is not required to hold its committee meetings in public hearings**." (**Exhibit 13** -- OAG Opinion No. 6935) (Emphasis Added)

After stating this general proposition, the Michigan Attorney General provides an in depth examination of the Michigan Supreme Court's Opinion in **Booth Newspapers** v **University of Michigan Board of Regents**, 444 Mich. 211; 507 NW2d 422 (1993). **(Exhibit 13** --OAG Opinion No. 6935)

The Michigan Attorney General notes that, in **Booth**, the Michigan Supreme Court held that the University of Michigan Board of Regents' process for selection of a new university president violated the OMA. In **Booth**, the Board of Regents appointed **all of its members** to the Presidential Selection Committee, appointed one of the Regents chairmen of that committee and engaged in a process of eliminating potential candidates from consideration for the position. The committee and its chairman ultimately reduced the number of candidates from 250 to 12 without having conducted any public meetings. **(Exhibit 13** -- OAG Opinion No. 6935)

As noted by the Michigan Attorney General, the Michigan Supreme Court held in **Booth** that the selection committee's "reduction of the field of potential candidates" constituted a series of "decisions" made by a public body that should have been made in open session.

> "**The Court further held that the selection committee's reduction of the field of potential candidates constituted a series of "decisions" made by a public body that should have been made in open session**. Booth, supra, 444 Mich at 227-229." **(Exhibit 13** -- OAG Opinion No. 6935) (Emphasis Added)

The Michigan Attorney General noted that the Michigan Supreme Court's decision in **Booth** is not applicable because the Board of Education of the Ionia Public Schools never delegated any decision making authority to the committee. Thus, unlike in **Booth**, the committee created by the Ionia Board of Education was purely advisory in nature.

> "The Supreme Court's decision in Booth, supra, is not applicable here because the **Board of Education of the Ionia Public Schools never delegated any decision-making authority to the committee**. It simply

> ***created the committee to study the issue and to make recommendations***. Thus, unlike Booth, the committee created by the Ionia Board of Education is purely advisory in nature. **Since the committee is only capable of making 'recommendations concerning the exercise of governmental authority." Its meetings need not be open to the public**. OAG, 1977-1978, No 5183, supra, at 40." **(Exhibit 13** -- OAG Opinion No. 6935) (Emphasis Added)

Here -- unlike in Booth -- the Review Committee did not reduce the field of applicants for a Provisioning Center License. The field of applicants was presented to the City Council and the City Council made the final determination. The Warren Code of Ordinances, at Section 19.5-14, expressly states that the issuance of any provisioning center license shall be approved by the City Council.

2. **Michigan Attorney General Opinion No. 6053 -- Exhibit 14**

In OAG Opinion No. 6053, the question presented to the Michigan Attorney General was whether the student budget review and allocation committee at Central Michigan University must conduct its meetings in accordance with the provisions of the Open Meetings Act. **(Exhibit 14** – OAG Opinion No. 6053) The Michigan Attorney General noted that the function of the student budget review and allocations committee (SBAC) is to gather information, conduct hearings and make recommendations regarding the allocation of university funds to the office of student affairs. The final funding decisions are not made by SBAC. Instead, the decisions are made by the vice-president of student affairs

> "The function of the student budget review and allocations committee (SBAC) is to gather information, conduct hearings and **make recommendations regarding the allocation of university funds to the office of student affairs. The final funding decisions are not made by SBAC, but rather, are made by the vice-president of student affairs."** **(Exhibit 14** – OAG Opinion No. 6053)

The Michigan Attorney General concluded that the **Legislature has not**, by the provisions of 1976 PA 267, supra, required the student budget review and allocation committee to conduct its meetings in public. **(Exhibit 14** -- OAG Opinion No. 6053)

3. Michigan Attorney General Opinion No. 5505 -- Exhibit 15

In OAG Opinion No. 55505, the question presented was whether the meetings of the promotion and tenure committees and the budget committees of Wayne State University subject to the provisions of the Open Meetings Act. **(Exhibit 15** -- OAG Opinion No. 5505) The Michigan Attorney General noted that these committees evaluate and recommend candidates for promotion and tenure. The President of the University retains the ultimate right to make affirmative recommendations for tenure and promotion to the Board of Governors. However, tenure can only be granted by the Board of Governors; and promotions determined by the Board and the President in accordance with the authority delegated to the President by the Board.

> **"These committees evaluate and recommend candidates for promotion and tenure. The President of the University retains the ultimate right to make affirmative recommendations for tenure and promotion to the Board of Governors (Agreement, art 22D3) and art C). "** **(Exhibit 15** -- OAG Opinion No. 5505)

The Michigan Attorney General concluded that the promotions and tenure committees and the budget committees of Wayne State University are advisory boards and are not subject to the provisions of the Open Meetings Act. **(Exhibit 15** -- OAG Opinion No. 5505)

E. The Ruling In "A Felon's Crusade" Is Instructive And On Point. (Exhibit 16)

In **A Felon's Crusade For Equality**, the Detroit Public Schools Board of Education ("Board") was searching for a new superintendent for the Detroit Public Schools Community District ("DPSCD"). The DPSCD issued a request for proposal from search firms to look for a new superintendent. Three members of the Board were assigned to a committee to review the

responses to the RFP and report back to the Board. This committee screened 3 search firms, presented all 3 to the Board and recommended one of them. The plaintiff initiated suit and alleged the committee violated the OMA by failing to hold their meetings in public. The Michigan Court of Appeals noted that a report -- even if it contains recommendations -- is purely advisory in nature and cannot constitute governing through independent decision making. **(Exhibit 16 -- A Felon's Crusade** v. **Detroit Pub. Schs. Cmty. Dist. Bd. Of Educ.**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [November 14, 2019] (Docket No. 343881).)

The Michigan Court of Appeals ruled that the actions of the committee were a far cry from the actions in **Booth**. The committee screened three search firm candidates and presented three candidates. Thus, unlike the evasive procedures used in ***Booth***, the Board was free to consider the merits of all three prospective search firms at a meeting open to the public. The Michigan Court of Appeals ruled that the mere fact that the committee recommended Ray as the most qualified search firm does not necessitate the conclusion that the Committee was exercising the Board's authority to choose the search firm. The Court of Appeals ruled that the Board was free to accept or reject the committee's recommendation. The Michigan Court of Appeals ruled that the committee was not a public body.

> "**The mere fact that the Committee recommended Ray as the most qualified search firm does not necessitate the conclusion that the Committee was exercising the Board's authority to choose the search firm**. See *Davis*, 296 Mich App at 600 . . . **The Committee explained the reasons for its recommendation and the Board was free to accept or reject that recommendation**. Because the Committee only gathered and presented information to the Board, and because the Committee had no authority to act on its own recommendation, the trial court did not err by concluding that the Committee was not a public body required to comply with OMA." **(Exhibit 16 – A Felon's Crusade** v. **Detroit Pub. Schs. Cmty. Dist. Bd. Of Educ.**, Unpublished Opinion Per Curiam of the Court

of Appeals, decided [November 14, 2019] (Docket No. 343881).) (Emphasis Added)

The Review Committee in this case, screened the applications and presented all of the applicants to the Warren City Council, The City Council was free to accept or reject the committee's recommendation. Just as the committee in **A Felon's Crusade** was not a public body the Review Committee was not a public body either.

V. CONCLUSIONS AND RELIEF REQUESTED

Sozo Health meets the legal standards for intervention. Sozo Health had a vested right that was adjudicated and revoked without any form of due process. The City of Warren Review Committee is not a public body under the law because it did not narrow or reduce the listing of licensee candidates presented to the City Council.

WHEREFORE, the Proposed Intervening Defendant/Cross-Plaintiff Sozo Health, Inc. respectfully requests that this Honorable Court enter an Order:

(I) Granting the Intervening Defendant/Cross-Plaintiff Sozo Health, Inc.'s Motion to Intervene; and

(II) Granting such further relief in favor of the Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., as this Honorable Court deems just, equitable and appropriate under the circumstances presented.

By: **/s/ Robert Charles Davis**

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Dated: May 1, 2020

PROOF OF SERVICE

I served the **Proposed Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc.'s Brief in Support Of Its Motion to Intervene Pursuant to MCR 2.209** upon the attorneys of record and/or parties in this case on **May 1, 2020**. I declare the foregoing statement to be true to the best of my information, knowledge and belief.

☐ U.S. Mail	☐ Fax
☐ Hand Delivered	☐ Messenger
☐ Express Mail Private	**X Other: E-file**

/s/ William N. Listman
William N. Listman

ROBERT CHARLES DAVIS
Attorney

Memo

TO: **Village Council**
Village Planning Commission *via electronic mail only*
Village Manager
Village Clerk

FROM: **Robert Charles Davis**

RE: **Adult Use Marijuana Facilities Ordinance**

DATE: **May 7, 2020**

I. INTRODUCTION

The purpose of this memo is to present a revised version of the referenced ordinance. This memo explains the proposed changes and also presents ongoing legal and litigation concerns.

II. THE ORDINANCE

The following is a listing of the primary ordinance provisions:

a. The ordinance now establishes a license process instead of a special land use approval process. The license will not run with the land and shall be subject to a revocation process. The license will be tied to the entity and not the property.

b. The locations for the authorized facilities are defined as "Permitted Districts" under Section C.4.a. and are further defined to be in designated areas of the I-1 zoning district.

c. The development conditions for any facility are in place and are generally the same as the prior ordinance.

d. There is now an application submittal process with defined requirements. This requires a completed application form. That draft application form is attached.

e. There is a lawful process to revoke/suspend or otherwise terminate a license with an appeal process. This creates fairness in the process and should satisfy due process concerns.

f. There is a penalty provision which is consistent with the law.

III. ORDINANCE CONCERNS

The establishment of a recreational marijuana facility is competitive in the market due to the revenue projections at issue. The question of who gets selected for a facility and how that selection process works is an area that is subject to litigation concerns. Current lawsuits in other jurisdictions challenge the ordinance process, the review process, the selection process and the siting process. Many of these legal challenges are in the beginning stages with no judicial results. Thus, there is very little precedent available to provide guidance with respect to all of various approaches to local ordinances that attempt to allow and govern these facilities in any given community.

With respect to the Village of Oxford proposed ordinance scheme, I believe the following components may raise concerns -- both positive and negative:

a. We are not establishing a defined number of licenses to be issued. Instead, we are defining an area where licenses may be eligible.

b. We are defining, by geography, the permitted properties wherein these facilities may be licensed and located. Thus, zoning is not a dispute because the area is defined. I think it is wise to make it clear in the ordinance that rezoned parcels that become I-1 due to a successful rezoning process are not included. There should be no right to seek any form of variance or to argue for approval in a non-defined area as a special land use. I have inserted this type of language.

c. By designated the zoning "box" for these uses, the Village is -- in a sense -- selecting the license "winners" as being the current property owners/operators in the geography pre-determined to be permitted. This could be subject to a challenge by disgruntled outsiders.

d. The ordinance scheme, as drafted, removes any form of review process which may result in legal challenges by non-selected/non-eligible entities. Instead, the review criteria starts with geography and then moves only to application compliance. I view this as fair.

e. The ordinance scheme, as drafted, does not create any link to persons or entities previously granted an approval for medical marijuana facility. Many new ordinances create a preference for entities already approved for medical related facilities. We are not doing this.

IV. CONCLUSIONS

The ordinance scheme is based on a license process that is linked to a geographic portion of the Village. While it does favor the existing property owners in that designated area, those persons/owners/operators are subject to the license requirements and processes. The same process would apply to any new owner or operator in that geographical area of the I-1 zoning district.

Robert Charles Davis

/emm
Attachment(s)

SECTION 4.1.29 • ADULT USE MARIJUANA FACILITIES

An ordinance to license regulate adult use marijuana facilities in the Village of Oxford.

Adult use marijuana facilities shall conform and be subject to the provisions of this ordinance.

A. **Definitions.** As used in this ordinance, the following definitions shall apply to adult use marijuana facilities:

1. **Applicant:** Any individual, organization, entity, or association, including any corporation, partnership, limited liability company, or any other business, that applies for a License under this ordinance.

2. **Department:** The State of Michigan Department of Licensing and Regulatory Affairs.

3. **License:** A license to operate a marijuana facility under this ordinance.

4. **Marijuana:** All parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marijuana concentrate and marijuana-infused products. For purposes of this act, marijuana does not include:

   a. the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;

   b. Industrial hemp; or

   c. any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

   For the purposes of this Village of Oxford ordinance, the spelling of the above defined term shall be 'marijuana' and should be deemed to be equivalent to and referencing the term that is spelled 'marihuana' by the Department and within the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, as amended.

5. **Marijuana Accessories:** Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

6. **Marijuana Designated Consumption Establishment:** A commercial space that is licensed by the Department and authorized to permit adults 21 years of age and older to consume marijuana products at the location indicated on the state license.

7. **Marijuana Facility:** Any type of marijuana-related business licensed by the Department as authorized by the Michigan Regulation and Taxation of Marijuana Act, Initiated Law 1 of 2018, as amended.

8. **Marijuana Grower:** A facility operated by a State Licensee holding less than 5 class C marijuana grower licenses where the cultivation of marijuana takes place. A facility receiving a grower license authorizes the facility to grow not more than the following number of marijuana plants under the indicated license class for each license the grower holds in that class:

    a) Class A – 500 marijuana plants

    b) Class B – 1,000 marijuana plants

    c) Class C – 1,500 marijuana plants

9. **Excess Marijuana Grower:** A facility operated by a person holding 5 class C marijuana grower licenses and licensed to cultivate marijuana and sell or otherwise transfer marijuana to marijuana establishments where the cultivation of marijuana takes place.

10. **Marijuana Microbusiness:** A facility operated by a State Licensee where the cultivation of not more than 150 marijuana plants, the processing and packaging of marijuana, and the sale or otherwise transference of marijuana to individuals who are 21 years of age or older or to a marijuana safety compliance facility takes place.

11. **Marijuana Processor:** A facility operated by a State Licensee where the processing and packaging of marijuana takes place.

12. **Marijuana Retailer:** A facility operated by a State Licensee where the sale or otherwise transference of marijuana, marijuana-infused products or marijuana accessories to individuals who are 21 years of age or older takes place.

13. **Marijuana Safety Compliance Facility:** A facility operated by a State Licensee where the testing of marijuana for the certification of potency and the presence of contaminants takes place.

14. **Marijuana Secure Transporter:** A person licensed to obtain marijuana from marijuana establishments in order to transport marijuana to marijuana establishments.

15. **State Licensee:** Any individual, corporation, limited liability company, partnership of any type, trust or other legal entity that has been issued a license by the Department that allows for the operation of a marijuana facility.

16. **Temporary Marijuana Event:** Any event held by a marijuana event organizer licensee where the onsite sale or consumption of marijuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

B. Permitted and Prohibited Facilities.

1. **Conflicts of Law.** As of the effective date of this ordinance, marijuana is classified as a Schedule 1 controlled substance under the Federal Controlled Substances Act, 21 USC S801, et. seq. which makes it unlawful to manufacture, distribute or dispense marijuana. Nothing in this ordinance creates or grants immunity to any person or entity from criminal prosecution under any applicable federal law.

2. **Permitted Facilities.** Only the following listed marijuana facilities shall be allowed to be located within the Village of Oxford under this ordinance:

   a. Marijuana Grower

   b. Marijuana Microbusiness

   c. Marijuana Processor

   d. Marijuana Retailer

   e. Marijuana Safety Compliance Facility

   f. Marijuana Secure Transporter

   No person or entity shall establish or operate any adult use marijuana facility in the Village of Oxford without first complying with this ordinance and any and all applicable state laws and regulations, including all amendments to such ordinances, laws and regulations.

3. **Permitted Shared Facilities.** Any licensed marijuana facility under this ordinance may be allowed to operate in the same building housing another licensed marijuana facility provided it is constructed and operated in compliance with all State and Village of Oxford requirements for the shared use of marijuana facilities. Marijuana facilities may be allowed to occupy more than one building on the same lot provided the facility and buildings are operated in compliance with all State and Village of Oxford requirements.

4. **Prohibited Facilities.**

   a. **Mixed-Use Prohibited.** No other principal use, special land use or accessory use shall be permitted or continue to operate on the same lot, parcel or unit upon which a marijuana facility is located and operated upon under this ordinance.

b. **Home Occupations and Accessory Use Prohibited.** A marijuana facility, or activities associated with the marijuana facility, shall not be permitted as a home occupation or an accessory use.

c. **Other Marijuana Facilities Prohibited.** Any marijuana facility or event not specifically listed as a permitted facility or event herein shall be prohibited within the Village of Oxford.

C. Location. Marijuana facilities are permitted to be located, as a permitted use subject to the terms of this ordinance and all applicable State laws and regulations, within the Village of Oxford as set forth below and shall adhere to the following location requirements:

1. **Child Care Facilities, Schools, and Similar Facilities Buffer.** All lots containing a marijuana facility must be located at least 500 feet from the nearest lot line of any child care center or licensed day care facility licensed by the State of Michigan Department of Licensing and Regulatory Affairs and 500 feet from the nearest preschool program center, primary, intermediate or secondary school, or like facility, established pursuant to and in accordance with the Revised School Code, P.A. 451 of 1976, being M.C.L.A. §§ 380.1 through 380.1853, as amended, and/or the State School Aid Act of 1979, P.A. 94 of 1979, being M.C.L.A. §§ 388.1601 through 388.1772, as amended.

2. **Public Parks Buffer.** All lots containing a marijuana retailer facility must be located at least 500 feet from a public park measured from the nearest lot line of the marijuana facility to the nearest lot line of the public park.

3. **Marijuana Facilities Buffer.** All lots containing a marijuana facility must be located at least 100 feet from any other lot containing a marijuana facility, measured from the nearest lot line of the marijuana facility to the nearest lot line of any other marijuana facility.

4. **Permitted Districts.**

   a. **I-1 Industrial District:** All permitted marijuana facilities shall be allowed as a permitted use only on parcels in the Village of Oxford whose front lot line is the Glaspie Street, Industrial Drive or Drahner Road right-of-way line and are otherwise fully located in the I-1 Industrial zoning district.

   b. The geographic area defined above in 4.a. is final and complete. No other property outside this geographic area shall have the right to allow for the placement of a marijuana facility by variance, special land use approval, rezoning or any form of contract rezoning.

D. General Use Requirements For All Marijuana Facilities.

1. **Hours of Operation.** All marijuana facilities must provide the Village of Oxford administration and Chief of Police with the hours of operation of the facility, must

provide revised hours if adjusted within 48 hours of a change and must provide such information if requested by the Village of Oxford. Marijuana retailers and the retail operations of a Marijuana Microbusiness shall only be open from 9:00 a.m. to 9:00 p.m. with no modifications allowed.

2. **Odor Control.** All marijuana facilities must be equipped with an operable filtration, ventilation, and exhaust system that, at all times, effectively confines odors to the interior of the building from which the odor is generated.

   No marijuana shall be cultivated, grown, manufactured or processed in any manner that would emit odors beyond tbe interior of the premises or which is otherwise discernable to another person. The odor must be prevented by the installation of an operable filtration to ventilation and exhaust system. Odors must otherwise be effectively confined to the interior of the location in which the odor is generated.

   Venting of marijuana odors into the areas surrounding the location is deemed and declared to be a public nuisance for all legal purposes.

3. **Waste Water.** All marijuana facilities shall be designed and operated so as to minimize the amount of pesticides, fertilizers, nutrients, marijuana, and any other potential contaminants discharged into the public wastewater and/or stormwater systems as shall be determined by the Village Engineer.

4. **Security Requirements.** All marijuana facilities must have an adequate security plan to prevent access to marijuana by non-authorized personnel, including unauthorized removal of any marijuana. All rooms that contain marijuana, in any form, must be individually locked and accessible only to authorized personnel. The building(s) housing the marijuana facility shall all be equipped with security cameras approved by the Chief of Police, maintained in operational order, and installed in such a way as to monitor the entire perimeter of the building(s) including all parking lots and areas accessible by individuals and capable of recording and storing both on and off site a minimum of 120 continuous hours of the perimeter monitoring. The security cameras shall be in operation 24 hours a day, seven days a week, and shall be set to maintain the record of the prior 120 hours of continuous operation. The Chief of Police may require review and recommendation of a proposed security plan by an independent consultant with credentialed expertise in the field of site/facility security measures. The cost of an independent review by an independent security consultant shall be paid by the applicant. The security plan shall describe how cash will be handled and deposited, including a plan to minimize the cash on hand at the marijuana facilities and to provide for a method of secure pick up and transportation of cash.

5. **Indoor Activity Only.** All marijuana facility activities including, but not limited to, operations, cultivation, processing, storage, and transactions, shall be conducted within an enclosed structure. All outdoor storage is prohibited.

6. **Inspections.** A marijuana facility shall be subject to inspections to ensure compliance with all applicable Village of Oxford codes and ordinances and all applicable State laws.

7. **Prohibited Activities.** No smoking, inhalation, or consumption of marijuana shall take place on the premises of any marijuana facility.

8. **Unlawful Activities.** Any uses or activities found by the State of Michigan or a court of competent jurisdiction to be unconstitutional or otherwise unlawful by State law shall not be permitted by the Village of Oxford.

E. Application Submittal Requirements for a License.

The following items shall be required at the time an applicant makes an application for a license under this ordinance. If any item is not included at the time of the application, the entire application shall not be accepted for review by the Village of Oxford. Any subsequent revisions to an application previously reviewed by the Village of Oxford shall submit all of the following items at the time of application.

1. **Application Form.** A signed and dated application form to be provided by the Village of Oxford. If the applicant does not own the property, a signed and notarized statement granting permission to another individual to submit an application shall be included with the application.

2. **Preliminary State License Approval.** A letter from the Marijuana Regulatory Agency of the State of Michigan, or its' designated successor, granting preliminary state license approval for the applicant to operate a marijuana facility that the applicant is requesting for approval within the Village of Oxford.

3. **Site Plan.** A site plan including all information required in the Village of Oxford zoning ordinance and all general use requirements set forth herein. The site plan shall be reviewed and approved consistent with the Village of Oxford Zoning Ordinance.

4. **Use Statement.** A written statement by the applicant identifying all activities, operations, products and services to be provided by the marijuana facility, including retail sales of food and/or beverages, if any.

5. **Hours of Operation.** A written statement identifying the marijuana facilities' hours of operation.

6. **Odor Control Plan.** An odor control plan consistent with the requirements herein.

7. **Waste Water Control Plan.** A waste water control plan consistent with the requirements herein.

8. **Security Plan.** A security plan consistent with the requirements herein.

9. **Liability Release and Insurance Documentation.** An executed release of liability, indemnification and hold harmless agreement in the form provided by the Village of Oxford's application form and proof of insurance providing general liability coverage for loss, liability and damage claims arising out of injury to persons or property in an amount to be set by resolution of the Village of Oxford Council.

10. **Notarized Acknowledgement of Operational Requirements.** As part of the application form, the applicant shall submit a signed and notarized statement by all individuals receiving pre-approval to operate the marijuana facility that applicant(s) are aware of the terms of this ordinance.

F. Application Consideration.

A completed application for a license shall be reviewed and considered to be consistent with this ordinance. There shall be no other review policy or guideline.

1. **Application Fee**. The applicant, with the application, shall pay a fee of $5,000.00 per license type to defray the administrative and enforcement costs associated with the operation of marijuana facility.

2. **Renewals**. Each license issued under this ordinance must be renewed annually with a renewal fee of $5,000.00 per license on a renewal form to be provided by the Village of Oxford.

3. **No Property Right**. A Village license for a marijuana facility is a revocable privilege granted by the Village of Oxford and is not a property right. Granting a license under this ordinance does not create or vest any right, title, franchise, or other property interest. No licensee or any other person shall lease, pledge, or borrow or loan money against a license.

G. Adverse License Actions.

The Village of Oxford Village Manager may suspend, revoke, or place in non-renewal status any License granted under this ordinance based on the following:

1. Any fraud or misrepresentation contained in the license application.

2. Any violation of this ordinance or State Marijuana Law.

3. The marijuana business operates in an unlawful manner or in such a way as to constitute a public nuisance or to adversely affect the health, safety, or general welfare of the public.

4. The revocation, suspension, nonrenewal, and placement of restrictions by the agency on a state license applies equally to the corresponding license issued by the Village of Oxford.

If a license is not renewed or is suspended or revoked, the licensee must immediately cease all operations at the marijuana facility.

Nothing in this section prohibits the Village from imposing other penalties authorized in the Village of Oxford Codes and Ordinances, including filing a public nuisance action or any other legal action in a court of competent jurisdiction.

H. Due Process. For a violation that impacts health or safety of customers, employees, or the public, the Village of Oxford Village Manager may temporarily suspend a license without a hearing but only until such time as a hearing can be held.

The Village of Oxford shall send notice to the licensee listing the reason for the adverse license proceeding. The notice shall list a proposed action and proposed conditions for reinstatement, if applicable.

The licensee shall have 10 business days from the date the notice was sent to respond in writing and request a hearing. If the licensee does not reply within the 10-day period, then the proposed adverse action and any proposed conditions will be considered the recommendation of the Village of Oxford Village Manager. The licensee may appeal a recommended adverse action issued under this subsection to the Village of Oxford Planning Commission. The Planning Commission's review shall be limited to the information possessed by the Village of Oxford Village Manager at the time the recommendation was issued.

The Village of Oxford Planning Commission shall, as soon as practicable, conduct a public hearing where the licensee and the Village of Oxford Village Manager will each have the opportunity to give testimony, present evidence, and show cause as to why the license should or should not be placed in non-renewal status or suspended or revoked and as to any conditions for reinstatement or renewal.

I. Appeal to Village of Oxford. A recommendation of the Planning Commission may be appealed through a written request to the Village Clerk within 10 business days from the date the Planning Commission issued its decision. The Village Clerk shall place the appeal on the agenda for the next regular meeting of the Village Council. A written appeal shall be limited to 20 pages plus up to 10 pages of exhibits.

The Village Council shall be limited to reviewing the record of the hearing at the Planning Commission.

If the Planning Commission's recommendation is supported by the record, then the Planning Commission's recommendation shall be adopted by the Village Council.

It shall be the burden of the licensee to show by clear and convincing evidence that the Planning Commission's recommendation was not supported by the record.

The Village Council may adopt the Planning Commission's recommendation in whole or in part or may issue an entirely new decision. The decision of the Village Council shall be final.

J. Severability.

The provisions of this ordinance are hereby declared, for all legal purposes, to be severable. If any clause, sentence, word, section, or provision is hereafter declared to be void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of this ordinance which continue in full force and effect.

K. Violations and Penalties.

Any person who disobeys, neglects, or refuses to comply with any provision of this ordinance or who causes, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se for all legal purposes.

A violation of this ordinance shall be a misdemeanor, for which the punishment for a first violation shall be a fine of not less than $100.00 and not more than $500.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the court. The punishment for a second or subsequent violation shall be a fine of not less than $250.00 and not more than $500.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the court. For purposes of this section "second or subsequent violation" means a violation of the provisions of this ordinance committed by the same person within twelve (12) calendar months of a previous violation of the same provision of this ordinance for which said person pled or was adjudicated guilty. The foregoing penalties shall be in addition to the rights of the Village to proceed at law or equity with other appropriate and proper remedies.

Each day during which any violation continues shall be deemed a separate offense.

The Village may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.

Adult Use Marijuana Facility License Application

Village of Oxford
Clerk's Office
22 W. Burdick, Oxford, MI 48371

Phone: (248) 628-9760

Type of Application	Type of Permit(s) being Applied for
	Adult Use (MRTMA)
_____ New	_____ Grower Class A Grower
_____ Renewal	_____ Grower Class B
_____ Modification	_____ Grower Class C
	_____ Amount of Class C
	_____ Microbusiness
	_____ Retailer
	_____ Processor
	_____ Safety Compliance
	_____ Secure Transporter

License Applicant

Name

Address City State Zip

Phone Number Cell Number Email

Company Name

Proposed Facility Address

Proposed Facility Property ID Number

For Village Use Only					
Date Received		Application Number		Fire Department	Building Department
Time Received		Employee Initials		Planner	Administration
Final Disposition:					

The names, home addresses and personal phone numbers for all owners, directors, officers and managers of the License Applicant and the Marijuana Business (Attach additional pages if necessary)

Full Name (First Middle Last)			
			%
Official Position/Nature of Interest		Ownership Percentage	
Address	City	State	Zip
Phone Number	Cell Number	Email	

Full Name (First Middle Last)			
			%
Official Position/Nature of Interest		Ownership Percentage	
Address	City	State	Zip
Phone Number	Cell Number	Email	

Full Name (First Middle Last)			
			%
Official Position/Nature of Interest		Ownership Percentage	
Address	City	State	Zip
Phone Number	Cell Number	Email	

Full Name (First Middle Last)			
			%
Official Position/Nature of Interest		Ownership Percentage	
Address	City	State	Zip
Phone Number	Cell Number	Email	

You must attach one copy of each of the following:

_____ 1 All documentation showing the proposed License Holder's valid tenancy, ownership or other legal interest in the proposed Location and Permitted Premises. If the Applicant is not the owner of the proposed Location and Permitted Premises, a notarized statement from the owner of such Location authorizing the use of the Location for a Marijuana Facility under this Application.

_____ 2 If the proposed License Holder is a corporation, non-profit organization, Limited Liability Company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof of registration with the State of Michigan, and a certificate of good standing.

_____ 3 A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed Marijuana Facility.

_____ 4 Evidence of a valid sales tax license if such a license is required by state law or local regulations.

_____ 5 Non-refundable Application fee/Renewal fee of $5,000 per permit requested.

_____ 6 Business and Operations Plan, showing in detail the Marijuana Business's proposed plan of operation, including without limitation the following:

_____ i. A description of the type of Marijuana Facility proposed and the anticipated or actual number of employees. The name of the proposed Manager of the Marijuana Facility. The days and hours the Marijuana Facility will be open and or in operation.

_____ ii. A security plan meeting the requirements of the Ordinance which shall include a general description of the security systems(s) and lighting plan showing the lighting outside of the Marijuana Facility for security purposes in compliance with Village requirements, current centrally alarmed and monitored security system service agreement for the proposed Location, and confirmation that those systems will meet State requirements and be approved by the State prior to commencing operations.

_____ iii. A list of Material Safety Data Sheets for all nutrients, pesticides, and other chemicals proposed for use in the Marijuana Facility. A copy of a procedural plans for testing of contaminants, including mold and pesticides.

_____ iv. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detected from outside the Location.

_____ v. A plan for the disposal of Marihuana and related byproducts that will be used at the Facility which includes at a minimum how the plan will protect against any marijuana being ingested by any person or animal, indicating how the waste will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal. Disposal by on-site burning or introduction to the sewage system is prohibited.

_____ 7 An identification of any business that is directly or indirectly involved in the growing, processing, testing, transporting or sale of Marijuana for the Facility.

_____ 8 A signed attestation whether any Applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or nonrenewal, including the licensing authority, the date each action was taken and the reason for each action.

_____ 9 A Site Plan of the Location and the Permitted Premises. The site plan shall also include an interior floor plan as well as a scale diagram illustrating the Location upon which the Facility (s) is to be operated, including all available parking spaces and specifying which parking spaces, if any, are handicapped accessible. A location area map of the Marijuana Facility and the surrounding area that identifies that the location of the Facility is situated.

_____ 10 Information regarding any other Marijuana Business Facility that the Licensee is authorized to operate in any other jurisdiction within the State, or another State, and the Applicant's involvement in each Facility.

11 Proof of Insurance. A Licensee shall at all times maintain full force and effect for duration of the License, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan. A Licensee shall provide proof of insurance to the Village Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number and the names of the additional insureds. The policy shall name the Village of Oxford and its officials and employees as additional insureds to the limits required by this section. A License or its insurance broker shall notify the Village of any cancellation or reduction in coverage within seven (7) days of receipt of insurers' notification to that effect. The License Holder shall forthwith obtain and submit proof of substitute insurance to the Village Clerk within five (5) business days in the event of expiration or cancellation of coverage.

Release of Liability, Indemnification and Waiver

This Application process or the granting of a license hereunder is not intended to grant, nor shall it be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with state or federal law. Also, since federal law is not affected by state law or local ordinance, nothing in this permit application; the granting of a permit hereunder; or any Village of Oxford ordinance, policy, or rule is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law, state law, this permit application, or the issuance of a Village of Oxford permit does not protect users, caregivers, or the owners of properties on which the use of marijuana/marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act or other federal statutes.

Upon issuance and acceptance of a license for a Marijuana Facility and/or renewal, the undersigned individually and on behalf of _____, as its duly authorized agent, hereby unconditionally and irrevocably waives, discharges, and releases the Village of Oxford, its agents, employees, and officials from any and all claims, damages, and liability in any way arising out of or related to the permitted premises including, but not limited to, issuance of a permit to permittee and any and all acts, omissions damages, or injuries to any person or property resulting from any act, omission, condition, occurrence, or criminal act occurring upon or in relation to the premises, and to indemnify, defend, and hold harmless the Village of Oxford, including its agents, employees, and officials to the fullest extent permitted by law and equity for any and all claims, damages, injuries, or liabilities at law or equity in any way arising out of or related to any acts, omissions, activities, conditions, or occurrences or incidents in any way related to the premises.

Additionally, the applicant herby agrees to not violate any of the laws of the State of Michigan or the ordinances of the Village of Oxford in conducting the business in which the license will be used, and that a violation on the premises may be cause for objecting to renewal of the license, or for revocation of the license.

The applicant agrees to make the premises open for inspection upon request by the Building Official, the Fire Department, and law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises. The applicant agrees to inspections by the Village of Oxford Official's designee to confirm the facility is operating in accordance with applicable laws including, but not limited to, state law and local ordinances.

Authorized Signature	Title	Date

Oath of Application

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with all applicable ordinances, law and regulations. I acknowledge and understand that I am required to immediately provide the Village of Oxford with any changes in the information submitted with the Application or any other changes that materially affect a License if granted.

_____

Signature of Applicant

Sworn to and subscribed before me this

_____ day of_____, 20

Notary Public, _____

County of_____, Michigan

My Commission Expires_____

ROBERT CHARLES DAVIS
Attorney

Memo

TO: **Village Council**
Village Planning Commission *via electronic mail only*

FROM: **Robert Charles Davis**

RE: **Adult Use Marijuana Facilities Ordinance**

DATE: **May 27, 2020**

This is a follow-up to my memo to you dated May 2, 2020. Attached is a series of articles presented by the MML in a recent publication. The material is valuable from the ordinance writing and adoption perspective.

I am continuing to track litigation relating to new ordinances. I am directly involved in several matters that are working through the Court systems.

The litigation all tends to focus -- primarily -- on the selection process. For communities using a limit of facilities by a certain number, a scoring system is required under the law. The implementation of the scoring system is being challenged in many of the pending cases. Any irregularity in the ordinance scheme is likely to be challenged. This is because of the investment and revenue at issue.

CONCERN:

The Village of Oxford's proposed ordinance does not limit the licenses to a certain number triggering the need for a scoring system. That might be challenged. However, we do limit the zoning category where a use is designated as a permitted use to the I-1 zoning category. This does not include one isolated I-1 property. This may raise a concern of spot zoning and I recommend this parcel be included in the permitted use area at Section 4.a. of the draft ordinance as previously distributed.

Robert Charles Davis

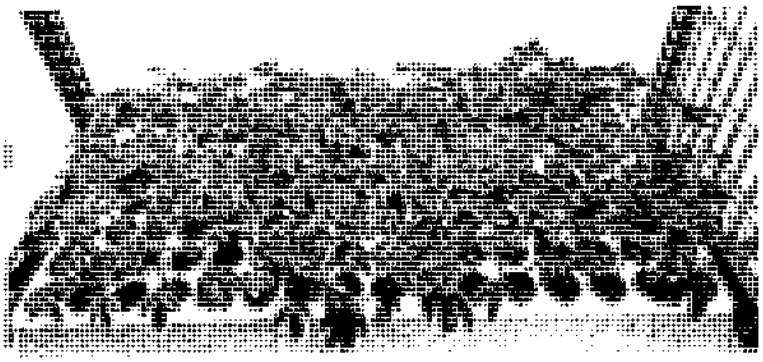
/emm
Attachment(s)

MARIJUANA: BUSINESS

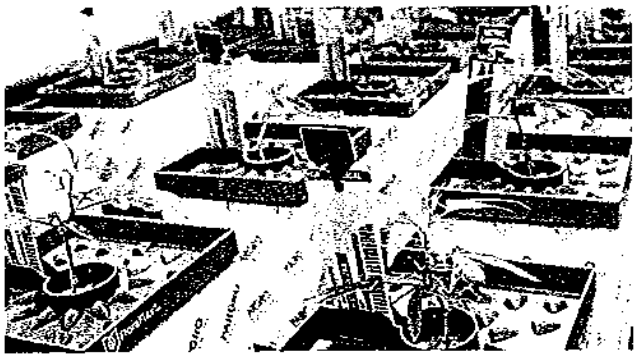
Morenci was approached with an offer to buy two parcels in its empty industrial park—by prospective medical marijuana businesses. The offer was too good to pass up. It started Morenci on its journey to becoming one of the few cities in Michigan with operating recreational marijuana businesses.

Southern Municipalities

Is Michigan benefiting from the lack of recreational marijuana in Indiana and Ohio? There are eight other cities and villages south of I-94 (the interstate that runs between Chicago and Detroit) authorizing adult-use marijuana: Adrian, Buchanan, Decatur, Niles, Quincy, Reading, Petersburg, and Sturgis. For most, their location didn't factor into their decision. According to Petersburg Mayor James Holeman, there was minimal opposition in his city. There was a lot of uproar over medical marijuana, but by the time recreational came along, there were only a few citizens at the public hearing on the subject. The city was approached by investors—its location was not a factor. "The public approval (election result) was obvious and tax revenue is the goal," said Holeman.



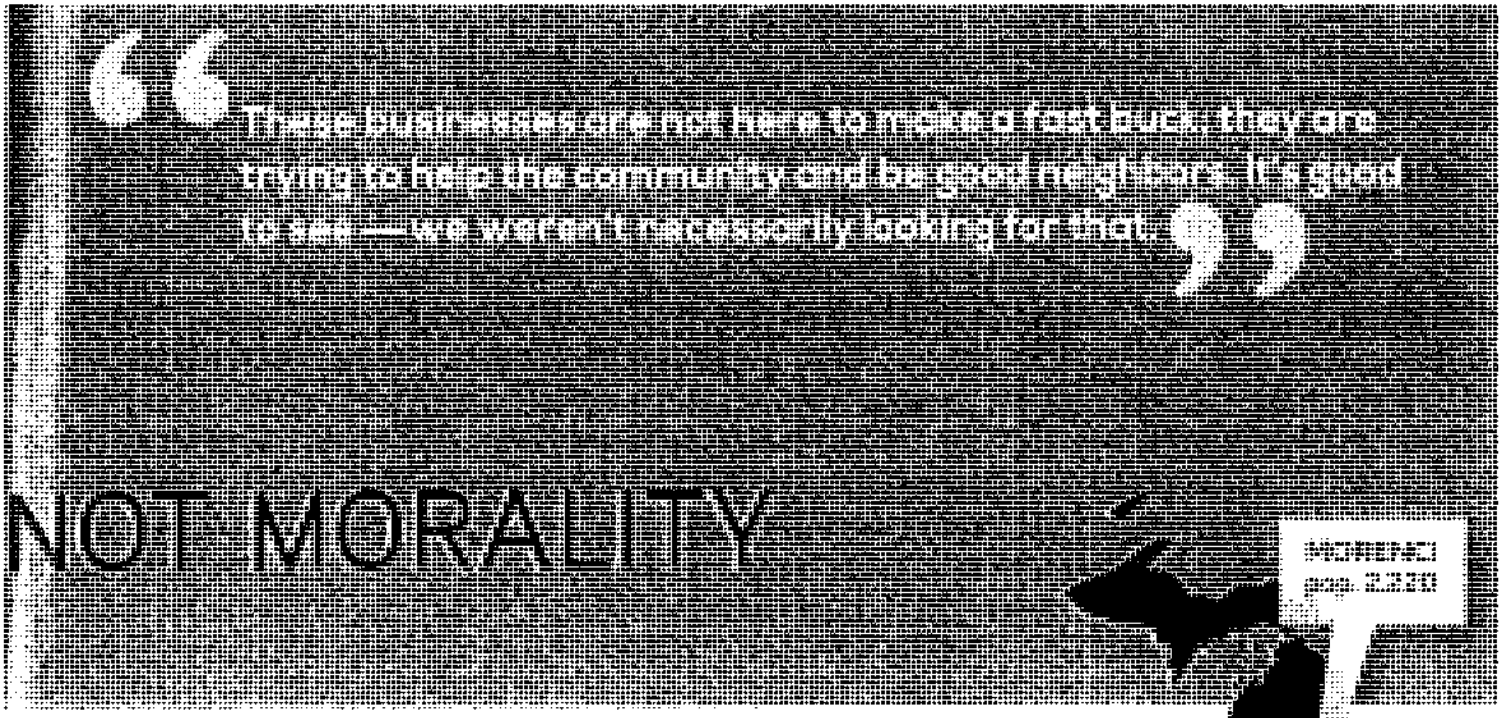
Clones are placed in color-coded collars that indicate the strain of marijuana growing.



Out of the nursery and planted in growing cubes, young plants will soon be moved into a flower room where they will eventually develop buds—the flowering part of the cannabis plant.

In Adrian, City Manager Nathan Burd reported, "We held a public hearing, and since Proposal 1 passed by a decent margin in Adrian, many residents seemed to expect that the city would remain opted in." Location was not a part of the decision-making in Adrian, either.

However, in Decatur the situation is different. "We see a lot of out-of-state visitors in the summer. So, it stands to reason that some of those people could be customers of those facilities," said Village Manager Matthew Newton. "In conjunction, we felt that being close to the border could offer our community a chance to increase tourism from neighboring states, similar to what we have seen with Colorado. With the lake (Lake of the Woods) as a great asset here, it's possible a bed-and-breakfast or other types of establishments could spring up around the industry."



Marijuana Facilities – Morenci

Medical Marihuana Licensing Fund

Fiscal Year 2019–20 (to date):	$140,000
(adult use $40,000; medical	$100,000)
Fiscal Year 2018–19:	$60,000
Fiscal Year 2017–18:	$80,000
Total:	$280,000

Tax Revenue Generated

2020 Operating Tax Revenue:	$48,096
2019 Operating Tax Revenue:	$11,767
2018 Operating Tax Revenue:	$1,747
Total:	$61,611

Property Sales

Fiscal Year 2019–20	$26,673
Fiscal Year 2018–19:	$144,505
Fiscal Year 2017–18:	$198,340
Total:	$369,352

Utility Sales

FY 2019–20:	$2,527

(Growing and Processing Centers Only)

Regarding the villages opt-in decision, Newton continued: "After the ordinances opting in were passed, Decatur had a small minority of residents express some displeasure on social media and a time or two in public comments. Now that the initial shock of legalization has passed, most seem to think that the jobs created will be a big benefit and agree that the economic impact could be substantial for our community down the line. In fact, many local business owners and residents have made it a point to tell me so."

Morenci's Journey
Michigan Medical Marihuana Act of 2008 (MMMA)

in Morenci, and their neighbors were not pleased with the odor. In 2016, city council appointed the Exploratory Committee of Concerned Citizens to Protect the Rights of Patients and Non-Patients of Medical Marihuana. The committee crafted language that protected individuals with the legal right to grow under the Act, while also protecting nearby property owners by making it an ordinance violation to emit noise, smells, and/or other environmental issues when growing.

Medical Marihuana Facilities Licensing Act of 2016 (MMFLA)

A public presentation in Morenci by MSU-Extension in April 2017 attracted 60-70 attendees. By June, the city had received two offers to purchase property in its industrial park. The committee created a citizen survey with only one question: "If any of these types of facilities were allowed in the city, would you be interested in being employed by one of them?" According to City Administrator/Clerk Michael Sessions, that is when public sentiment turned. They received more replies than for any other city survey. The results showed overwhelming support for development: 60 percent yes, 30 percent no, 10 percent not sure/need more info. By the time the results came in, city council was prepared to allow medical marijuana businesses. Mayor Sean Seger states that they were past stigma and stereotypes. The mayor himself had done a turn-around. They passed an ordinance in October 2017.

Michigan Regulation and Taxation of Marihuana Act of 2018 (MRTMA)

By the time recreational marijuana talk came to Morenci, medical marijuana had been in place for two years. The small city is blessed with a great local paper, the *State Line Observer*. Both the mayor and manager remarked on its quality. When the editor outed himself as a medical marijuana user, it caused a ripple effect. Others came forward as users, too. And they wanted to buy marijuana in Morenci, not drive to Ann Arbor. The city held a public hearing in November 2018. There were some residents who were opposed—they thought the city would turn into a live action *Reefer Madness*. City officials did not want that, either. The mayor was intent on focusing on the business aspect and not the morality side.

The time for discussing the morality of marijuana was reserved for whether it should be legalized. After that, the point was moot. When asked about Facebook, Mayor Seger said they didn't use it. He feels it would have derailed the process. He didn't want one side being nasty to the other. The city wanted to proceed in a controlled environment, with civil discourse. Council passed an ordinance in October 2019. The first customer through the door was an older gentleman in a wheelchair.

When asked how the city decided on the number of each type of establishment to allow, Sessions said they mimicked what was in the medical ordinance. They allowed what was possible in the confines of the city (five retail businesses) with distancing and available properties—all other types of establishments are unlimited. Morenci now has three operating retail businesses, and seven to eight other businesses in development. A large amount of capital has come into the community. Business owners didn't need bank loans—they came in and started spending money. Sessions stressed that "These businesses are not here to make a fast buck; they are trying to help the community and be good neighbors. It's good to see—we weren't necessarily looking for that."

Although Morenci decided against onsite consumption establishments, the idea of such businesses has come up in planning commission and DDA meetings. The city now has a booming marijuana industry, but the downtown is suffering. Sessions' opinion is if it will bring in revenue, they should do it. Mayor Seger is less inclined to allow onsite consumption establishments. The city already has issues with odor. They say they will have to find a happy medium.

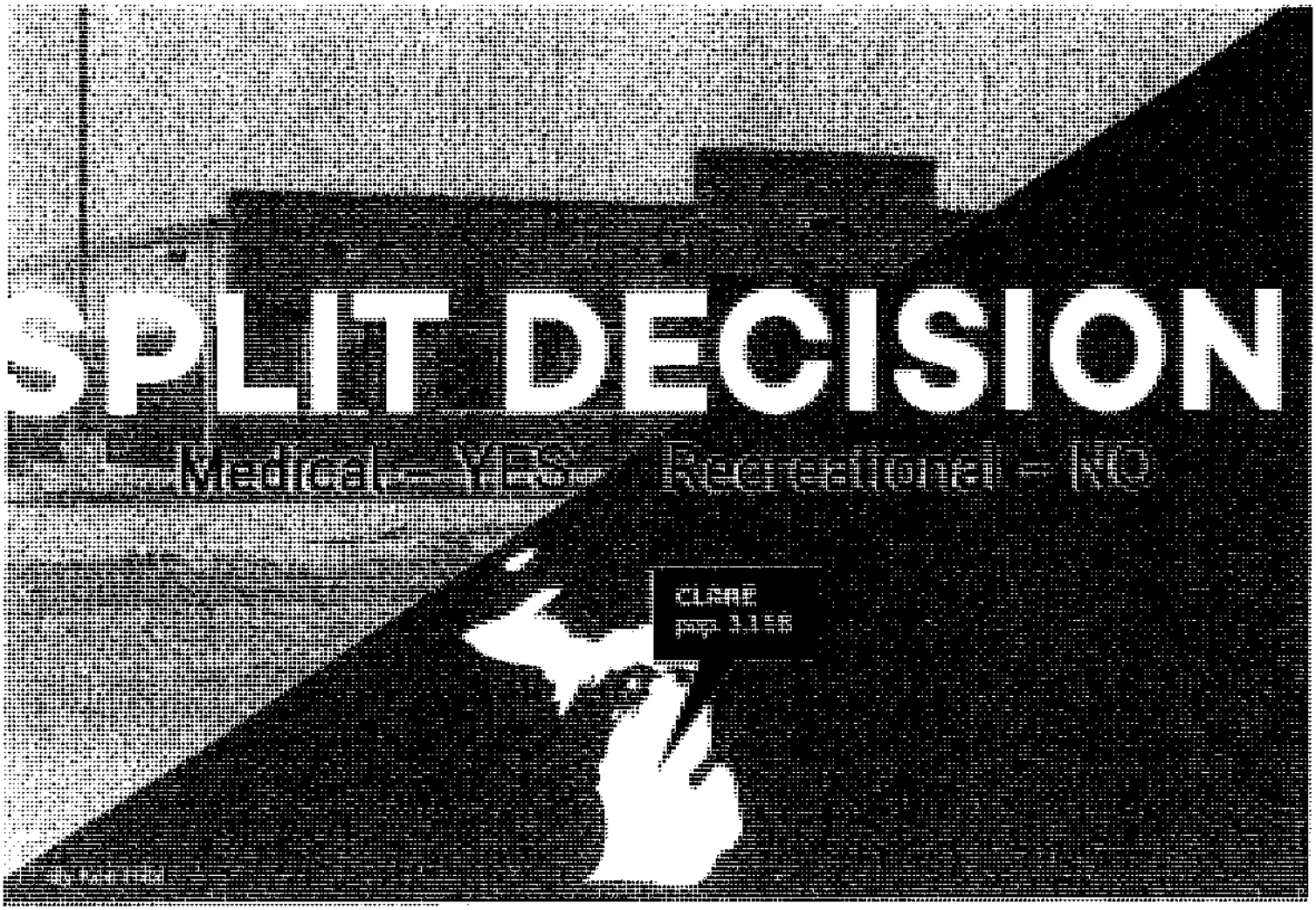
Advice to Municipalities

Morenci's experience has been interesting. "It's not that scary," said Sessions. "You'll find that people going into marijuana facilities are the same as those buying liquor at the liquor store. And the stores are nice. There are trustworthy people working there. The businesses are providing a supplemental income for employees."

In Decatur, a simple application process proved to be essential. "Don't overreach and require a lot of documentation in your application that might be redundant," said Newton. "We did, and realized several issues: many of our elected officials and staff didn't have the expertise to judge the completeness of a facility plan, crisis response plan, etc. So, we simplified our application; our focus now is on parcel location and zoning elements. Our view is simple—if MRA issues a license, they met the state requirements; all we need to focus on is then ensuring the facility operates in the manner we permit."

In the words of Mayor Seger: Think about business, not morality.

Kim Cekola is a research specialist/editor for the League. You may reach her at 734.669.6321 or kcekola@mml.org.



The legislation, Senate Bill 431, was clearly written—and is being promoted by a veritable army of hired guns—to crush the will of local residents in a single sleepy community in rural Lapeer County. But the outcome of this legislative battle will be felt across the state.

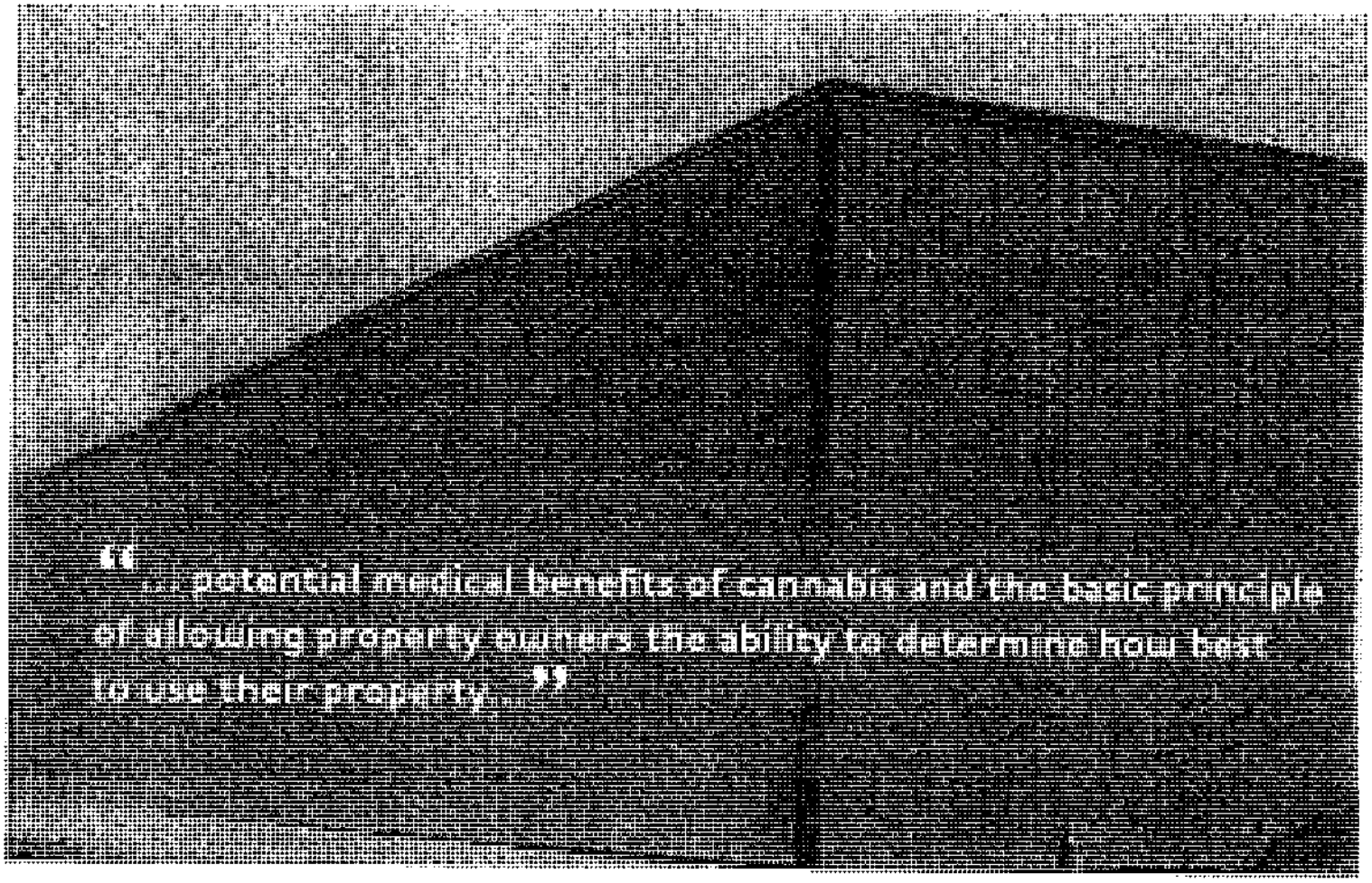
The City of Clare's current positions on medical and recreational marijuana are somewhat unique. In 2011, the city decided to opt-in on the topic of medical marijuana. Seven years later, after the majority of Michigan's electorate supported the legalization of recreational marijuana in the state, Clare chose to opt-out on recreational marijuana.

The decisions made by clare's city commission followed a lengthy process. It began in 2010 with the city commission's task to its planning commission to conduct a detailed study and make appropriate recommendations to the city commission on whether to allow commercial medical marijuana activities in Clare. The city commission initially passed a three-month moratorium followed by two moratorium extensions. This precluded the receipt and processing of any special permit applications for medical marijuana facilities in Clare while the planning commission completed its research and due diligence before making its recommendations to the city commission.

During the period of the city commission-imposed moratoriums, the planning commission tried to become well-informed about medical marijuana. They read numerous case studies; sought the advice and counsel of its city attorney; held lengthy internal discussions; listened to expert speakers on the topic; attended numerous seminars; and held multiple public hearings in jam-packed rooms, listening to testimonials from proponents of medical marijuana and opposition opinions professing the adverse impact of allowing the introduction of commercial medical marijuana activities in Clare.

Medical Marijuana Gets a Thumbs Up

In December 2010, the planning commission unanimously recommended that the city commission amend its zoning ordinances to allow commercial medical marijuana. The primary reasons for its recommendation were the potential medical benefits of cannabis and the basic principle of allowing property owners the ability to determine how best to use their property within the parameters and guidelines of the city's zoning codes. The city commission unanimously accepted and adopted the planning commission's recommendations in March 2011, thereby allowing medical marijuana facilities within the industrial-zoned districts of the city.



"I believe that research has shown the benefits of medical marijuana to those in need," said Nick Loomis, planning commissioner and assistant library/information technology director for Pere Marquette District Library, "If its allowance in the City of Clare can help those citizens then it can only serve to benefit our community."

Since the city commission's 2011 decision, the city's ordinance codes have been amended on four separate occasions with respect to medical marijuana. The amendments further defined the process for application for special use permits for medical marijuana licensing; further restricted and isolated the geographical area within the city where medical marijuana facilities are allowed; and restricted the number of allowed medical marijuana provisioning centers/retail outlets to only two. There are presently no city restrictions on any of the other categories of medical marijuana licensing except retail sales.

Building Construction is Underway

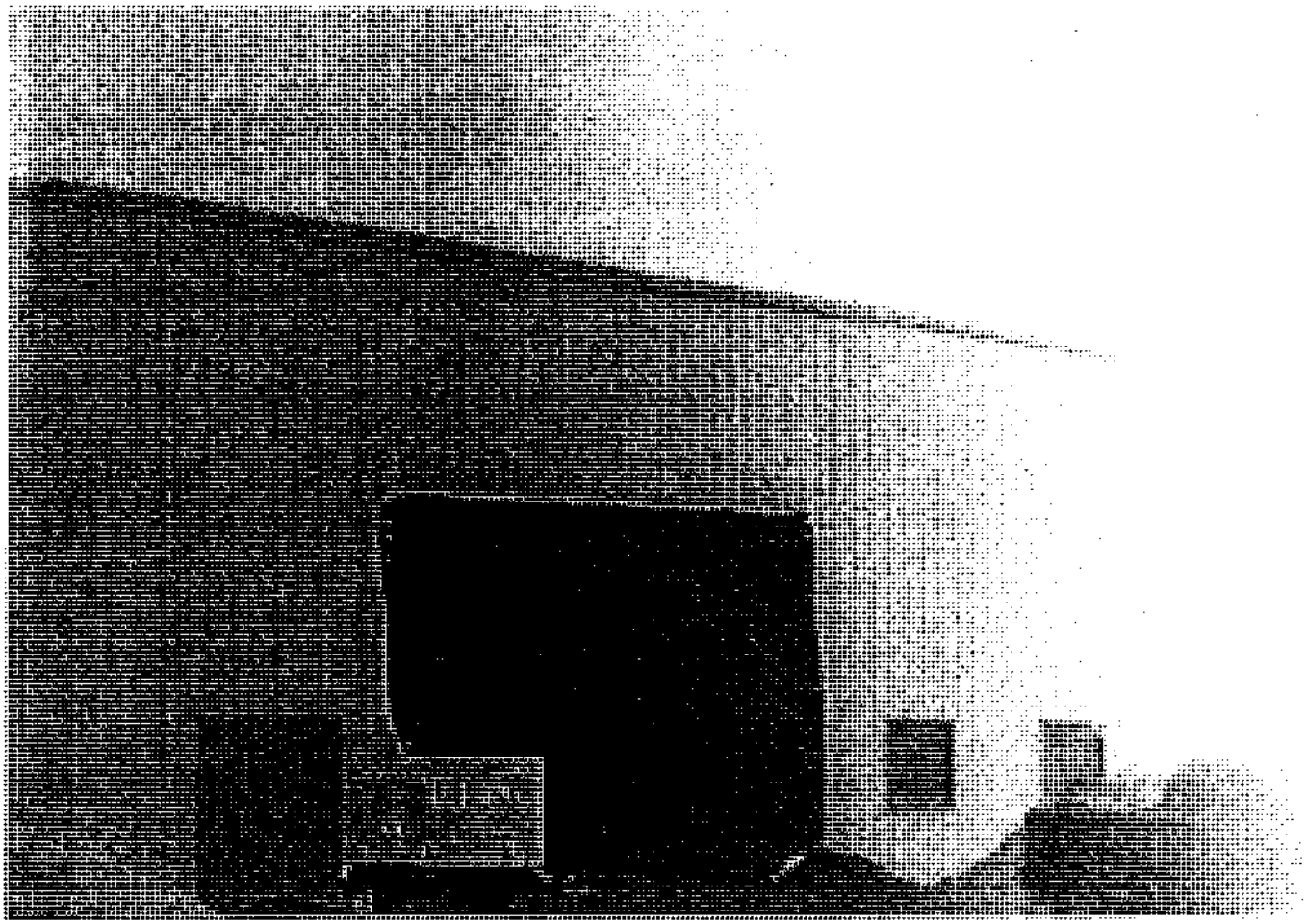
To date, the city has issued six special use permits for grow and processing facilities and two special use permits for retail sales. New construction is in progress for one of the grow and process facilities as well as one of the retail outlets. Internal building construction is in progress on three other existing industrial buildings to accommodate medical marijuana growing, processing, and retail sales. While special use permits have been issued, no actual commercial medical marijuana activities have commenced. The city continues to receive frequent queries related to the start-up of additional commercial medical marijuana activities.

Recreational Marijuana Gets a Thumbs Down

Clare has decided to opt-out of allowing commercial recreational marijuana activities in the city. The planning commission and city commission simply followed the will of its electorate at the ballot box, wherein 51 percent of the city's voters opposed recreational marijuana in the 2018 referendum on this topic.

"Many recreational marijuana studies show the possibility of it becoming a gateway drug," said Loomis. "As the people have voted not to allow recreational marijuana, I would agree it's not right for the City of Clare at this time."

Ken Hibl is the Clare city manager. You may contact him at 989.386.7541 ext. 102 or KHibl@cityofclare.org.



MARIJUANA ON THE BALLOT

Initiatives and Referendums of Marijuana Ordinances

By Laura J. Genovich

For the City of Mount Pleasant, the battle at the ballot box between competing marijuana ordinances began in the fall of 2019. Following a series of public work sessions, the city commission approved an ordinance under Michigan's 2018 voter-initiated marijuana law, the Michigan Regulation and Taxation of Marihuana Act (MRTMA). The city's ordinance would allow up to three adult-use (recreational) marijuana retailers, along with limited numbers of other establishments, contingent on zoning and special use approval.

Shortly before that, a citizen submitted a petition to initiate a marijuana ordinance that would allow five retailers and an unlimited number of marijuana growers, without any special use approval or establishment-specific zoning requirements. The initiated ordinance was placed on the November 2019 ballot.

Would voters approve the less restrictive initiated ordinance? What would happen to the city's existing ordinance if the initiative passed? What if provisions in the initiative were incompatible with the city charter or other ordinances?

Mount Pleasant was one of the first cities—but not the last—to encounter a marijuana ordinance initiative or referendum. (The concepts are distinct: an initiative proposes a new ordinance, while a referendum seeks to reject an ordinance already adopted by the municipality.)

The MRTMA permits electors to initiate a marijuana ordinance:

> *Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election.*

MCL 333.27956. This means that if enough electors sign a petition, the municipality must place a proposed ordinance on the ballot at the next regular election—and that ordinance could allow or prohibit marijuana establishments, depending on the petition's language.

When marijuana regulations take the form of zoning ordinance amendments, the referendum provisions of the Michigan Zoning Enabling Act, Act 110 of 2006 (MZEA) also come into play. The MZEA allows "a registered elector residing in the zoning jurisdiction" to file a notice of intent and then a petition requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in this zoning jurisdiction for their approval." MCL 125.3402. Thus, if a city or village enacts zoning regulations for marijuana establishments, those regulations are subject to referendum under the MZEA..

Beyond those statutes, a city or village's charter may include a process for initiatives and referendums. As of 2019, 250 cities and 24 villages provided for initiatives, referendums, or both in their home rule charters. The signature requirements in those charters may differ from the requirements of the MRTMA, as discussed below.

Several cities have already faced marijuana ordinance initiatives, including the following:

- City of Mount Pleasant
- Village of Vanderbilt
- City of Highland Park
- City of South Haven
- City of Allen Park
- City of Hudson
- City of Lincoln Park

Most initiatives to allow establishments have failed at the ballot box, even though a majority of Michiganders approved the MRTMA in the November 2018 election. Of the examples listed above, only voters in the City of Lincoln Park approved an initiate to allow establishments.

Most recently, on March 10 voters in the City of Ecorse approved an initiative to allow recreational marihuana establishments. The city had previously adopted an ordinance prohibiting the establishments. Meanwhile, voters in the City of Petoskey voted down a referendum of the city's ordinance allowing medical marihuana facilities, meaning that the facilities will be able to operate, and approved a measure that would allow voters (not the city) to determine whether recreational establishments should be permitted in the future.

The MRTMA's initiative provision creates many potential issues for cities and villages. Given the short time that the MRTMA has been in effect, the courts have not published decisions interpreting its initiative provision, so some of these questions do not yet have clear answers.

1. What happens if the initiated ordinance passes and the city or village has adopted an ordinance? The MRTMA allows a municipality to "completely prohibit or limit the number of marihuana establishments within its boundaries," while also allowing electors to initiate an ordinance. The MRTMA does not say what happens if both ordinances are approved. Some argue that the initiated ordinance supersedes a municipality's ordinance, but the courts have not yet addressed this issue.
2. What if the initiated ordinance conflicts with the charter or other ordinances? Because an initiated ordinance is drafted by electors, it could include provisions inconsistent with the city or village's charter or ordinances. This could put the city or village in the position of having to seek a court order determining the enforceability of such provisions if the initiative is approved. (Lawsuits to challenge the substance of initiatives before the election have been rejected as premature.)

3. What can a city or village say about a proposed initiative before the election? The Michigan Campaign Finance Act prohibits public bodies from using funds or other public resources to promote a ballot question (such as an initiative), but a public body may disseminate "factual information concerning issues relevant to the function of the public body." This means cities and villages can provide factual information about the content of an initiative, but they must avoid providing opinions or persuasive statements about whether the initiative should be approved.
4. What if the charter requires more signatures than the MRTMA? Generally, a state statute can preempt a local charter if the charter directly conflicts with the state law or if the state law completely occupies the regulatory field. Thus, if a charter requires signatures of more than 5 percent of the electors for an initiative, it may be preempted by the MRTMA, which only requires 5 percent. Cities and villages should consult with legal counsel when dealing with conflicting provisions.

In Mount Pleasant, the voters ultimately turned down the initiated marijuana ordinance, so the city was able to move forward with the ordinance approved by the city commission. But undoubtedly, more ordinances will be initiated around the state, and more cities and villages will be faced with the novel issues discussed above.

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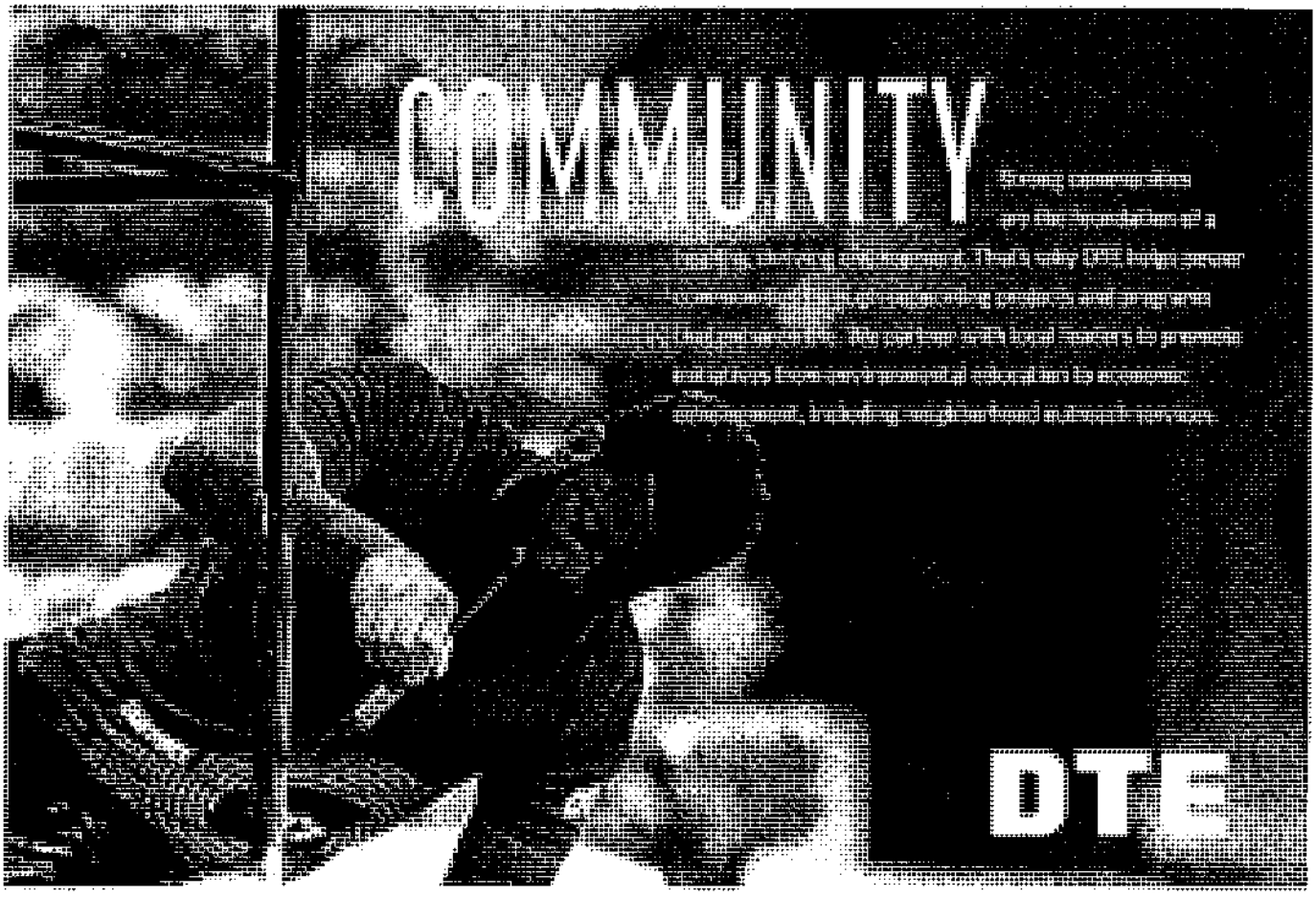
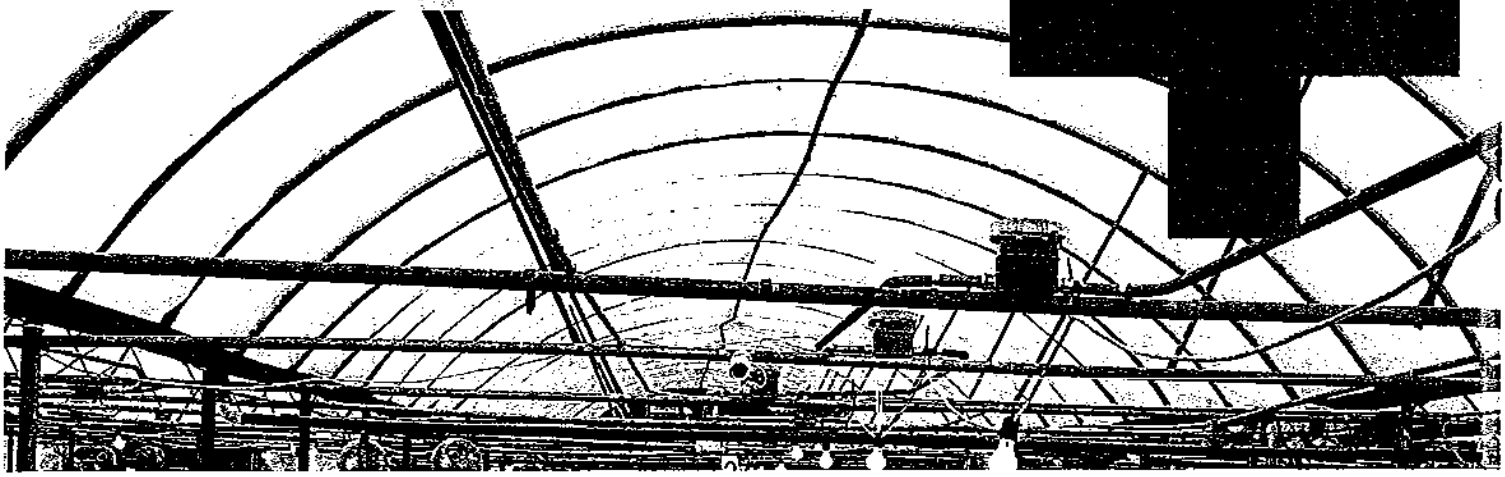


FIRE AND LIFE SAFETY IN MICHIGAN'S MARIJUANA FACILITIES

By Adam A. Dailide



With so many stories, articles, websites, podcasts, presentations, and online "experts" on the topic of marijuana, reliable information is critical. It's important to educate Michiganders on the marijuana facilities that may be coming to their community, particularly the fire and life safety aspects.

With the passage of the Medical Marihuana Facilities Licensing Act (MMFLA) and the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the Bureau of Fire Services (BFS) was named as one Authority Having Jurisdiction (AHJ) for marijuana facilities in Michigan. The other initial AHJs are the Marijuana Regulatory Agency (MRA) and the local jurisdiction (delegation of power as per each jurisdiction has been designated). The "Fire Code"—NFPA 1, 2018—and its reference codes were adopted by reference as part of those rules.

The marijuana industry is a moving target. Innovation is constantly improving, and methods are frequently changing and adjusting. These facilities are not simple tomato greenhouses, they are highly technical, evolving plant nurseries, which are tracked from seed to sale.

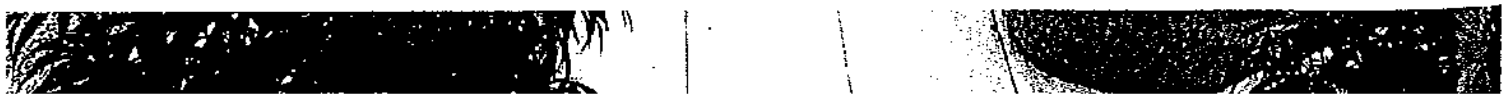
Industrial Occupancy

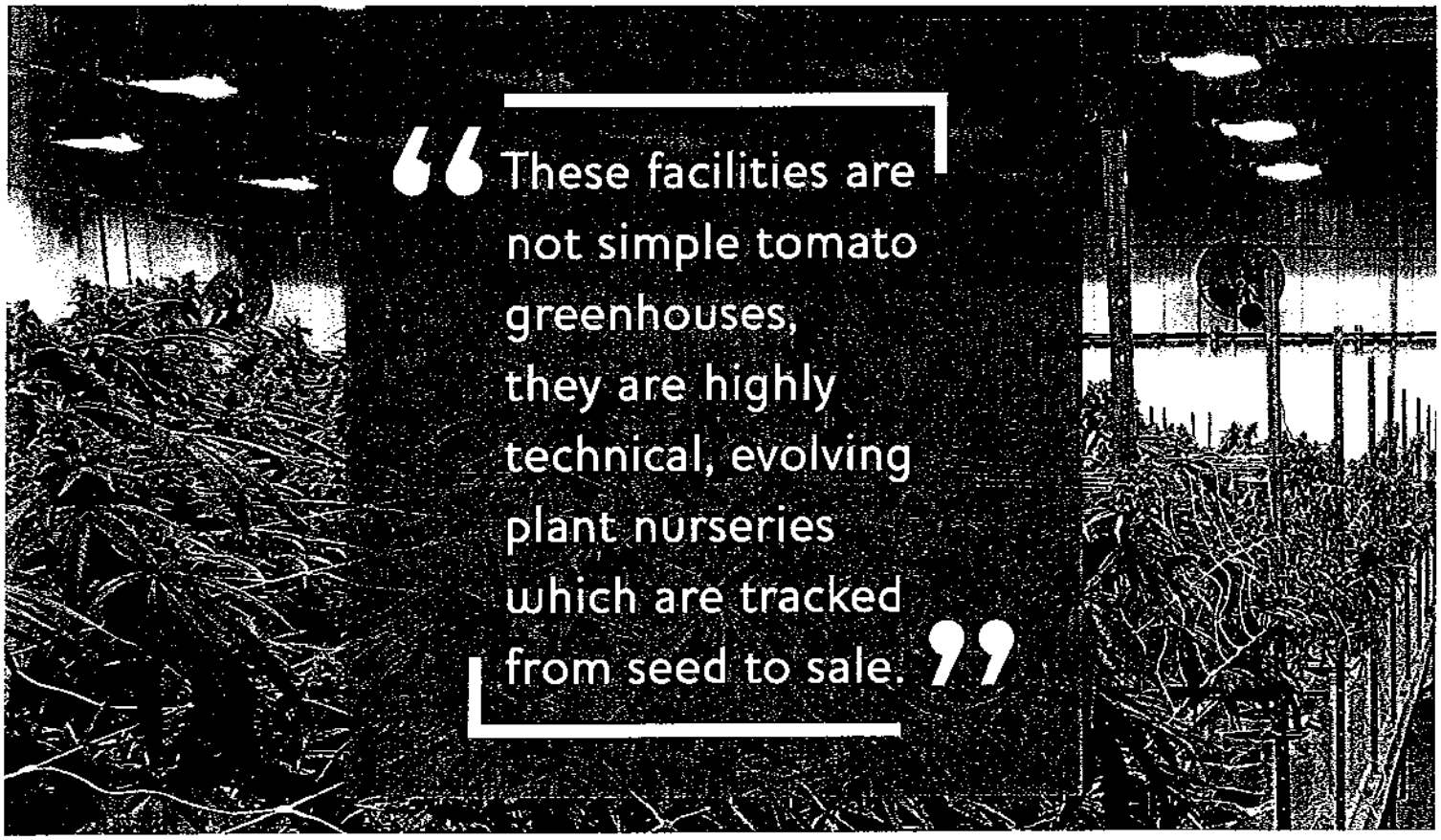
The Bureau of Fire Services looks specifically at the fire and life safety issues with these facilities and their operation. These facilities have uses and methods that are specific to marijuana growing and processing. NFPA 1, 2018, Chapter 38, specifically addresses marijuana facilities. Within this "Fire Code," the occupancy of Grow and Processor facilities falls under the industrial category. More specifically, for a Processor with an Extraction Room, the occupancy is Industrial Special Purpose for that specific room. Local municipalities should study these occupancies within their own local ordinances.

The BFS does plan review on several types of licensed facilities: Grow, Processor, Consumption Establishments, and Microbusinesses. In addition, our field staff does the follow-up inspection on the plan review facilities as well as inspection of Secure Transporters, Provisioning Centers, Adult-Use Retailers, and Safety Compliance Facilities.

Potential Concerns

Grow facilities cultivate plants from seed or cloning from a Mother plant in an industrial manner, with hopes of harvesting a plant multiple times a year to maximize yield. A methodical approach is taken, and great care is given to each plant. Windows and doors are kept to a minimum for security and contamination protection. Water and light are abundant, as are fire and life safety concerns. Since 2018, our review of the construction plans and specifications have uncovered some prevalent issues, including common path of travel, aisle width, sprinkler systems, and processor requirements.





- **Common Path of Travel**—In an Industrial Grow or Processor Facility without sprinklers, the common path of travel is limited to 50 feet. The distance is measured from furthest point in one direction, along the walking path to a point at which the occupant has a choice of two paths of travel to remote exits. This distance is doubled in a sprinklered industrial facility. With the tables, racks, and/or arrangement of grow rooms, this distance becomes a critical point of fire and life safety. An occupant needs to have the ability to exit the facility in a timely and safe manner in the case of an emergency.
- **Aisle Width**—In a windowless Grow room, aisle width becomes an issue that needs to be addressed. Facilities want to pack as many plants in their grow rooms as possible. With the immense growth of the plants, having a clear aisle width and means of egress is critical. In an existing industrial facility, 28" clear width is considered the minimum. In a new industrial facility, the minimum width should be 36". The clear width, measured at the narrowest point, is important to ensure that a means of egress is accessible for an occupant or emergency responder.
- **Sprinkler Systems**—Sprinkler systems become a potential sticking point for these facilities. In new industrial facilities with three or more stories, greater than 12,000 square feet in fire area and/or greater than 24,000 square feet total of all areas in the building, a NFPA 13 compliant sprinkler system is required. There is an exception in the code to allow for "Low Hazard Industrial." The Low Hazard designation is something that needs to be documented and studied, as well as approved by BFS. MRA and BFS have decided upon the following qualifying statement for a Low Hazard Industrial facility:
  - **A Non-Electrified Hoop/Greenhouse**—If the hoop/greenhouse has pots or pallets, then the grow is not low hazard; the plants will need to be planted in the dirt. As per MRA rules, this low hazard hoop/greenhouse would be our equivalent of an "outdoor grow" which would require a contiguous building to do the drying/trimming/etc. and other outdoor rule requirements. That building would require a Certificate of Occupancy and must pass the BFS inspection.

- **Processor Requirements**—The highest hazard for fire and life safety comes in the Processor facilities. Extraction of marijuana occurs in these buildings, using solvents such as liquified petroleum gas, alcohol, carbon dioxide, or sometimes just cold water and pressure. These conditions may result in explosion hazards, vapor hazards, or HazMat issues including storage and maximum allowable quantities (MAQ). Each type of extraction has its own requirements that include items like exhaust systems, electrical systems, fire suppression, non-combustible construction, certification, labels/listing, staff training, and/or configuration. These items are very detailed and are based on Chapter 38 of NFPA 1.

The Marijuana Unit of the BFS is available to help your municipality. We can supply you with resources so that your community can make informed decisions on what is required in these facilities to ensure proper fire and life safety. You can also visit our website at www.michigan.gov/bfs

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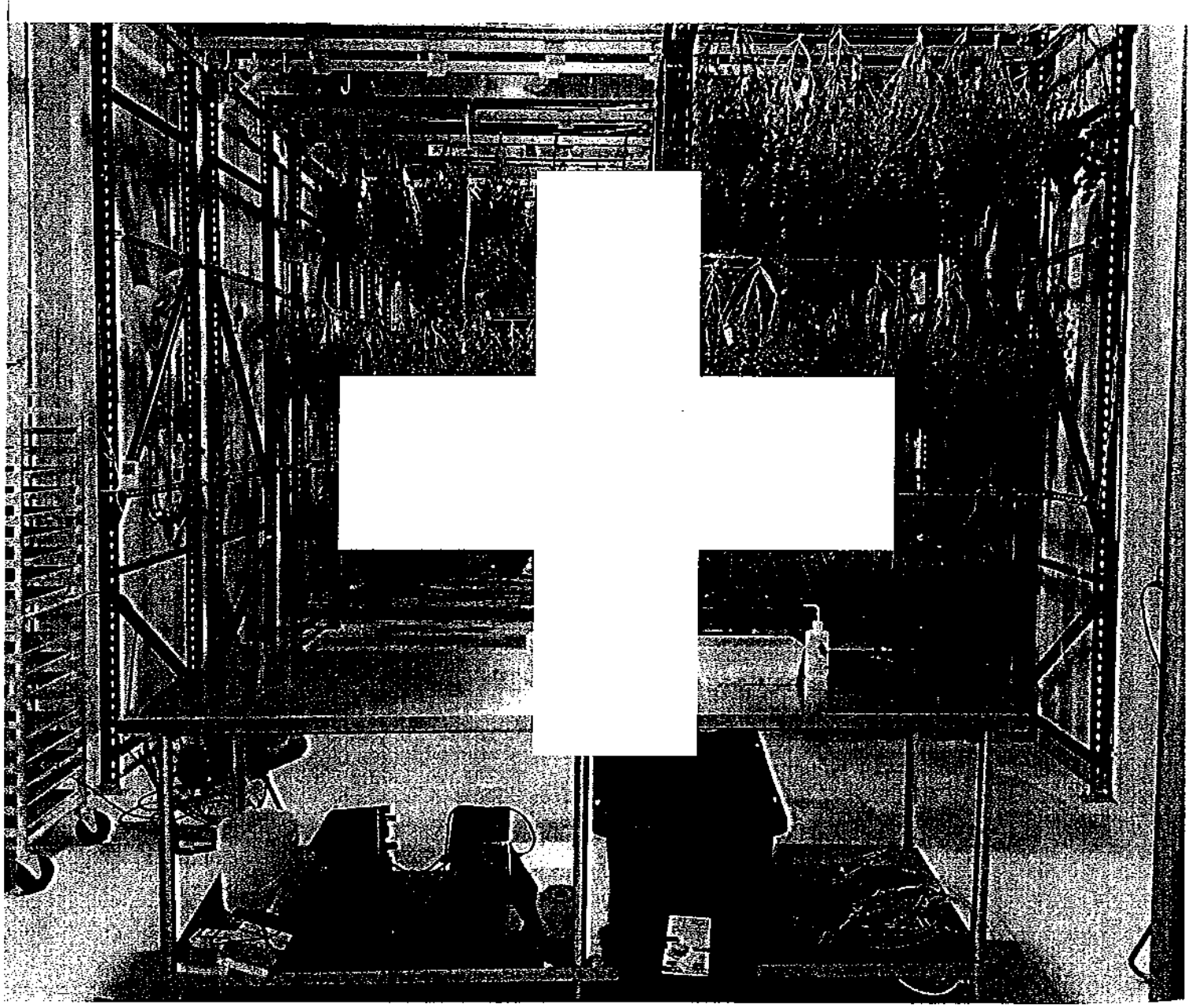

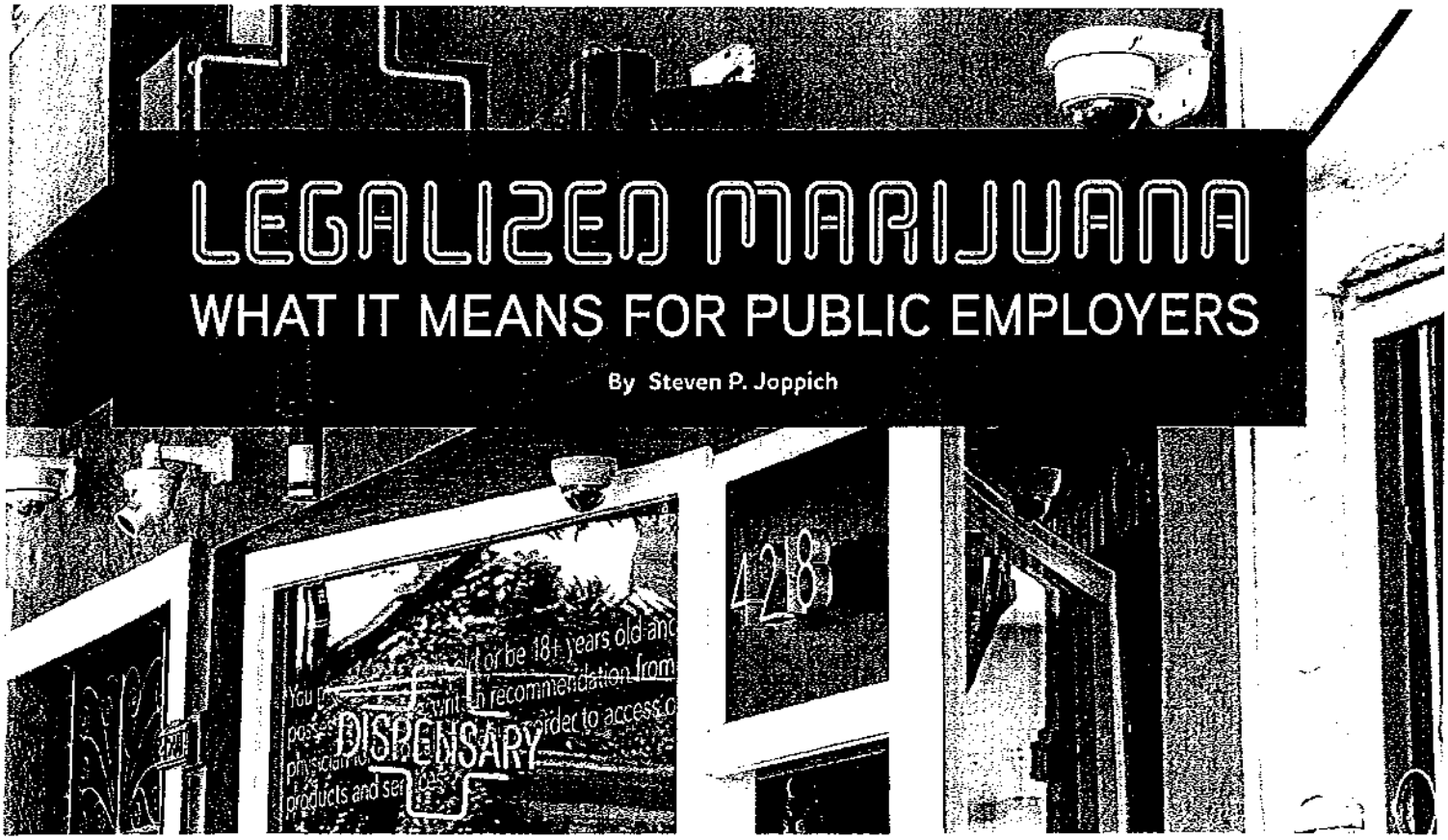

LEGALIZED MARIJUANA
WHAT IT MEANS FOR PUBLIC EMPLOYERS

By Steven P. Joppich

As most readers of *The Review* are aware, the 2008 Michigan Medical Marihuana Act (MMMA) and the 2018 Michigan Regulation and Taxation of Marihuana Act (MRTMA) are widely recognized as legalizing the use and possession of certain amounts of marijuana. In the wake of these laws is a long list of challenging public policy and legal issues for local governments across the state. Not least among them are issues related to municipal employees who engage in the now legal use and possession of marijuana for medical or recreational purposes. This article is an effort to identify and briefly touch upon some of the more significant workplace laws, questions, and scenarios that might confront municipal employers and employees in this new age of legalized marijuana.

Both the MMMA and the MRTMA have provisions that specifically address some of the employer-employee related questions and issues that will inevitably arise in municipalities. For instance, the MMMA does not require "an employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana." And under the MRTMA, persons who are under the age of 21 are not allowed to use or possess marihuana at any time, including public employees under 21. Additionally, the MRTMA contains a number of other specific provisions related to employer-employee matters.

- Does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property
- Does not prohibit an employer from disciplining an employee for violation of a workplace drug policy
- Does not prohibit an employer from disciplining an employee... for working while under the influence of marihuana
- Does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person... because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana

What public employees do outside of work may be open to debate. For example: Must an employer forgive an employee's legal use of marijuana in private and outside of work? What if an employee operates heavy machinery or drives for work? What if an employee fails a drug test? Must an employer accommodate an employee's use of medical marijuana for a medical condition?

Although the MMMA, and to some extent the MRTMA, do not clearly answer these questions, there are some federal and other state laws and court decisions that provide some guidance. Before examining those laws, however, it should

be recognized that the MMMA and MRTMA do not and cannot alter federal law. Accordingly, just as federal laws prohibiting the possession and use of marijuana are still effective despite Michigan's legalization laws, so too are the Drug-Free Workplace Act and the Department of Transportation regulations implementing the Omnibus Transportation Employee Testing Act. Also relevant are the federal Americans with Disabilities Act, federal Civil Rights Act and state Elliott-Larsen Civil Rights Act.

(a) DOT Regulations

According to U.S. Department of Transportation regulations, marijuana use remains unacceptable for any safety-sensitive employee who is subject to drug testing. That includes public employees who need a commercial driver's license as a condition of their employment (an example would be certain DPW employees). These employees are still required to comply with all USDOT regulations, prohibited from using marijuana, and subject to DOT's policies and procedures on drug-testing.

(b) Drug-Free Workplace Act

The Drug-Free Workplace Act enables municipal employers (and others) to adopt drug-free workplace policies that articulate the requirements and expectations of employees regarding the use of or impairment from marijuana while at work. This federal law is relevant to public employers because it requires some federal grantees to maintain a drug-free workplace as a precondition of receiving certain grants from a federal agency.

(c) Americans with Disabilities Act

The ADA does not require an employer to permit medical marijuana use as a reasonable accommodation.

(d) Title VII and ELCRA

Marijuana users are not a protected class under either Title VII of the federal Civil Rights Act of 1964 or under Michigan's Elliott-Larsen Civil Rights Act.

There are a few cases worth mentioning that are related to employment issues involving the medical use of marijuana. The leading case is *Casias v. Wal-Mart Stores, Inc.*, in which the federal court determined that a private employer could discharge an employee who tested positive for marijuana during a standard drug test even though he was not under the influence while at work, was a properly registered medical marijuana patient, and had only used medical marijuana outside of work hours. Although this case involved a private employer, there is little reason to believe public employers should be treated differently.

In 2014, the Michigan Court of Appeals decided the case of *Braska v. Challenge Manufacturing Co.*, which involved three plaintiffs who made claims for unemployment compensation after being discharged from their jobs for failing a drug test as a result of using medical marijuana with a valid card. The court determined that under the terms of the MMMA, employees discharged solely on the basis of a positive drug test for marijuana were not disqualified from receiving unemployment benefits.

Lastly, in the 2019 case of *Eplee v. City of Lansing*, the Michigan Court of Appeals upheld the city's decision to rescind a conditional offer of employment to the plaintiff after she tested positive for marijuana during a drug screen that was a part of the hiring process. Here, again, the plaintiff was a medical marijuana patient who had lawfully used marijuana outside of work.

For now, it seems that Michigan employers may terminate or otherwise discipline employees who do not pass an otherwise authorized drug test and can choose not to hire applicants who fail a pre-employment marijuana screening, even if they have a medical marijuana card. However, we can also gather that the law in this area is still evolving.

Below is a non-exclusive short list of steps employers should take now to strive to be compliant with these laws and protect against the risk of liability.

(a) Review Policies: None of the court cases discussed earlier involved situations in which the employee had a contract or a just cause termination provision written into a collective bargaining agreement or personnel policy. Such circumstances might cause the courts, in future cases, to make different decisions. Accordingly, human resources manuals, policies, regulations, operating procedures, and work rules should be carefully reviewed in light of the MMMA and MRTMA. Do you have a substance use policy in place? If so, they often contain references specifically to "marijuana" use, so public employers may want to consider revising such policies to more broadly refer to "illegal drugs" or "illegal substances" for certain employee positions. It is also important to focus on prohibiting employees from being impaired while working, and you may want to consider adding marijuana to your no-smoking policy. Lastly, if you do not currently have one, consider adopting a Drug-Free Workplace Policy.

(b) Review Collective Bargaining Agreements (CBAs): Consider whether there are provisions in the CBAs that may provide additional protections to employees with respect to the use or possession of marijuana on or off the job. This comes into play in a variety of ways, but it is particularly significant with respect to employee discipline.

(c) Review Job Descriptions: Consider updating job descriptions for safety-sensitive positions to include a "no drug" policy. Elements of a drug-free workplace may also come into play with respect to the content of job descriptions.

(d) Review Drug Testing Policy: If your organization has one, it should be reviewed in light of the new laws legalizing marijuana.

(d) Train Managers and Supervisors: Make sure they know and understand applicable employment policies and how to recognize and respond to employees who appear under the influence.

(e) Consult Legal: This is an evolving area of law, so it is important to obtain the advice of a municipal attorney, who can help you create and maintain policies and procedures that are compliant with the laws and a proper fit for your organization.

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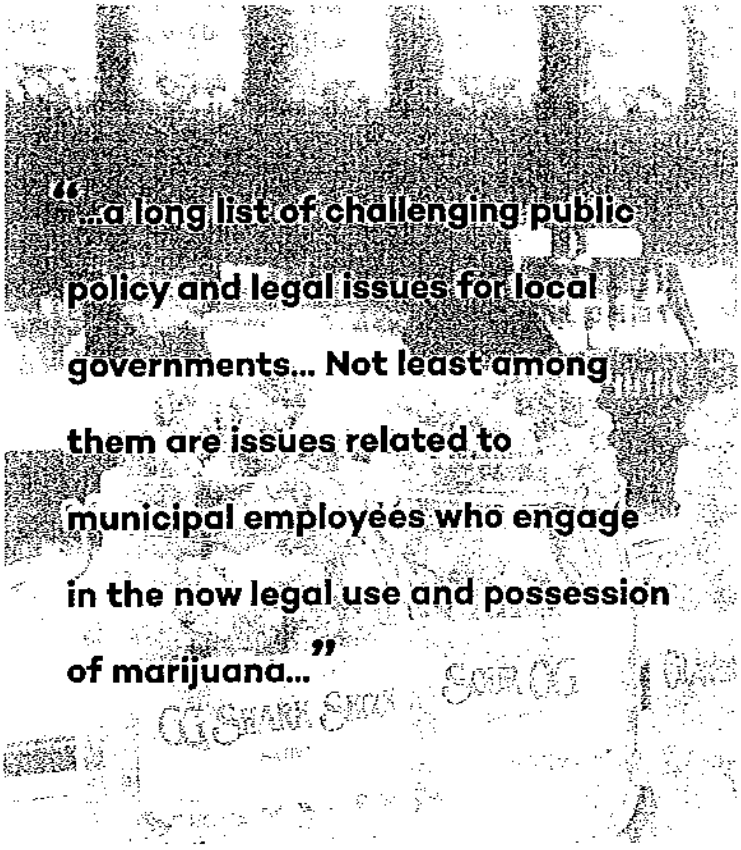
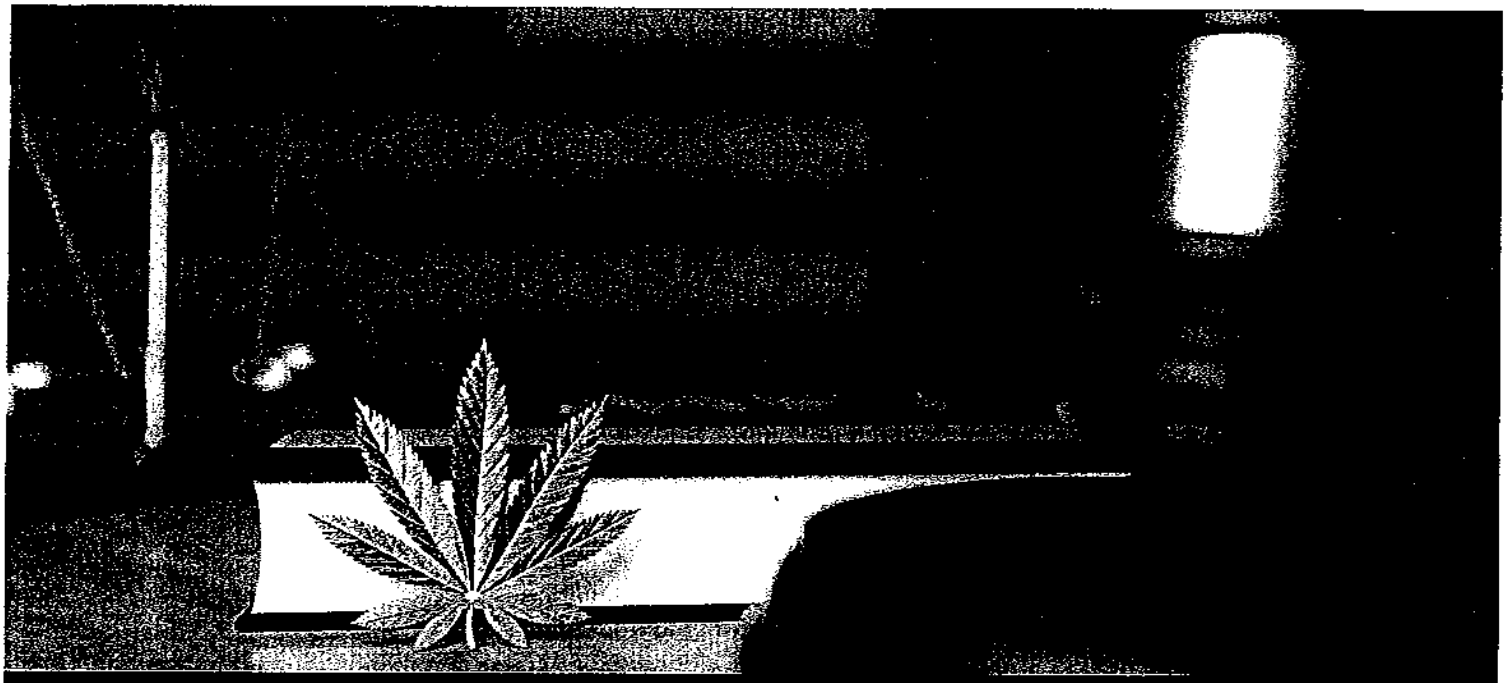




IS MARIJUANA SOCIAL EQUITY A PIPE DREAM?

By Clyde J. Robinson

For many years, certain Michigan communities have been more likely to feel the sting of marijuana prosecution than others. In an effort to address that injustice, Section 8.1 (j) of the Michigan Regulation and Taxation of Marijuana Act (MRTMA), MCL 333.27958, requires the Marijuana Regulatory Agency (MRA) within the Michigan Department of Licensing & Regulatory Affairs to promote "a plan to promote and encourage participation in the marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition and enforcement and to positively impact those communities." The language used by the statute adopted by Michigan voters in November 2018 raises several questions this article will explore.

Disproportionately Impacted Communities

According to a 2013 American Civil Liberties Union report, The War on Marijuana in Black and White, a review of arrests from 2001-2010 found that nationally, black individuals were 3.73 times more likely than whites to be arrested for possession of marijuana despite roughly the same degree of marijuana use by both groups. More specifically, in Michigan, black individuals were 3.3 times more likely than whites to be arrested for possession of marijuana. It is clear that African-American individuals and neighborhoods have been disproportionately impacted by the enforcement of marijuana laws. The question therefore becomes how can the State and local municipalities best fulfill the statutory mandate?

Impact of Michigan Constitution and Federal Fourteenth Amendment

Article 1, § 26 of the Michigan Constitution precludes the State or other governmental body from granting preferential treatment to an individual or group on the basis of race in the operation of public employment, education, and contracts. While the reach of this constitutional requirement does not expressly extend to licensing, or the provision of other benefits, a municipality should nevertheless be cognizant of its existence. In 2007, the Michigan Attorney General issued opinion #7202 which determined that a City of Grand Rapids policy aimed in part at providing access and equal opportunity to disadvantaged business enterprises (DBE) to do business with the city violated Article 1, section 26 because the definition of a DBE created a rebuttable presumption that females and certain racial and ethnic minorities were disadvantaged. Although the Attorney General found the policy was prohibited by the Constitution, he also opined that a policy which employed race and sex neutral financial or economic factors would be acceptable.

Hence, it is incumbent upon municipalities implementing local policies seeking to promote and encourage people disproportionately impacted by marijuana enforcement to do so in a racially neutral manner. Even if the language of Article 1, § 26 is not applicable to licensing, any classification on the basis of race is inherently suspect and susceptible to challenge pursuant to the Equal Protection Clause of the 14th

Amendment. Any classification made on the basis of race is subject to evaluation using the "strict scrutiny test" articulated by the United States Supreme Court. This test requires any classification based on an inherently suspect category, such as race, must be narrowly tailored to further a compelling governmental interest. *Fisher v. Univ. of Texas*, 570 U.S. 297 (2013). In order to use a race-based remedy, there must be a demonstration that a nonracial approach will not produce the benefits being sought. In other words, while black residents have borne the brunt of marijuana enforcement efforts, other individuals have been impacted as well.

"... EFFORTS CAN BE MADE TO PROVIDE BENEFITS TO THOSE INDIVIDUALS WHO HAVE BEEN DISPROPORTIONATELY IMPACTED BY MARIJUANA ENFORCEMENT AND CREATE A POSITIVE IMPACT ON THE COMMUNITY."

LARA's Social Equity Plan

The way the Marijuana Regulatory Agency has implemented MRTMA § 8.1 (j) is twofold. First, Emergency Rule 7 (13) requires all adult-use marijuana license applicants to provide a social equity plan detailing how the applicant will comply with and carry out the mandate of the statutory provision. Second, the MRA identified 41 communities that it determined to have been disproportionately impacted by marijuana enforcement. The methodology the MRA used for doing so involved a survey of Michigan counties to determine those which had a higher than average number of marijuana-related convictions and communities within those counties where 30 percent or more of the population lived below the federal poverty level. Individuals (and businesses with 51 percent of its members) who can demonstrate residency within a qualifying community for the past five years will receive a 25-percent discount on all State adult-use marijuana application, licensure, and renewal fees, provided the business locates within a qualifying community. Potential licensees can further qualify for additional reductions of 25 percent by providing proof of a marijuana-related conviction (except for delivery to a minor) and 10 percent for being a registered medical marijuana primary caregiver for at least two years between 2008-2017.

The application of the State's social equity plan has been questioned. Does it go far enough to reach those individuals impacted by the enforcement of marijuana laws? This is where it is possible for any community, whether identified as being disproportionately impacted or not, to supplement what the State already provides. In formulating a social equity program, a local community should be mindful to use a race neutral approach. This is not likely as difficult to do as it may seem at first blush.

Article 1, Section 26 of the Michigan Constitution is based on a nearly identical provision of the California Constitution. Therefore decisions by California courts interpreting that state's constitutional language, while not binding on Michigan courts, can nevertheless provide persuasive guidance. In *American Civil Rights Found. v. Berkeley School Dist.*, 172 Cal App 4th 207 (2009), a social diversity plan which used neighborhood demographics (income level, adult education attainment, and race) to assign students to elementary schools and high school programs was challenged. The California Court of Appeals upheld the school district's program because all students living within a given residential area, regardless of their race, were treated equally. Therefore, a Michigan community can likely single out residents of identified neighborhoods, based on zip code or census tracts, for preferential treatment as part of its local social equity program because all residents of the neighborhood, regardless of their race, are treated equally.

Local Social Equity Plans

The City of Ypsilanti has done exactly this in requiring adult-use businesses to use good faith efforts to hire 25 percent of their employees from designated zip codes. Additionally, Ypsilanti encourages the hiring of individuals who have a prior marijuana conviction. However, care must be taken by marijuana business licensees in hiring employees with criminal histories. MRA rules for both medical marijuana and adult use marijuana businesses require an employer to run a criminal history background check on potential employees. And, the MRA maintains a list of "excluded employees."

Another approach is the one employed by the City of Flint. Qualifying social equity applicants are eligible to receive an administrative exception, without the need for a zoning variance, to locate closer than the otherwise required 300 feet from a residential district. Other distance exemptions exist for adult use marijuana license applicants willing to undertake a blight elimination plan or a park beautification plan near their establishment. Although the Flint ordinance does not specify neighborhoods eligible for these plans, a municipality could limit such exceptions to disproportionately impacted neighborhoods along the lines of the Ypsilanti approach.

Yet another approach is being used by the City of Muskegon. Their plan is consistent with the ACLU recommendation that marijuana-related revenues be used to assist in funding substance abuse prevention and health care. The Muskegon Social Equity Plan asks for a voluntary contribution of 0.5 percent of a marijuana licensee's annual profits and a commitment to offer market rate lease space to retail businesses. Additionally, the Muskegon program intends to focus on providing expungement clinics grants/loans, education on unsafe marijuana consumption and use prevention.

Kalamazoo is still in the planning stage for having an adult-use ordinance in place by June 1, 2020. The city has reached out to the community for its ideas. Suggestions have included making land and structures available at an affordable cost; implementing a mentorship program with licensed businesses; and creating a marijuana business incubator program for residents from identified disproportionately impacted neighborhoods within the city.

In any local social equity assistance program, the likely goal is to provide assistance to residents of the municipality which have been impacted by marijuana enforcement. As a result, a municipality may attempt to impose a condition of durational residency within the municipality to qualify for benefit eligibility. Again, some caution is advised. Although a minimal residency qualification will not likely trigger a challenge, a significantly lengthy residency requirement could be an invitation to constitutional litigation based on violations of equal protection, privileges and immunities, and commerce clauses for discriminating against non-residents.

Another basis for providing social equity assistance is whether the applicant or a member of the applicant's family has a marijuana-related conviction. If using this basis, some thought should be given to a) the nature of the conviction, such as disqualifying convictions for felony trafficking or selling to minors; and b) where the conviction occurred, whether in the local area, Michigan, or out-of-state.

In summary, while there may exist some legal challenges to instituting a local social equity program, they are not insurmountable, and efforts can be made to provide benefits to those individuals who have been disproportionately impacted by marijuana enforcement and create a positive impact on the community.

Clyde J. Robinson has practiced municipal law for nearly 40 years, serving as the city attorney for Battle Creek and Kalamazoo. He is a past chair of the Government Law Section of the State Bar and past president of the Michigan Association of Municipal Attorneys. You may contact him at 269.337.8185 or robinsonc@kalamazoocity.org.

How Legalizing Recreational Marijuana Impacts Home Values

By Luke Babich

This study originally appeared on the Clever Real Estate blog at listwithclever.com/real-estate-blog/marijuana-housing-market-study/.

Recreational marijuana legalization is a hot-button topic, and the debate is now entering the real estate industry. With more states legalizing recreational use, every home buyer needs to know how housing markets are affected by this cultural shift. Opponents of legalization stress increases in crime that lead to lower property values, while supporters highlight the potential economic benefits. We decided that doing a deep dive into the available Multiple Listing Service data and combining it with dispensary license data was the only way to settle the debate.

Three pivotal questions guided our research

1. How are home values impacted by legalizing recreational and medicinal marijuana on a city level?
2. How does marijuana legalization impact crime rates, and how do changes in crime impact home values?
3. How do retail dispensaries impact local home values?
4. Digging into Zillow's historical home price index, we can shed some light on these questions.

Key Insights

- Cities that allow retail dispensaries saw home values increase $22,888 more than cities where marijuana is illegal from 2014 to 2019 (controlling for population and initial home values)
- CATO Institute research supports our findings, suggesting homes close in proximity to marijuana retail dispensaries increase in value
- For cities where only medicinal marijuana is legal, home values increased at a comparable rate to cities where marijuana is illegal; a statistically significant increase in home values could not be attributed to medicinal marijuana legalization
- States that legalize recreational cannabis see an immediate bump in home values following legalization, even without retail dispensaries opening. From 2017 to 2019, cities where recreational marijuana is legal saw home values increase $6,337 more than cities where marijuana is illegal (controlling for population, initial home values, and GDP).

Recreational Dispensaries Lead to Higher Local Home Values

Public concern around legalizing recreational marijuana usually focuses on elevated crime rates. Elevated crime rates lead to lower property values and poor real estate investments, so the narrative goes. In fact, 42 percent of Canadian's believe a cannabis dispensary will have a negative impact on local home values according to a 2018 study.

Our research reveals the opposite is true: On average, in states where recreational marijuana is legal, cities with retail dispensaries saw home values increase $22,888 more than cities where marijuana is illegal from 2014 to 2019. Per a CATO Institute study, homes close to retail dispensaries (within 0.1 miles) increased in value approximately 8.4 percent compared to those further away. This effect appears to bring up the entire city's home values at a rate higher than the national average. Real estate agents can use this data to encourage home buyers that are scared off by retail dispensaries near their homes; based on the research, retail dispensaries don't impact home values like liquor stores.

Colorado's first retail dispensaries opened on January 1, 2014, and medical and recreational sales have generated over $948,000,000 in tax revenue. Denver has 180 dispensaries, the most of any Colorado city, and its housing market has seen unprecedented growth since recreational legalization in 2012.

Since Denver retail dispensaries opened their doors in 2014, residential property values have increased 67.8 percent, the most significant growth in over two decades. Denver is a clear-cut example of dispensaries raising residential property values, but dispensaries have helped bring up property values all

"Cities that allow retail dispensaries saw home values increase $22,888 more than cities where marijuana is illegal ..."

around Colorado. Cities in Colorado with dispensaries have higher than average property value growth compared to the national average.

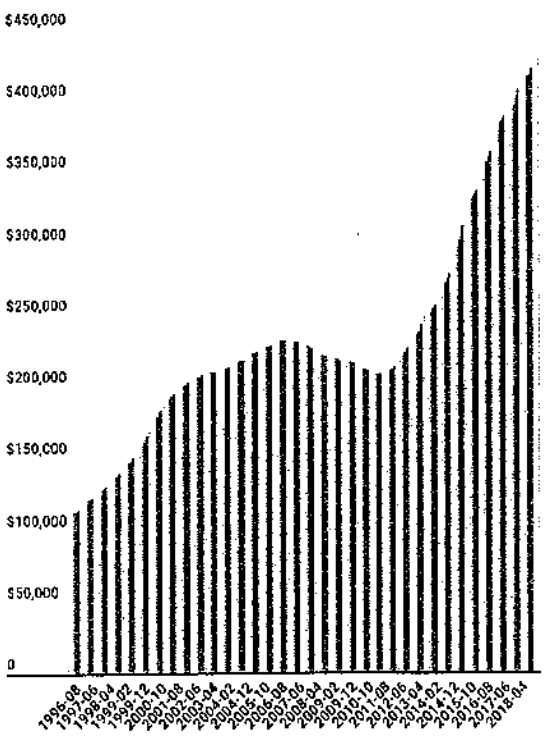
Colorado and Washington, the first states to legalize cannabis for recreational use, have both seen above average home values since opening their first dispensaries in 2014. Colorado homes have increased by 58 percent and Washington home values have increased 57 percent in the years since legal commercial sales began.

While there are tax benefits to legalizing marijuana medicinally, there was not a statistically significant increase in cities where only medicinal marijuana is legal.

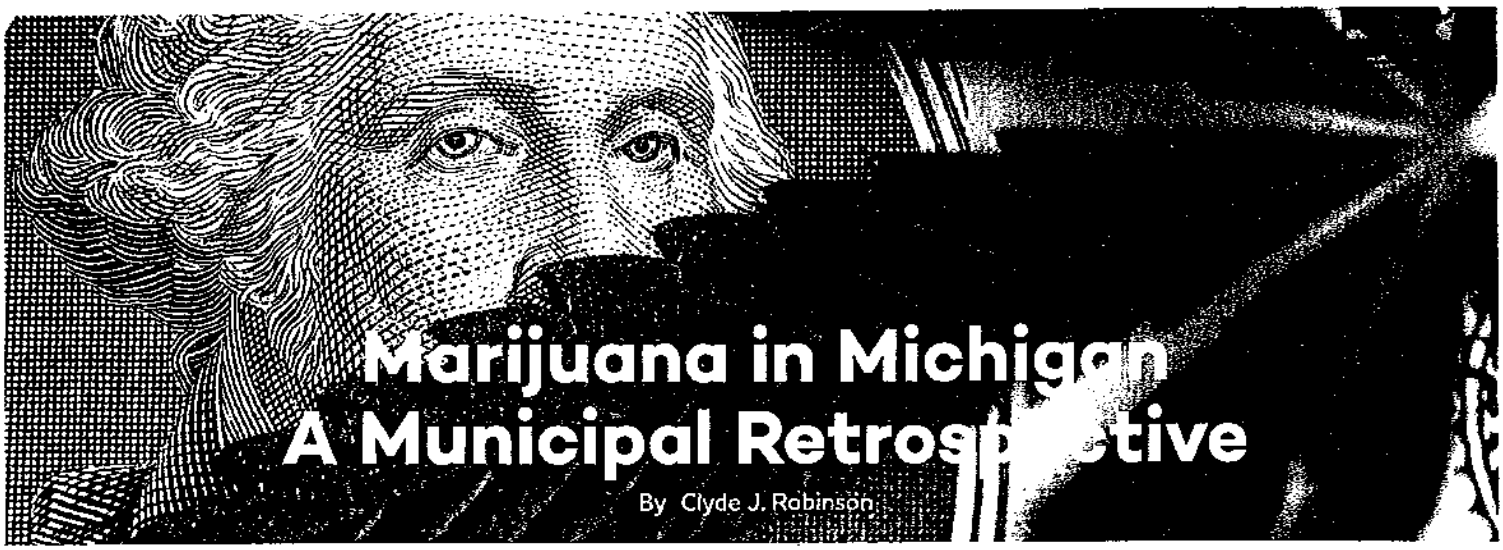
So, why do recreational legalization and retail dispensaries lead to homing price boosts? According to a 2017 study from the University of Mississippi, recreational legalization "attracts more home buyers, including marijuana users as well as entrepreneurs and job seekers." Businesses start to pop up, and job seekers flock to these cities, driving up the demand for housing and retail space.

Luke Babich is the co-founder and chief strategy officer of Clever Real Estate, a free online service that connects people with top agents to save money on commission. For more information, you may contact Thomas O'Shaughnessy at thomas@movewithclever.com.

Denver Home Values (February 1997 - 2019)



Source: Zillow Home Value Index (February 1997 - February 2019)



Marijuana in Michigan
A Municipal Retrospective

By Clyde J. Robinson

The MMMA: Palliative or Placebo?

In November 2008, Michigan voters approved the citizen-initiated Michigan Medical Marihuana Act (MMMA). The Michigan Coalition for Compassionate Care, supporters of the measure, emphasized that the measure would provide a much needed drug to address pain relief or lack of appetite in patients. At the same time, it would eliminate the threat of criminal prosecution through State registration of patients and their caregivers. However, the law did not address the commercialization of medical marijuana.

Two years later, the first of many appellate decisions interpreting the MMMA, *People v. Redden*, was issued. Aside from the legal issues present in the case, the concurring opinion of Judge Peter D. O'Connell highlighted the "confusing nature of the MMMA, and its susceptibility to multiple interpretations," pointing out that a marijuana shop existed less than 100 feet from a school in Lansing and questioned whether the statute was the "first step in legalizing marijuana in Michigan." Subsequent to this opinion, the MMMA became the source of a body of law that continues to grow as individuals and local governments attempt to understand and apply the statute.

Attempts by municipalities to regulate the commercialization of medical marijuana following the adoption of the MMMA, and in the absence of statewide legislation, did not fare well, largely due to the seminal *Ter Beek v. City of Wyoming* decision. In this case, the Supreme Court voided a zoning ordinance which prohibited uses that were contrary to federal law, seemingly holding that the MMMA superseded the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.* and was not preempted by the Federal Controlled Substances Act, 21 USC 801 *et seq.* However, in a significant victory for municipalities a unanimous Michigan Supreme Court in *DeRuiter v. Township of Byron* clarified its holding in *Ter Beek* by stating that the MMMA does not nullify the inherent authority of a municipality to regulate land use under the MZEA so long as it does not prohibit or penalize all medical marijuana cultivation by registered caregivers and does not impose regulations that are unreasonable and inconsistent with state law.

Between 2012 and 2015, many Michigan cities sought to fill the gaps created by the MMMA. Charter amendments were adopted that decriminalized marijuana by legalizing the possession or transfer of less than one ounce of marijuana on private property by persons age 21 and older. Others made enforcement of marijuana law the lowest law enforcement priority or permitted the establishment of commercial medical marijuana dispensaries. In particular, Grand Rapids amended its city charter to make possession, use, or transfer of marijuana a $25 first offense civil infraction, broadened the scope of the health professional defense in the MMMA, and precluded city police from referring marijuana arrests to the county prosecutor. In what was a victory for home rule in *Kent County Prosecuting Attorney v. City of Grand Rapids*, the charter provisions were upheld on a variety of grounds.

The MMFLA: The Legislature (Finally) Steps In

In 2016, some semblance of direction was obtained for municipalities with the Legislature's passage of the Medical Marihuana Facilities Licensing Act (MMFLA). This legislation created a State licensing and regulatory framework for the commercialization of medical marijuana. Importantly, municipalities were not required to allow any of the five permitted classes of licensed businesses (growers, processors, safety compliance centers, secure transporters, or provisioning centers) to operate within their borders. Instead, a municipality had to affirmatively "opt-in" to the MMFLA. For those communities that did so, they weren't allowed to regulate price, purity, or adopt an ordinance conflicting with state administrative rules. But local officials were granted broad authority in terms of adopting licensing and zoning regulations pertaining to commercial marijuana businesses and could limit the number and types of medical marijuana facilities allowed. However, just as municipalities were coming to grips with the commercialization of medical marijuana, Michigan voters were being urged to legalize recreational marijuana.

The MRTMA: Legalizing Recreational Marijuana

As predicted by Judge O'Connell in his Redden concurrence, the MMMA was a precursor for a citizen-initiated proposal to legalize recreational or adult use marijuana in Michigan. Although competing proposals failed to garner enough signatures to put the question on the November 2016 ballot, legalization advocates came together as the Coalition to Regulate Marijuana Like Alcohol to put the question to voters in November 2018. Like the MMMA of ten years earlier, voters overwhelmingly approved the Michigan Regulation and Taxation of Marihuana Act (MRTMA) which legalized and permitted the most generous quantities for the personal possession of marijuana by persons 21 and older in the United States.

> "MUNICIPALITIES WILL LIKELY FACE MANY OF THE SAME LEGAL ISSUES IN THE ATTEMPT TO ZONE AND LICENSE ADULT USE MARIJUANA ESTABLISHMENTS THAT WERE PRESENTED BY THE IMPLEMENTATION OF THE MEDICAL MARIJUANA STATUTES."

Although the MRTMA could have, and perhaps should have, more closely paralleled the MMFLA, it did not. Instead, it imposes greater limitations on the degree of municipal regulatory and zoning discretion. Unlike the MMFLA, the MRTMA requires municipalities to affirmatively "opt-out" if they do not want recreational marijuana commercial businesses to locate in their communities. According to the Marijuana Regulatory Ageny (MRA) website within the Michigan Department of Licensing and Regulatory Affairs, only 43 municipalities (and nearly all with some restrictions) currently permit recreational commercial establishments. The observation by a unanimous Supreme Court in *People v. Hartwick* regarding the MMMA is likely equally apt to the MRTMA—that the use of the initiative process leads to the creation of inconsistent or unclear law that may be difficult to interpret and harmonize. Like the MMMA, the provisions of the MRTMA lack consistency and are susceptible to conflicting interpretations.

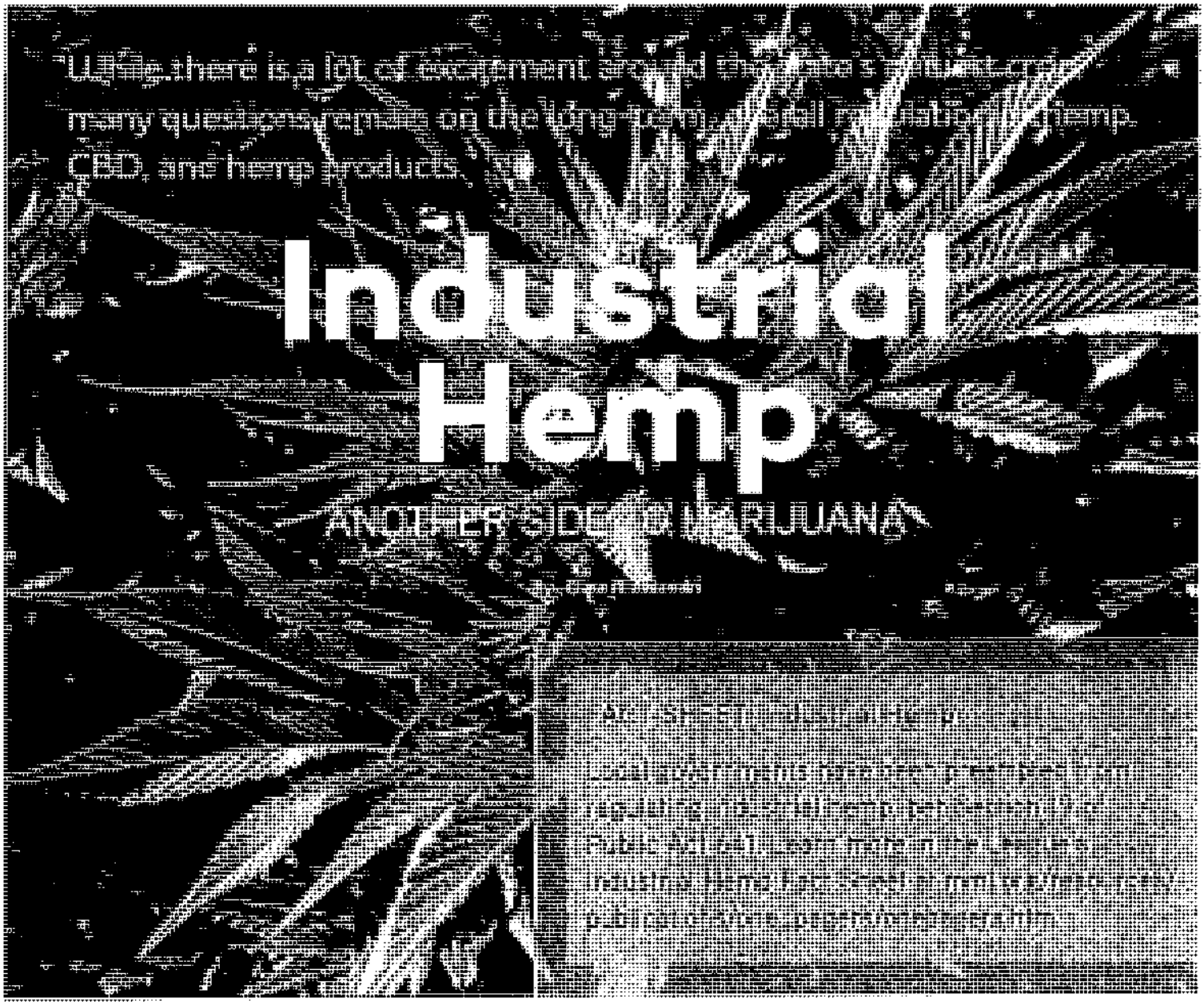
The MRTMA permits individuals to petition to initiate an ordinance to provide for the number of marijuana establishments allowed within a municipality or to completely prohibit marijuana establishments within the municipality. In 2019, elections were held in 15 Michigan communities. Commercial adult-use marijuana businesses were rejected in 11 of those instances (see article p. 23).

If a community attempts to limit or cap the number of adult-use marijuana businesses, the MRTMA requires it to use "a competitive process intended to select applicants who are best suited to operate in compliance with (the MRTMA) within the municipality." Any objective scoring system intended to comply with this requirement is likely an invitation to a lawsuit by those applicants who don't get a license.

The MRTMA also required LARA to adopt a rule to encourage participation in the marijuana industry by people "from communities that have been disproportionately impacted by marijuana prohibition and enforcement." The MRA rolled out its "Social Equity Plan" which waives 25 percent of the state application, licensing, and renewal fees for five-year residents of 41 identified communities who agree to locate their business within an impacted community. Additional waivers of 25 percent if applicants have a prior marijuana-related conviction (excluding delivery to a minor), and 10 percent if they were a registered medical marijuana caregiver for at least 2 years between 2008-2017 are available (see article p 23). However, in direct contrast with this mandate, the MRTMA for the first two years after going into effect largely limits the availability of adult-use licenses to those marijuana businesses holding a medical marijuana license.

This provision effectively shuts residents of communities impacted by marijuana enforcement out of the market. In addition to creating the "microbusiness" category (a 150 plant grow, processing, and sale operation), the MRTMA permits the State to create additional categories of businesses. The MRA announced that it will also issue four types of licenses, if permitted by the local municipality: Excess Grower operations (limited to Class C Growers); Designated Consumption Establishments (a commercial space where persons age 21 and older may consume marijuana); Marihuana Event Organizers (who are eligible to apply for and hold); and Temporary Marihuana Events (which permit the onsite sale/consumption of marijuana on the dates of the event with the approval of the municipality where the event is being held). Municipalities will likely face many of the same legal issues in the attempt to zone and license adult use marijuana establishments that were presented by the implementation of the medical marijuana statutes. This has prompted caution on the part of many municipalities, which explains the overwhelming number of "opt-outs." Because it is very likely that municipalities attempting to implement the MRTMA will be faced with similar legal issues that were encountered with the implementation of the MMMA and MMFLA, taking a measured approach, until "the smoke clears" is a prudent course of action.

Clyde J. Robinson has practiced municipal law for nearly 40 years, serving as the city attorney for Battle Creek and Kalamazoo. He is a past chair of the Government Law Section of the State Bar and past president of the Michigan Association of Municipal Attorneys. You may contact him at 269.337.8185 or robinsonc@kalamazoocity.org.



In April 2019, the Michigan Department of Agriculture and Rural Development (MDARD) launched the state's first industrial hemp program, adding a new crop to the state's farming community.

Hemp (also known as industrial hemp) is one of the largest new opportunities for growers in Michigan after it was legalized in the 2018 U.S. Farm Bill. Hemp is Cannabis (Cannabis sativa L.) with less than 0.3 percent tetrahydrocannabinol (THC), the psychoactive component found in marijuana. Hemp is cultivated to produce fiber, grain, biomass, or non-intoxicating medicinal compounds such as cannabidiol (CBD).

Michigan is uniquely positioned to grow, process and manufacture industrial hemp as one of the nation's most agriculturally diverse states. This emerging crop not only creates new opportunity for our farming community, but it also offers an avenue for new businesses to develop across the state.

Federal Legislation

The 2018 U.S. Farm Bill authorized the commercial production and processing of industrial hemp in the United States. The United States Department of Agriculture (USDA) published its interim final rules on the establishment of a domestic hemp program and is seeking public comments before finalizing a national program. In the meantime, MDARD is utilizing authority in the 2014 Farm Bill for an Industrial Hemp Ag Pilot Program and, will continue it into 2020.

The USDA Interim Final Rules provide guidance on federal requirements as states across the nation draft state hemp plans for approval. MDARD is currently reviewing the rules to identify needed changes to state law. Once statute changes are made, MDARD will submit Michigan's industrial hemp plan, and once approved, will provide oversight of the department's commercial hemp program.

State Legislation and Hemp Pilot Program

While there is a lot of excitement around the state's newest crop, many questions remain on the long-term, overall regulation of hemp, CBD, and hemp products. There is a steep learning curve for everyone involved in this budding commodity—farmers, federal and state regulators, and local authorities. The 2019 and 2020 Industrial Hemp Ag Pilot programs have, and will continue, to provide an opportunity for all to learn.

Michigan's Public Act 641 of 2018 authorizes the growing and cultivating of hemp and requires the registration and licensing of certain persons who are interested in growing, processing, and handling hemp.

Some of the highlights of the Michigan Industrial Hemp Research and Development Act of 2018 are below:

- Prohibits a person from growing hemp in Michigan unless registered as a grower
- Requires growers to identify all growing locations on their grower application
- Prohibits a person from processing, handling, brokering, or marketing hemp unless licensed as a processor-handler
- Requires signage to be placed at the boundaries of each growing area
- Requires growers to have their crops tested for THC content prior to harvest
- Requires individuals to be able to show proof of registration and licensing upon request by law enforcement
- Pre-empts local units of government from adopting any rule, regulation, code, or ordinance to restrict or limit any hemp cultivation or processing

People growing or processing hemp in the state must have a current and valid license from MDARD. Licenses to grow or process hemp in Michigan are available at any time. Those interested can download and complete the Hemp Grower Registration Application and the Hemp Processor-Handler Application on Michigan's Hemp website. The cost for the grower registration is $100 and the processor-handler license is $1,350. MDARD is currently issuing licenses for the 2020 Hemp Ag Pilot program as licenses expire annually on November 30.

For more information on Michigan's Industrial Hemp Ag Pilot Program, visit www.michigan.gov/industrialhemp.

Gina Alessandri is the industrial hemp program director for the Michigan Department of Agriculture and Rural Development. You may contact her at AlessandriG@michigan.gov.

STATE OF MICHIGAN

IN THE 16th JUDICIAL CIRCUIT FOR MACOMB COUNTY

PINEBROOK WARREN, LLC, a Michigan Limited liability company, et al.,

Plaintiffs,

vs.

Case No. 2019-004059-CZ
Hon. Carl J. Marlinga

The CITY OF WARREN, a Michigan Municipal corporation, et al,

Defendants,

INTERVENING DEFENDANT/CROSS-PLAINTIFF, SOZO HEALTH, INC.'S, MOTION FOR RECONSIDERATION PURSUANT TO MCR 2.119(F) OF THIS COURT'S OPINION AND ORDER GRANTING PLAINTIFF HAPPY TRAILS GROUP, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT DATED APRIL 14, 2020 AND PROOF OF SERVICE

Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., ("Sozo Health"), for its Motion For Reconsideration Pursuant to MCR 2.119(F) relies upon its attached Brief In Support.

WHEREFORE, Intervening Defendant/Cross-Plaintiff Sozo Health, Inc. respectfully requests that this Honorable Court enter an Order:

(I) Granting the Intervening Defendant/Cross-Plaintiff Sozo Health, Inc.'s Motion For Reconsideration; and

(II) Reversing this Court's Opinion and Order Dated April 14, 2020 Granting Plaintiff Happy Trails Group, Inc.'s Motion For Partial Summary Judgment; and

(III) Finding that the OMA was not violated by the Review Committee or the Warren City Council; and

(IV) Affirming the actions of the Warren City Council in issuing the Provisioning Center Licenses; and

(V) Granting such further relief in favor of the Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., as this Honorable Court deems just, equitable and appropriate under the circumstances presented.

By: **/s/ Robert Charles Davis**
ROBERT CHARLES DAVIS (P40155)
Attorney for Intervening Defendant/
Cross-Plaintiff Sozo Health, Inc.
10 S. Main St., Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300
(586) 469-4303 – Fax
rdavis@dbsattorneys.com

Dated: May 12, 2020

PROOF OF SERVICE

I served the **Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc.'s Motion For Reconsideration Pursuant to MCR 2.119(F) Of This Court's Opinion And Order Granting Plaintiff Happy trails Group, Inc.'s Motion For Partial Summary Judgment Dated April 14, 2020** upon the attorneys of record and/or parties in this case on **May 12, 2020. I declare the foregoing statement to be true to the best of my information, knowledge and belief.**

☐ U.S. Mail
☐ Hand Delivered
☐ Express Mail Private
☐ Fax
☐ Messenger
X Other: E-file

/s/ William N. Listman
William N. Listman

STATE OF MICHIGAN

IN THE 16th JUDICIAL CIRCUIT FOR MACOMB COUNTY

PINEBROOK WARREN, LLC, a Michigan Limited liability company, et al.,

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vs.

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Hon. Carl J. Marlinga

The CITY OF WARREN, a Michigan Municipal corporation, et al,

Defendants,

INTERVENING DEFENDANT/CROSS-PLAINTIFF, SOZO HEALTH, INC.'S, BRIEF IN SUPPORT OF ITS MOTION FOR RECONSIDERATION PURSUANT TO MCR 2.119(F) OF THIS COURT'S OPINION AND ORDER GRANTING PLAINTIFF HAPPY TRAILS GROUP, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT DATED APRIL 14, 2020 AND PROOF OF SERVICE

Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., ("Sozo Health"), for its Brief In Support of Its Motion For Reconsideration Pursuant to MCR 2.119(F), states the following:

I. PREAMBLE

The issue presented is whether the Review Committee at issue is subject to the OMA. This Motion identifies other judicially reviewed fact patterns to show that, as a matter of controlling law, the OMA does not govern the Review Committee. Any review of the number of applicants versus the number of licenses is not relevant. Any review of how often the Review Committee met as opposed to the decision making legislative body is also not relevant. Reconsideration is appropriate and fully supported.

II. STANDARDS OF REVIEW

A. MCR 2.119(F)(3) Motions For Reconsideration

MCR 2.119(F)(3) states that a party which moves for reconsideration under MCR 2.119 must demonstrate a palpable error by which the court and show that a different disposition of the motion must result from correction of the error. Intervening Defendant Sozo seeks reconsideration of this Court's Opinion and Order Dated April 14, 2020 Granting Plaintiff, Happy Trails Group, Inc.'s, Motion For Partial Summary Judgment. Defendant Sozo asserts that when the controlling facts are applied against the controlling law, a different disposition will result. (**Exhibit 1** – Opinion and Order)

III. LEGAL ARGUMENTS

A. The General And Controlling Law On Committees Under The OMA.

The OMA, at MCL 15.263, states all "meetings of a public body," "decisions of a public body," and "deliberations of a public body constituting a quorum of its members" must take place in meetings open to the public. (See: MCL 15.263) According to the Michigan Supreme Court, the threshold issue under the OMA is whether an entity is a public body. (**Exhibit** 2 -- **Herald Co**. v. **City of Bay City**, 463 Mich. 111, 129; 614 NW2d 873, 881 (2000).) The OMA defines a "public body" as any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function. (**Exhibit 2** -- **Herald Co**. v. **City of Bay City**, 463 Mich. 111, 129; 614 NW2d 873, 881 (2000).)

The definition of "public body" in the OMA encompasses two requirements. **First**, the entity at issue must be a state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council. (**Exhibit** 2 -- **Herald Co**. v. **City**

of Bay City, 463 Mich. 111, 129; 614 NW2d 873, 882 (2000).) **Second,** the entity must be "empowered" to exercise governmental or proprietary authority or perform a governmental or proprietary function, and that power must derive from state constitution, statute, charter, ordinance, resolution, or rule. (**Exhibit 2** -- **Herald Co**. v. **City of Bay City**, 463 Mich. 111, 129; 614 NW2d 873, 882 (2000).)

According to the Michigan Court of Appeals, a report -- even if it contains recommendations -- is purely advisory in nature and cannot constitute governing through independent decision making that effectuates or formulates public policy. (**Exhibit 3** -- **Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. 568, 607-608; 821 NW2d 896, 915-916 (2012).) (See Also: **Exhibit 4** -- OAG Opinion No. 6935)

1. **The Defendant City of Warren's Code Of Ordinances Are Controlling And Not Challenged, Procedurally Or Otherwise.**

The ordinances are not challenged in this matter and are enacted properly. The Warren Code of Ordinances, at Section 19.5-7, states that the City of Warren authorizes provisioning centers and the City of Warren may issue up to fifteen provisioning center licenses. (**Exhibit 5** -- Ordinance at Section 19.5-7) The Warren Code of Ordinances, at Section 19.5-6, states that a "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. (**Exhibit 5** -- Ordinance at Section 19.5-7) The Warren Code of Ordinances, at Section 19.5-13, states that a medical marihuana review committee ("Review Committee"), made up of the **city attorney**, (or a designee), **the director of the public service department**, (or a designee), and the **members of the medical marihuana committee** or alternates of the city council, as appointed by city council, shall review applications for provisioning centers. When reviewing

plans and applications, the Review Committee shall consider each applicant's submission on 17 different factors. (**Exhibit 5** -- Ordinance at Section 19.5-13) The Warren Code of Ordinances, at Section 19.5-14, states that the Review Committee shall forward the scores and applications to the Warren City Council with "recommendations". The Warren Code of Ordinances, at Section 19.5-14, states that the issuance of any provisioning center license "shall be approved by the City Council".

> "Sec. 19.5-14. - Initial license approval.
>
> (a) **The review committee shall forward the scores and applications to the city council with recommendations. The issuance of any provisioning center license shall be approved by the city council.**" (**Exhibit 5** -- Sec. 19.5-14) (Emphasis Added)

The Michigan Court of Appeals has ruled that municipal ordinances are interpreted and reviewed in the same manner as statutes. (**Exhibit 6** -- **Sau-Tuk Indus**. v. **Allegan Cnty**., 316 Mich. App. 122, 136; 892 NW2d 33, 41 (2016).) According to the Michigan Court of Appeals, the rules governing statutory interpretation apply with equal force to a municipal ordinance. (**Exhibit 6** -- **Sau-Tuk Indus**. v. **Allegan Cnty**., 316 Mich. App. 122, 136; 892 NW2d 33, 41 (2016).)

The Michigan Supreme Court has ruled that the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body and the most reliable evidence of that intent is the language of the ordinance itself. According to the Michigan Supreme Court, the language of an ordinance must be given its plain and ordinary meaning. (**Exhibit 7** -- **Bonner** v. **City of Brighton**, 495 Mich. 209, 221-222; 848 NW2d 380, 388 (2014).)

According to the plain meaning of the Warren Code of Ordinances, the Review Committee only makes recommendations. (**Exhibit 5** -- Sec. 19.5-14) The Warren Code of

Ordinances states that the issuance of any provisioning center license shall be approved by the City Council. **(Exhibit 5** -- Sec. 19.5-14) Thus, the Review Committee is a designated recommending body and the City Council is the approving body.

The Michigan Court of Appeals has ruled that the use of the term **"shall"** in a statute denotes a mandatory requirement. **(Exhibit 8** -- **People** v. **Kelly**, 186 Mich. App. 524, 528-529; 465 NW2d 569,571 (1990).)

According to the plain meaning of the Warren Code of Ordinances, any decision related to the issuance of any provisioning center license rests solely with the Warren City Council. **(Exhibit 5** -- Ordinance at Section 19.5-14) This is the only way to interpret the Warren Code of Ordinances. The Review Committee has no power to issue provisioning center licenses. The name of the Committee itself is instructive – "Review". The Review Committee is not, as a matter of law, subject to the OMA.

B. The Michigan Supreme Court's Opinion In Booth Supports Reconsideration By This Court.

The facts before this Court differ drastically from the facts presented in **Booth**. In **Booth**, the President of the University of Michigan, Harold Shapiro, announced his resignation. In response, the University of Michigan's Board of Regents, which consisted of 8 members, appointed itself as the presidential Selection Committee ("Selection Committee"). The Selection Committee appointed Regent Paul Brown ("Regent Brown") as the chairman of the Selection Committee. **(Exhibit 9** -- **Booth Newspapers** v. **University of Mich. Bd. Of Regents**, 444 Mich. 211, 215-216; 507 NW2d 422, 424 (1993).)

The Selection Committee, on its own, compiled a list of 250 potential candidates to potentially replace President Shapiro. **According to the Michigan Supreme Court, in order to reduce the field of candidates, the Selection Committee made a series of cuts which**

narrowed the list of potential candidates from 250 to one. (**Exhibit 9** -- **Booth Newspapers**, 444 Mich. 211, at p. 216.) These are the key facts that represent the foundation of any analysis under **Booth**. In **Booth**, the Selection Committee is the entity that reduced the list of potential candidates from 250 to one.

The Michigan Court of Appeals has examined **Booth** and has made it clear that, in **Booth**, the Michigan Supreme Court concluded that the chair and various committees were acting as public bodies under the OMA because they exercised expansive authority over the selection of the university's president. (**Exhibit 10** -- **A Felon's Crusade** v. **Detroit Pub. Schs. Cmty. Dist. Bd. Of Educ.**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [November 14, 2019] (Docket No. 343881).)

The Michigan Attorney General has also analyzed **Booth** and has latched onto the foundational precept in **Booth** that the Selection Committee's "reduction of the field of potential candidates" constituted a series of "decisions" made by a public body that should have been made in open session. That analysis is correct and controlling. (**Exhibit 4** -- OAG Opinion No. 6935)

The foundational precept in **Booth** is clear. If a committee exercises such expansive authority that it begins to actually filter or reduce of the field of potential candidates for consideration, then such actions will constitute a series of "decisions" which must be made by a public body in open session under the OMA. The question before this Court is whether the Review Committee exercised the type of broad expansive authority demonstrated in **Booth** so as to actually filter and/or reduce the number of applications presented to the City of Warren's Council. The answer is no. The uncontroverted facts show just the opposite and support reconsideration by this Court.

C. The Underlying And Key Facts Presented In This Matter.

1. Applicant Binders

The Record is clear that, when each member of the Review Committee received a binder from an applicant for a provisioning center license, an additional binder was delivered to the Office of City Council. The Warren City Council members had access to a copy of every **complete application** for the same length of time as the members of the Review Committee. The Review Committee did not filter, eliminate or reduce the number of applications or applicants.

2. Review Committee Score Sheets

The Record is clear that there were 65 applicants (collectively "Applicants"). The Record is clear that a copy of all 5 sets of score sheets for all 65 applicants and the spreadsheet with the total scores -- created by Plante Moran -- were all delivered to the Office of the Warren City Council. The Review Committee did not filter, eliminate or reduce the presentation of the scores to the City Council of the 65 Applicants.

3. The Review Committee Only Provided A Recommendation

The Record is clear that the Review Committee's recommendation was consistent with the Ordinance and was only a recommendation. Pursuant to this Court's Order dated October 8, 2019 and pursuant to the City of Warren's Code of Ordinances, the City of Warren's Council was informed during the October 8, 2019 City Council meeting that the City Council may make its own determination of the merits of the license applications using the work of the Review Committee as only a recommendation. The materials used to score the 65 Applicants, the five sets of 65 signed and completed scoring sheets, the recordings of the interviews of the 65 Applicants, and the charts reflecting the individual scores, total score and ranking, drafted by Plante Moran were delivered -- in total -- to the Warren City Council.

D. The Facts Presented Here Are Inconsistent With The Facts Presented In Booth.

In **Booth**, the University of Michigan's Board of Regents, appointed itself as the presidential Selection Committee. Here, the Warren City Council did not appoint itself as the Review Committee. Instead, and consistent with the unchallenged ordinances, it placed the Review and recommendation to the Review Committee.

In **Booth**, the Selection Committee made a series of cuts which narrowed (filtered by decision) the list of potential candidates from 250 to one. Here, the Review Committee did not make any cuts or otherwise limit the number of Applicants (filtered by decision) which were presented to the Warren City Council.

In **Booth**, the Board of Regents only had one candidate to vote and take action on. Here, the Warren City Council had all 65 Applicants available to vote and take action on.

While the Selection Committee in **Booth** may have exercised expansive authority over the selection of the university's president, the Review Committee before this Court only made a recommendation. Providing a recommendation for action by another entity, by its very nature, cannot -- and does not -- constitute "governing" and does not trigger the OMA requirements as a matter of law.

E. Michigan Court of Appeals Opinion in Davis v. City of Detroit Fin. Review Team, 296 Mich. App. 568; 821 NW2d 896, 898 (2012) Is Instructive, On Point, And Supports Reconsideration.

The Michigan Court of Appeals Opinion in **Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. 568; 821 NW2d 896, 898 (2012) is, instructive, on point and supports reconsideration.

In **Davis**, the central issue was whether a financial review team ("Financial Review Team") that the Governor appoints under § 12(3) of the emergency financial manager act is a "public body," under the OMA. The Michigan Court of Appeals ruled that the Financial Review

Team was not a public body because it was not a "governing body" as that term is used under the plain language of the OMA (**Exhibit 3** -- **Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. 568; 821 NW2d 896, 898 (2012).)

In making this determination, the Michigan Court of Appeals focused on the powers of the Financial Review Team which included the following: examining books, utilizing the services of other state agencies, and negotiating and signing a consent agreement with the chief administrative officer of the local governments. These Consent Agreements must be approved by resolution of the governing body of the local government and be approved and executed by the State Treasurer.

> "**Under the emergency financial manager act, the review team has the power to examine the books** [***4] and records of the local government, utilize the services of other state agencies and employees, and negotiate and [*576] sign a consent agreement with the chief administrative officer of the local government. **However, for such a consent agreement with a municipal government to go into effect, it must be approved by resolution of the governing body of the local government and be approved and executed by the State Treasurer.**" (**Exhibit 3** -- **Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. at pp. 575-576.) (Emphasis Added)

On review, the Michigan Court of Appeals made it clear that it was the Financial Review Team's power to actually sign a consent agreement that was the fulcrum of the case. The Michigan Court of Appeals stated that the action of signing a consent agreement might appear to be an act of "governing". However, the language in the remainder of that provision invalidates such a conclusion because that language requires that, in order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state financial authority. Thus, the direction provided by the enabling language itself is controlling and instructive. This applies when the applicable ordinances are fully reviewed and afforded their plain meaning. Again, there is no indication

before this Court that the Review Committee or the Warren City Council violated these ordinances.

> **"It is a financial review team's third function under § 13—the power to negotiate and sign a consent agreement with the chief administrative officer of the local [*603] government—that is the fulcrum of this case. These actions might *appear* to be an act of "governing" by both formulating—through negotiations with the local government—and effectuating—through signing the consent agreement—public policy.** However, **language in the remainder of that subdivision invalidates such a conclusion**. That **language states that "[i]n order for the consent agreement to go into *effect*, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state financial authority,"** here, the State Treasurer." **(Exhibit 3 --** Davis v. City of Detroit Fin. Review Team, 296 Mich. App. at pp. 602-603.) (Emphasis Added)

According to the Michigan Court of Appeals, a consent agreement that the Financial Review Team negotiates and signs is only the first step in the process. By signing the consent agreement, the Financial Review Team is not acting "upon" a "motion proposal, recommendation, resolution, order, ordinance, bill or measure" that has come before it. Rather, it is making a recommendation upon which the governing body of the local government will act.

> "As a result, when we consider the entirety of this critical subdivision of the emergency financial manager [***43] act, we conclude that ***HN28*** **a consent agreement that a financial review team negotiates and signs is but the first step in the process of effectuating or formulating public policy. A financial review team is not acting "upon" a "motion, proposal, recommendation, resolution, order, ordinance, bill or measure" that has come before it. Rather, it is *making* a recommendation "upon" which the governing body of the local government and the State Treasurer, acting as the state financial authority can, within the exercise of their full discretion, act."** (Exhibit 3 -- Davis v. City of Detroit Fin. Review Team, 296 Mich. App. at pp. 602-603.) (Emphasis Added)

The Michigan Court of Appeals ruled that a recommendation for action by another entity, by its very nature, cannot constitute "governing". This Rule of Law certainly applies here.

> "**Such a consent agreement is, until the governing body of the local government approves it and the State Treasurer approves and executes it, only a recommendation**. And, in our view, a **recommendation for action by another entity**, group, or individual, **by its very nature, cannot constitute "governing" either through the effectuating [**914] or the formulating of public policy by the entity that is itself making the recommendation.** [*604] That is, **even by negotiating and signing the consent agreement, the financial review team is not, and cannot, by statute, exercise independent authority to effectuate the recommendation contained in the consent agreement.**" (**Exhibit 3 -- Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. 568 at p. 603-604.) (Emphasis Added)

The Michigan Court of Appeals ruled that, under the process established by the emergency financial manager act, a Financial Review Team can only provide a *recommended* consent agreement to the governing body of the local government and the State Treasurer. The Financial Review Team itself has no capacity to act upon this recommendation and has no power to implement it.

> "**Therefore,***HN29* **under [***44] the process established by the emergency financial manager act, a financial review team can only, together with the chief administrative officer of a local government, provide a *recommended* consent agreement to the governing body of the local government and the State Treasurer. The financial review team itself has no capacity to act upon this recommendation and has no power to implement it.**" **(Exhibit 3 -- Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. at p. 604.) (Emphasis Added)

The Michigan Court of Appeals ruled that the Financial Review Team cannot act on its recommendations. As a consequence, the Financial Review Team is not a public body within the meaning of the Open Meetings Act.

> "We therefore conclude thatHN37 the authority and functions of a financial review [***50] team under § 13 of the emergency financial manager act do not empower a financial review team to independently govern through decision-making that effectuates or formulates public policy. **A financial review team cannot act on its recommendations; it can only make such recommendations**. **As a consequence**, we conclude that the Detroit Financial Review Team **is not a "governing body" and, therefore, not a "public body" within the meaning of the Open**

Meetings Act." (Exhibit 3 -- Davis v. City of Detroit Fin. Review Team, 296 Mich. App. at p. 608.) (Emphasis Added)

The Michigan Court of Appeals then made it clear that the situation in **Davis** differed critically from the situation presented in **Booth**. This Court is now asked to do that same analysis to the facts presented here as compared to **Booth**.

The subquorum groups in **Booth** were not just making recommendations. They were effectively exercising the authority of the University of Michigan Board of Regents to narrow (filter) the field of candidates and ultimately selected the person to be the university president. In contrast, the Financial Review Team in **Davis** could not exercise authority to adopt a consent agreement but could merely participate in preparing a recommended consent agreement -- including signing it. **According to the Michigan Court of Appeals, the preparation of a recommended consent agreement cannot constitute governing**. This ruling is instructive and should apply to the facts now presented to this Court.

> **"This differs critically from the acts of individual or subquorum groups of regents in Booth Newspapers. In that case, the individual regents or subquorum groups were not merely making recommendations. Rather, they were effectively exercising the authority of the University of Michigan Board of Regents to narrow the field of candidates and ultimately choose the person to be the university president. In contrast, a financial review team cannot exercise authority to adopt a consent [***45] agreement but can merely participate in preparing a recommended consent agreement. And, in our view, the preparation of a recommended consent agreement cannot constitute "governing" either through the effectuating or the formulating of public policy." (Exhibit 3 -- Davis v. City of Detroit Fin. Review Team**, 296 Mich. App. 568, 604; 821 NW2d 896, 914 (2012).) (Emphasis Added)

Pursuant to Warren's Code of Ordinances, the Review Committee -- under any plain reading -- can only make a recommendation to the Warren City Council. This is controlled by the applicable Ordinances. The Review Committee itself has no capacity to act upon any

recommendation and has no power to implement it. The language is clear, concise and controlling without challenge. As a result, the Review Committee is not a public body subject to the OMA and reconsideration is appropriate.

F. The Michigan Court of Appeals Opinion In "A Felon's Crusade" Is Instructive, On Point, And Also Supports Reconsideration.

On November 14, 2019 -- just six months ago -- the Michigan Court of Appeals issued its Opinion in **A Felon's Crusade** v. **Detroit Pub. Schs. Cmty. Dist. Bd. Of Educ**., Unpublished Opinion Per Curiam of the Court of Appeals, decided [November 14, 2019] (Docket No. 343881). The rulings are instructive.

In **A Felon's Crusade**, the Detroit Public Schools Board of Education ("Board") was searching for a new superintendent for the Detroit Public Schools Community District ("DPSCD"). The DPSCD issued a request for proposal from search firms to search for a new superintendent. Three members of the Board were assigned to a committee to review the responses to the RFP and report back to the Board. This committee screened the 3 search firms, presented all 3 to the Board and recommended one of them, Ray and Associates, Inc. ("Ray"). The Board accepted the recommendation without objection and entered into a contract with Ray. **(Exhibit 10 -- A Felon's Crusade.)**

In **A Felon's Crusade,** the plaintiff initiated suit and alleged the committee violated the OMA by failing to hold their meetings in public. On review, the Michigan Court of Appeals ruled that a report -- even if it contains recommendations -- is purely advisory in nature and cannot constitute governing through independent decision making. **(Exhibit 10 -- A Felon's Crusade .)**

In the beginning of its Opinion in **A Felon's Crusade,** the Michigan Court of Appeals properly examined the Michigan Supreme Court's Opinion in **Booth**. The Michigan Court of

Appeals noted that, in **Booth**, the university's board of regents appointed itself as the committee responsible for choosing a new president for the university and appointed a single regent as the chair. The chair, other regents, and committees continued to narrow (filter by decision) the list of candidates through closed meetings and informal discussions until a single candidate was left. In **Booth**, the Michigan Supreme Court concluded that the chair and various committees were acting as public bodies under the OMA because they exercised expansive authority over the selection of the university's president. **(Exhibit 10 -- A Felon's Crusade)**

In **A Felon's Crusade,** the Michigan Court of Appeals ruled that the actions of the committee were far different from the unfettered authority held by the chair and committees in **Booth**. In **A Felon's Crusade**, the committee screened three search firm candidates and presented "**all**" three candidates for the board's consideration. Unlike the evasive procedures used in **Booth**, the Board in **A Felon's Crusade** was ultimately free to consider the merits of all three prospective search firms at a meeting open to the public. **(Exhibit 10 – A Felon's Crusade**.)

In **A Felon's Crusade,** the Michigan Court of Appeals ruled that the mere fact that the committee recommended Ray as the most qualified search firm **does not** necessitate the conclusion that the committee was exercising the Board's authority to ultimately take action and choose the search firm. The Court of Appeals ruled that the Board was free to accept or reject the committee's recommendation. **(Exhibit 10 -- A Felon's Crusade** .)

Here, the Review Committee now under review by this Honorable Court presented all of the applicants to the Warren City Council. The Review Committee did its job under the ordinances. The Warren City Council was free to accept or reject the Review Committee's

review, scoring and recommendation. The Review Committee now before this Court is not subject to the OMA as a matter of law and reconsideration is appropriate.

G. Michigan Attorney General Opinion No. 6935 Is Not Controlling But It Is Instructive, On Point, And Supports Reconsideration Because It Also Analyzes Booth.

In Opinion No. 6935, the Michigan Attorney General was asked if the OMA was violated when a committee formed by the Ionia Board of Education ("Ionia Committee") to study eligibility standards for participating in athletics excluded the public from a committee meeting. The Ionia Committee was charged with gathering information, reviewing existing school district policy and making recommendations to the Ionia Board of Education regarding eligibility standards for athletic participation. The Ionia Committee was not given authority to alter any existing district policy. Instead, decisions regarding the school district policy would be made by the Ionia Board of Education in an open meeting after the Ionia Board of Education evaluated the Ionia Committee's recommendations.

At its initial meeting, the Ionia Committee barred a local newspaper reporter from attending. The Michigan Attorney General starts this Opinion by noting that prior opinions of the Michigan Attorney General have consistently concluded that the definition of "public body" **does not** include advisory boards or committees of a public body that do not exercise governmental or proprietary authority. **(Exhibit 4** -- OAG Opinion No. 6935) The Attorney General then relies on Michigan Attorney General Opinion 1977-1978, No 5183, wherein the Michigan Attorney General concluded that, based on the wording of the OMA, the Act does not apply to committees and the subcommittees of public bodies which are merely advisory. According to the Michigan Attorney General, a subcommittee which can only make recommendations to the public body for final decision is not required to hold its committee

meetings in public hearings. (**Exhibit 4** -- OAG Opinion No. 6935) After stating this general proposition, the Michigan Attorney General provides an in depth examination of the Michigan Supreme Court's Opinion in **Booth.** (**Exhibit 4** --OAG Opinion No. 6935) It appears all comparisons lead to **Booth**.

The Michigan Attorney General concludes the following with respect to **Booth**. In **Booth**, the Michigan Supreme Court held that the University of Michigan Board of Regents' process for selection of a new university president violated the OMA. In **Booth**, the Board of Regents appointed **all of its members** to the presidential Selection Committee, appointed one of the Regents chairmen of that committee and engaged in a process of eliminating potential candidates from consideration for the position. In **Booth**, the Selection Committee and its chairman ultimately reduced (filtered) the number of candidates from 250 to 12 without having conducted any public meetings. (**Exhibit 4** -- OAG Opinion No. 6935)

In **Booth,** the Selection Committee's "reduction of the field of potential candidates" constituted a series of "decisions" made by a public body that should have been made in open session. (**Exhibit 2** -- OAG Opinion No. 6935) The Michigan Attorney General ultimately drew a sharp distinction from **Booth**. The Michigan Attorney General ruled that, because the Board of Education of the Ionia Public Schools never delegated any decision making authority to the Ionia Committee, **Booth** was not controlling. Thus, unlike in **Booth**, the Ionia Committee was purely advisory in nature. Because the Ionia Committee was only capable of making recommendations its meetings did not have to be open to the public. (**Exhibit 4** -- OAG Opinion No. 6935) The Review Committee now before this Honorable Court was never delegated any decision making authority by the City of Warren Code of Ordinances. The Review Committee is purely advisory in nature and is not subject to the OMA as a matter of law.

H. The Number of Applicants Versus the Number of Licensees Is Not The Test For Whether the Review Committee Is A Public Body.

Within its Opinion, this Court states that there were 65 applicants for 15 licenses. This Court states that, if an applicant was ranked in the bottom half, it had no chance of being awarded a license.

> **"Since council eventually limited the number of licensees to 15, and since there were 65 applicants, the committee's ranking was crucial. If an applicant finished in the top twenty, it still might have a chance to get a re-scoring from council; but if an applicant was ranked in the bottom half, it had no realistic chance of being awarded a license." (Exhibit #1 – Opinion at p. 3)**

According to this Court, the Review Committee was therefore, picking the winners and the losers.

> **"The review committee was choosing winners and losers." (Exhibit #1 – Opinion at p. 7) (Emphasis Added)**

Ostensibly, the foundation of this Court's Opinion is that the sheer number of Applicants somehow transforms the Review Committees recommendation into a decision or series of decisions. This is simply not true. The test for whether a Review Committee is a public body is not based on the number of applicants versus the number of licenses and this Court cites to no law from the Michigan Supreme Court or the Michigan Court of Appeals stating that it is. Instead, the Michigan Court of Appeals has clearly ruled that a recommendation for action by another entity, by its very nature, cannot constitute governing. This is the rule of law that applies here.

> "And, in our view, a **recommendation for action by another entity**, group, or individual, **by its very nature, cannot constitute "governing" either through the effectuating [**914] or the formulating of public policy by the entity that is itself making the recommendation.** [*604]"
>
> "That is, **even by negotiating and signing the consent agreement, the financial review team is not, and cannot, by statute, exercise**

> **independent authority to effectuate the recommendation contained in the consent agreement." (Exhibit 3 -- Davis** v. **City of Detroit Fin. Review Team**, 296 Mich. App. 568 at p. 603-604.) (Emphasis Added)

The Review Committee did not -- and cannot by ordinance -- exercise independent authority to effectuate their own recommendation. As such, the Review Committee is not a public body and this Court erred in holding otherwise. Reconsideration is appropriate.

The term "Review Committee" is instructive on the role. The Ordinance further defines that Role and makes it clear that the Review Committee is a recommending body only and has no final decision making authority. The current ruling of this Honorable Court eviscerates the Ordinance as written.

All committees take on a work load as assigned and directed by the legislative body. The legislative body receives a recommendation at the conclusion of that work. It is fundamental that the Committee must meet as often as necessary to complete the assigned task. Weighing the amount of meetings between the Committee and the legislative body has no legal merit or significance.

V. CONCLUSIONS AND RELIEF REQUESTED

There are three (3) pivotal factors that support reconsideration and a different result:

(1) The applicable Ordinances and the carefully used language to define the role of the Review Committee support Reconsideration; and

(2) The uncontroverted facts on the role of the Review Committee as a Recommending Committee support Reconsideration; and

(3) The controlling language of the OMA and the application of the controlling case law that defines a public body supports Reconsideration.

WHEREFORE, Intervening Defendant/Cross-Plaintiff Sozo Health, Inc. respectfully requests that this Honorable Court enter an Order:

(I) Granting the Intervening Defendant/Cross-Plaintiff Sozo Health, Inc.'s Motion For Reconsideration; and

(II) Reversing this Court's Opinion and Order Dated April 14, 2020 Granting Plaintiff Happy Trails Group, Inc.'s Motion For Partial Summary Judgment; and

(III) Finding that the OMA was not violated by the Review Committee or the Warren City Council; and

(IV) Affirming the actions of the Warren City Council in issuing the Provisioning Center Licenses; and

(V) Granting such further relief in favor of the Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc., as this Honorable Court deems just, equitable and appropriate under the circumstances presented.

By: **/s/ Robert Charles Davis**

ROBERT CHARLES DAVIS (P40155)
Attorney for Intervening Defendant/
Cross-Plaintiff Sozo Health, Inc.
10 S. Main St., Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300
(586) 469-4303 – Fax
rdavis@dbsattorneys.com

Dated: May 12, 2020

PROOF OF SERVICE

I served the **Intervening Defendant/Cross-Plaintiff, Sozo Health, Inc.'s Brief in Support Of Its Motion For Reconsideration Pursuant to MCR 2.119(F) Of This Court's Opinion And Order Granting Plaintiff Happy trails Group, Inc.'s Motion For Partial Summary Judgment Dated April 14, 2020** upon the attorneys of record and/or parties in this case on **May 12, 2020. I declare the foregoing statement to be true to the best of my information, knowledge and belief.**

☐ U.S. Mail	☐ Fax
☐ Hand Delivered	☐ Messenger
☐ Express Mail Private	**X Other: E-file**

/s/ William N. Listman
William N. Listman

VILLAGE OF OXFORD
Building Services Department
22 West Burdick, P.O. Box 94
Oxford, MI 48371-0094
248-628-2543

OUTDOOR DINING APPLICATION

Check all that apply

☒ On Season Fee (April 15 - November 1)	$200.00
☐ Off Season Additional Fee (November 2 - April 14)	$200.00
(Special use approval is required)	
☐ Platform Temporary Structure Permit	$85.00

Please Print

FACILITY INFORMATION

Name of Facility Gourmet Guys Grill

Address 74 N. Washington

Date of Site Plan approval _____ Square footage of area to be used 288 sq-ft

Are any changes proposed to the Outdoor Dining facility from the previous year? _____
(If yes, sketch plan approval is required. Contact McKenna Associates at 248-596-0920 for additional information.)

Seating Capacity 22 Non Covid / 14 SD Covid Will liquor be served? NO

Are you operating on Public Property of any type? NO
(If yes, a special use approval and license agreement is required.)

Are you operating in an MDOT right-of-way, such as the sidewalk of M-24? NO
(If yes, MDOT approval is required.

Will a platform be installed in conjunction with your outdoor dining? NO
(If yes, must complete the Platform Temporary Structure Permit.)

Will portable outdoor gas-fired heating appliances (patio type heaters) be used? NO
(If yes, please see attached fire code requirements)

Overall facility hours of operation 10:30 AM to 9:00 PM

Outdoor dining hours of operation 10:30 AM to 9:00 PM

APPLICANT INFORMATION

Applicant Name Just Grillin It 2 LLC / LDBA Gourmet Guys Grill

Business Address (include city and zip code) 1383 N. Leroy / Fenton MI 48430

Phone (248)494-0000 Fax N/A Email gourmetguysgrill@hotmail.com

PROPERTY OWNER INFORMATION / SIGNATURE

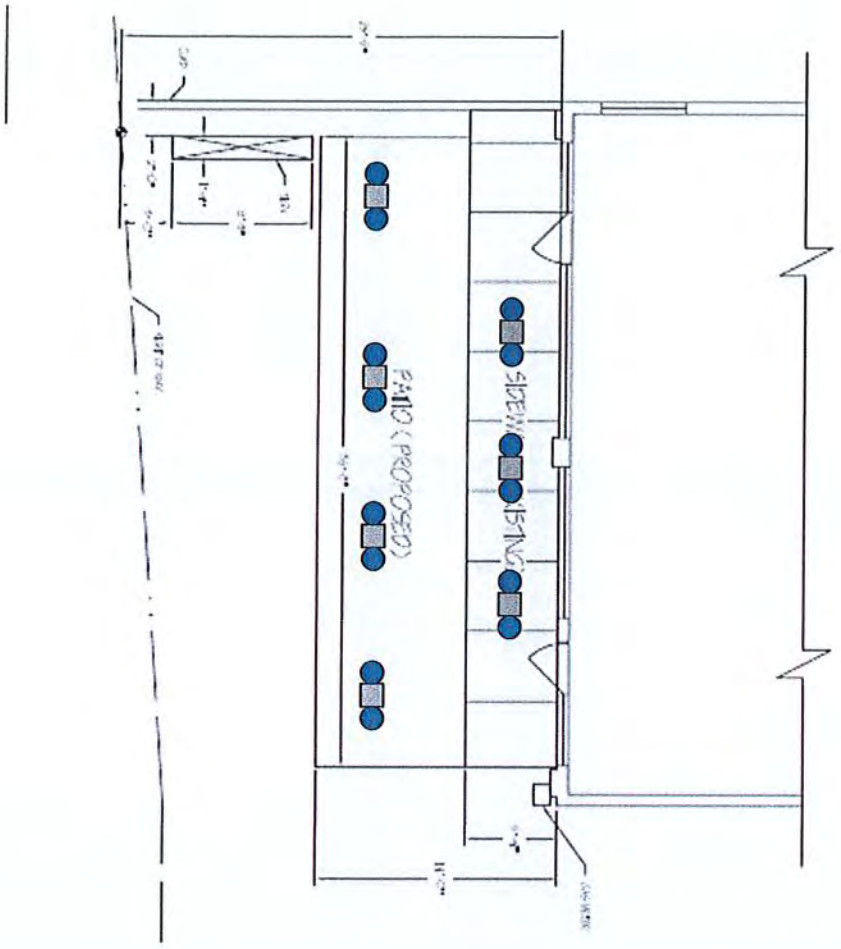
Name of Property Owner OOW LLC

Address (include city and zip code) 2745 Pontiac Lake Rd / Waterford MI 48328

Phone (248)494-0000 Fax N/A Email gourmetguysgrill@hotmail.com

SIGNATURE _____ **DATE** 05/19/2020

74 N. Washington / Village of Oxford

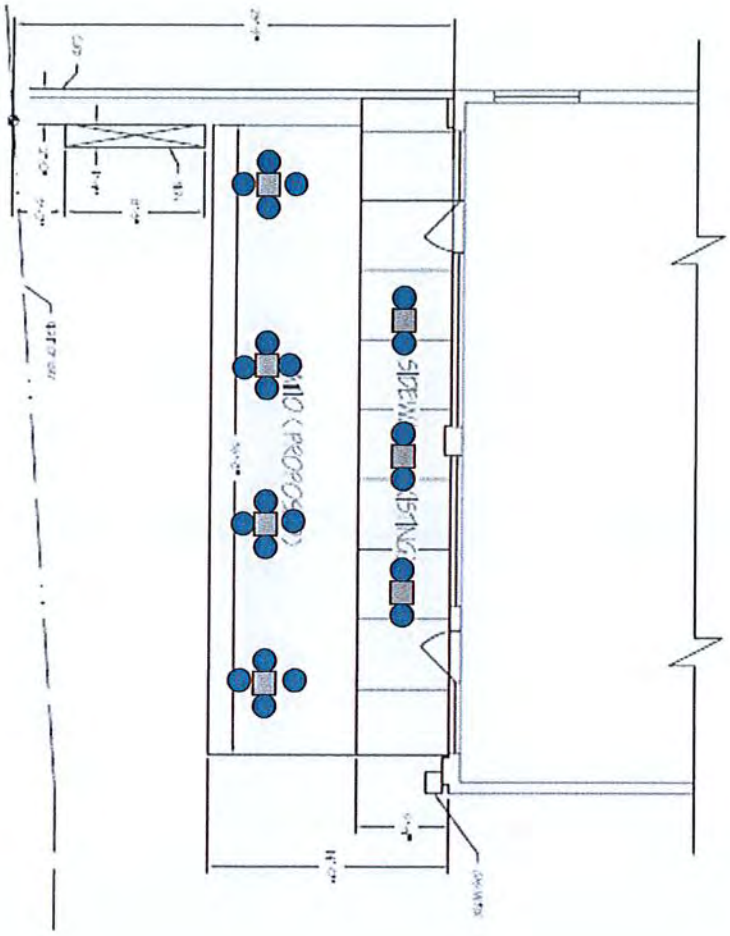


GOURMET GUYS®

Social Distancing Seating Plan

14 Seats

74 N. Washington / Village of Oxford



GOURMET GUYS®

Normal Seating Plan

22 Seats

74 N. Washington Oxford Mockup

OUTSIDE DINING PATIO & BIKE STATION (FRONT)

MCKENNA

June 8, 2020

Mr. Joseph Madore
Village Manager
Village of Oxford
22 W. Burdick Street
Oxford, MI 48317

Subject: **Gourmet Guys Grill – Outdoor Seating Review** *(Site Plan Dated February 11, 2020)*

Location: **74 N Washington Street – Parcel #04-22-456-001** *(East side of N. Washington Street, north of Center Street)*

Zoning: **C-1 Transition**

Dear Mr. Lehmann:

At the request of the Village, we have reviewed the above referenced application. The applicant is from property owner and business operator Just Grillin It 2 LLC for the Gourmet Grilling Guys restaurant use located at 74 N. Washington Street.

PROPOSED DEVELOPMENT

The site is located on the east side of N Washington Street, north of Center Street and just south of the Polly Ann Trail bridge. It is occupied by an existing 1,800 square foot (SF) one-story commercial building which currently occupies the Gourmet Grilling Guys restaurant. The applicants would like to operate a 288 SF April to November seasonal outdoor dining patio between the front/west façade of the existing building and the N Washington Street right-of-way on their private property. The entire site is zoned C-1 Transition.

OUTDOOR SEATING AREA REVIEW COMMENTS

We have reviewed the plot plan in accordance with the Outdoor Café and Seating standards of Section 4.1.45, other applicable standards of the Oxford Zoning Ordinance and sound planning and design principles. We offer the following comments for your consideration.

1. **Seating Area Enclosure.** *Outdoor seating areas shall be required to be enclosed in instances where there is*

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Suite 203
Detroit, Michigan 48207

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MCKA.COM

wait staff or alcohol service. For the purpose of this Section, an enclosure is a decorative wood or metal railing, or other decorative removable physical delineation approved by the Planning Commission.

The mock-up image shows the seating area will be enclosed with what appears to be a decorative metal fence. The applicant should indicate the type of railing material to be used and if the enclosure will be permanent or removable.

2. **Roof or Overhead Structure.** *All roofs and other overhead structures must be shown on a site plan.*

   No roof or overhead structure over the patio seating area is proposed within the application.

3. **Outdoor Furniture Compatibility.** *Tables, chairs, planters, trash receptacles, and other elements of street furniture shall be compatible with the architectural character of the adjacent buildings. If table umbrellas will be used, they should complement building colors. During non-business hours, all tables, chairs, umbrellas and other furniture and fixtures must be stored inside the building or properly secured within the enclosure.*

   The application is proposing seven tables and 14 seats under COVID-19 social distancing requirements. 22 seats would be proposed when social distancing is no longer required. No other furniture is proposed in the application. No details regarding the materials or style of the furniture have been provided. Furniture style and materials information should be provided to ensure compatibility.

4. **Off-Season Equipment Storage.** *The application shall specify the plans for the storage of tables, chairs, and equipment during the months when the outdoor seating is not in use.*

   The application does not state a plan for off-season storage of furniture. The applicant must indicate their plans for off-season furniture storage.

5. **Outdoor Area Upkeep.** *The outdoor seating area shall be kept clean, litter-free, free of debris, and with a well-kept appearance within and immediately adjacent to the area of tables and chairs. Additional outdoor waste receptacles may be required.*

   The outdoor dining must meet this requirement during its ongoing operation.

6. **Hours of Operation.** *Outdoor seating areas shall be allowed only during normal operation hours of the establishment. In no case shall an outdoor seating area operate between the hours of 11 PM and 7 AM.*

   The application indicates the patio will be open during the facility's normal hours of 10:30 AM to 9:00 PM in compliance with this requirement.

7. **Clear Vision Triangle.** *Outdoor seating areas shall not be located within the unobstructed triangular area (clear vision area) of a corner lot, consistent with Section 6.1.11, Clear Vision Area.*

   The patio seating will not be located within the clear vision area of the on-site driveway.

8. **Parking Requirements.** *The capacity of the outdoor seating area shall be provided by the applicant and verified by the Building Official. An outdoor seating area containing 30 or more seats shall be required to*

provide for the required number of parking spaces consistent with the restaurant parking standard in Section 7.1.9. However, no parking shall be required if the outdoor seating area is located within the parking reduction district per Section 7.1.8.

The social distancing requirement capacity of 14 seats and the standard proposed capacity of 22 seats do not require the applicant to provide additional parking. We note that during periods where social distancing will be required by the State, indoor seating capacity will be reduced. Customers may be required rather than choose to use the patio reducing any potential need for additional parking.

9. **Required Signage.** *A sign must be posted stating "No food or beverages allowed beyond this point." Additional signs associated with the outdoor seating area are prohibited.*

   The applicant must install the above required sign prior to operation.

10. **Residential Screening.** *Any outdoor seating areas shall be completely screened from view of all single-family residential properties by an obscuring wall or landscape buffer, unless the outdoor seating area is separated by a public road, public alley, or public parking area.*

    The outdoor patio area will not be visible from any single-family residential properties or is separated by a public road.

11. **Vending Machines Prohibited.** *Vending machines and other similar products shall be prohibited in all outdoor seating areas.*

    No vending machines will be located in the outdoor seating area.

12. **Food and Beverage Preparation Prohibited.** *Preparation of food and beverages shall be prohibited in any outdoor seating area. The sale and consumption of alcohol are governed by the Michigan Liquor Control Act and local ordinance. Additionally, such seating areas must include food service in addition to the sale and service of alcoholic beverages.*

    Food preparation will take place entirely within the building at 74 N. Washington. No alcohol will be served on site.

13. **Patio Noise and Lighting.** *Details regarding the hours and type of entertainment, music, speakers, lighting, or similar devices used in outdoor seating areas must be identified at the time of site plan review. There shall be no loudspeaker located in conjunction with an outdoor seating area and all other noise including music, speakers, or similar devices shall be controlled so as to not be audible more than ten (10) feet from the outdoor seating area. All lighting must be shielded to prevent glare on adjacent roadways and protect abutting parcels.*

    No speakers or televisions are proposed. The conceptual mock-up does show two streetlights at the western edge of the patio area which will be installed as part of the N Washington Street streetscape project this fall.

14. **Pedestrian Sidewalk Access.** *A minimum of five (5) feet of sidewalk along the curb and leading to the entrance to the establishment must be maintained free of tables and other encumbrances, in accordance with the provisions of the national Americans with Disabilities Act (ADA) and Michigan barrier-free requirements. If the sidewalk is not wide enough to allow for a five (5) foot wide clearance for circulation, the outdoor seating area shall not be permitted.*

    The plot plan does not show a separate dedicated pedestrian sidewalk between the N. Washington Street sidewalk and the building entrance. While the hard surface of the vehicle driveway is in close proximity to the building entrance, potentials for pedestrian conflicts with vehicles exists. The applicant must provide a dedicated five (5) foot wide pedestrian sidewalk connecting the N. Washington Street sidewalk to the building entrance. An effective means of safely separating pedestrians from vehicle traffic in the driveway is the primary concern.

RECOMMENDATION

The proposed outdoor dining will create an attractive and popular dining option the Village has been encouraging property owners to provide. In addition, given the challenges on businesses now due to COVID-19 related social distancing standards, the additional capacity is vital. We recommend the Planning Commission grant approval contingent upon the applicant providing the following information:

a) The type of railing material to be used and if the enclosure will be permanent or removable.

b) Furniture style and materials information to ensure compatibility.

c) Where outdoor furniture will be stored in the off-season.

d) Applicant installs a "No food or beverages allowed beyond this point" sign prior to operation.

e) Applicant providing an effective means of safely separating pedestrians from driveway vehicle traffic. The installation of a dedicated five (5) foot wide pedestrian sidewalk connecting the N. Washington Street sidewalk to the building entrance is the most effective option.

Please feel free to contact us with any questions.

Respectfully submitted,

McKENNA

Mario A. Ortega, AICP
Principal Planner