



**City of Allegan
Planning Commission
Griswold Auditorium – 401 Hubbard Street, Allegan MI 49010
Monday, February 18, 2019
6:00PM**

AGENDA

- 1. Call to Order**
- 2. Attendance**
- 3. Approval of the Minutes of the Previous Meeting**
- 4. Public Comment**
- 5. Public Hearings**
- 6. Site Plan Reviews**
- 7. Special Presentations**
- 8. Discussion**
 - 8A.1 – Recreational Marihuana Discussion**
- 9. Staff/Commission Comments**
- 10. Adjournment**



**City of Allegan
Planning Commission Meeting
Monday, February 4, 2019
Griswold Auditorium
401 Hubbard Street Allegan MI 49010**

MINUTES

1) Call to Order

The meeting was called to order at 6:02 pm.

2) Attendance

Present: Chair Brad Burke, Rachel McKenzie, Charles Tripp, Nancy Ingalsbee, Julie Emmons

Absent: Tom Morton and Cindy Thiele

Others Present: Jordan Meagher, Community Development Coordinator, Lori Castello of PCI

Rachel McKenzie, supported by Julie Emmons, made a motion to excuse the absences of Tom Morton and Cindy Thiele. Motion passed 5-0.

3) Approval of Previous Meeting Minutes

Motion to approve the minutes from the January 21, 2019 meeting was made by Nancy Ingalsbee, and supported by Rachel McKenzie. Motion passed 4-0, with Emmons abstaining due to absence from the meeting.

4) Public Comment

No public comments were heard.

5) Public Hearings

Special Use Permit- 125 Locust Street

The building located at 125 Locust Street is currently home to the Sassy Olive, a clothing and accessory retail store in Downtown Allegan. The store is seeking a special use permit to allow them to perform light manufacturing for many of their products. Manufacturing would take place in the basement of the store, and would take up a maximum of 13% gross floor area.

After reviewing the findings of fact for the City's standards for considering special uses, the Planning Commission came to a general consensus that the use would comply with all light manufacturing and special use standards required by the City's zoning ordinance.

Rachel McKenzie, supported by Julie Emmons, made a motion to approve the special use permit for 125 Locust Street, with a recommendation to City Council for final approval with the following conditions:

- Manufacturing may take place 7 days per week between the hours of 8:00am and 8:00pm.
- A maximum of 10 workers may be on site during manufacturing hours.
- Manufacturing may only take place on site during open retail hours.

Motion passed 5-0.

Special Use Permit- 110 Locust Street

The building located at 110 Locust Street is currently home to Cold Steel Tactical, a gun sling retail store in Downtown Allegan. The store is seeking a special use permit to allow them to perform light manufacturing for many of their products. Manufacturing would take place in the back of the store, 36' back from the public right-of-way and within 7% of the building's gross floor area.

After reviewing the findings of fact for the City's standards for considering special uses, the Planning Commission came to a general consensus that the use would comply with all light manufacturing and special use standards required by the City's zoning ordinance.

Rachel McKenzie, supported by Julie Emmons, made a motion to approve the special use permit for 110 Locust Street, with a recommendation to City Council for final approval with the following conditions:

- Manufacturing may take place 7 days per week between the hours of 8:00am and 8:00pm.
- A maximum of 10 workers may be on site during manufacturing hours.
- Manufacturing may only take place on site during open retail hours.

Motion passed 5-0.

6) Site Plan Reviews

No site plans were submitted for review.

7) Special Presentation

None were heard by the Commission.

8) Discussion

9) Staff/Commission Comments

Community Development Coordinator Jordan Meagher explained that Allegan's City Council had held a public hearing and voted to remove Caitlin Wendt from the Planning Commission due to non-attendance. This vote for removal was previously taken by the Planning Commission in the summer of 2018, but staff later found that a public hearing a vote by council would be required for an official removal.

Meagher also stated that the City Council had passed an ordinance at their last meeting to opt out of the newly passed State of Michigan policy to allow marihuana recreational facilities within the City limit while the State continues to put their regulation policies in place. Until the policies have been put in place, Council has directed the Planning Commission to study the land use regulation of the different types of marihuana facilities, and later present a recommendation to Council to either allow or not allow certain types of recreational marihuana facilities within the city limit. This topic will be discussed thoroughly over the next year, beginning at the next Planning Commission meeting on February 18, 2019.

10) Adjournment

Meeting was adjourned at 7:15pm.

**Respectfully submitted by
Jordan Meagher, Community Development Coordinator**

MEMORANDUM

TO: Allegan Planning Commission
FROM: Jordan Meagher, Community Development Coordinator
RE: Recreational Marihuana Establishment Study Discussion
DATE: February 15, 2019

Summary

It is requested that the Planning Commission, under the direction of City Council, begin to study the options for authorizing and regulating marihuana establishments within the City limits.

Background

On Tuesday November 6, 2018 the voters in the State of Michigan voted to legalize recreational marihuana with 57% approval, and in the City of Allegan, the proposal passed with 58% approval. Since this proposal passed state wide, the City was asked to make a decision as to whether the City should opt in and allow marijuana establishments or if the City should opt out and not allow marihuana establishments.

The term “marihuana establishments” encompass seven types of businesses.

1. Growers – Grow and package marijuana for sale to processors or provisioning centers.
2. Processors – Extract resin from marijuana or create marijuana-infused products to sale to provisioning centers.
3. Provisioning centers – Sell marijuana to patients or caregivers.
4. Secure transporters – Store and transport marijuana between facilities.
5. Safety compliance facilities – Test marijuana for contaminants and proper chemical levels.
6. Marihuana retailer - Sells or otherwise transfers marijuana to marihuana establishments or to individuals over 21.
7. Marihuana microbusiness – Cultivates up to 150 plants, processes marijuana from those plants, and sells or transfers it to individuals over 21 or to safety compliance facilities.

At their January 28th meeting, the Allegan City Council passed ordinance 475, which established the City’s position to opt out. City Council then directed the Planning Commission to begin studying the City’s options for authorizing and regulating marihuana establishments under the new law, which includes holding at least one public hearing to seek public input, and then preparing and submitting a report to City Council by December 1, 2019 with a recommendation on how the city should proceed with this issue. Ordinance 475 will afford the city the opportunity to make sure it has a good understanding and solid foundation on how it wants to proceed while at the same time ensures no marihuana establishment can open within the City of Allegan just in case the State of Michigan gets the licensing portion of the of the program up and running prior to the City of Allegan making a formal decision.

Correspondence

Attached is a statement from resident Margaret Brown, who had submitted a list of questions for the

Planning Commission to discuss at their upcoming meeting:

1. How will what is available within the shops be regulated – things to think about?
 - THC concentrations
 - Oils
 - Plants
 - Edibles – concentrations and packaging, marketing towards youth being illegal?
2. What is your plan to ensure the safety of our community and how will this be funded?
3. Who will be responsible for ensuring shops are adhering to requirements?
4. How will our community manage under-age use within the schools?
 - a. Suspension is not a good option – would we consider going to all in-school suspensions, Alternative Education or Youth Home versus out of school suspension for multiple days?
5. What is the plan for our Education system to be supported for both mental health professionals and School Resources Officers?
6. Does our current health system have resources in place to manage the impact?
7. Does our Law Enforcement and Legal system have resources in place to manage this?
8. How will parent be held accountable – is Child Protective Services prepared for influx of referrals?
9. Can our City impose a local tax on the sales? Other states have 25-30% excise taxes; Michigan is at 10%; we have picked a low rate within our State, though have the highest amount that individuals can be in possession of.

Recommend

It is recommended by the Planning Commission, with direction from City Council:

- (a) Study the City's options for authorizing and regulating marihuana establishments under the Act;
- (b) Hold at least one public hearing to seek input from the public; and
- (c) Prepare and submit a report to the City Council by December 1, 2019, with a recommendation as to whether the City should authorize one or more types of marihuana establishments. If the Planning Commission recommends authorization, the report shall outline, in general terms, recommended regulations.

Attachments:

Ordinance 475

**CITY OF ALLEGAN
ALLEGAN COUNTY, MICHIGAN**

ORDINANCE NO. 475

**AN ORDINANCE TO ADD A NEW CHAPTER 32 TO THE ALLEGAN
CITY CODE OF ORDINANCES TO PROHIBIT MARIHUANA
ESTABLISHMENTS AND TO DIRECT THE PLANNING COMMISSION
TO STUDY FUTURE OPTIONS**

The City of Allegan ordains:

Section 1. Addition. A new Chapter 31, entitled “Marihuana Establishments,” is hereby added to the Allegan City Code of Ordinances to read as follows:

**Chapter 31
Marihuana Establishments**

Sec. 31-1. Title.

This chapter shall be known as and may be cited as the City of Allegan Marihuana Establishments Ordinance.

Sec. 31-2. Definitions.

Words used in this chapter shall have the same meanings as in Initiated Law 1 of 2018, also known as the Michigan Regulation and Taxation of Marihuana Act, unless the context clearly indicates otherwise. The remainder of this chapter refers to Initiated Law 1 of 2018 as the MRTMA.

Sec. 31-3. Marihuana establishments prohibited.

Marihuana establishments are prohibited in the City until such time as the City Council amends this chapter to allow one or more establishments.

Sec. 31-4. Violations and penalties.

- (a) Any person who disobeys, neglects, or refuses to comply with any provision of this chapter 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 chapter is deemed to be a nuisance per se.
- (b) A violation of this chapter is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500, in the discretion of the Court. The foregoing sanctions shall be in addition to the rights of the City to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the City incurs in connection with the municipal civil infraction.
- (c) Each day during which any violation continues shall be deemed a separate offense.

Sec. 31-5. Study by the Planning Commission.

As of the adoption of this chapter, the legalization of marihuana is a new phenomenon in Michigan that presents unique opportunities and challenges for local governments. The intent of this chapter is to prohibit marihuana establishments on at least a temporary basis in order to allow further study of the issue. The Planning Commission is hereby directed to:

- (d) Study the City's options for authorizing and regulating marihuana establishments under the Act;
- (e) Hold at least one public hearing to seek input from the public; and
- (f) Prepare and submit a report to the City Council by December 1, 2019, with a recommendation as to whether the City should authorize one or more types of marihuana establishments. If the Planning Commission recommends authorization, the report shall outline, in general terms, recommended regulations.

Section 2. Publication and Effective Date. The City Clerk shall cause this ordinance to be published in a newspaper of general circulation in the City, and the ordinance shall be effective 20 days after enactment or upon publication, whichever is later.

YEAS: _____ NAYS: _____

CERTIFICATION

This is a true and complete copy of Ordinance No. _____ adopted at a regular meeting of the Allegan City Council held on _____, 2019.

Rachel McKenzie, Mayor

Danielle Bird, Clerk

Marijuana Business Discussion Table

General Business Category	Medical	Recreational
Storefront Sales (Provisioning Centers and Retailers)		
Secure Transporters		
Growers		
Safety Compliance		
Processors		
Microbusiness (Seed-To-Sale, Recreational Only)	N/A	

Notes:

1. It is now clear that the licenses issued under the MRTMA will be completely separate than those issued under the MMMFLA, even though many of them have the same names as their MMMFLA counterparts.
2. As a practical matter, for most of the business types, a community may not notice much difference in the operation of a medical business as compared to its recreational counterpart.
3. This may be true for secure transporters, growers, safety compliance facilities, and processors. It may be untrue with respect to the storefront sales businesses. MMMFLA provisioning centers can sell only to medical marijuana card holders. MRTMA retailers can sell to anyone 21 years old or older.
4. Another notable difference between the MMMFLA businesses and the MRTMA businesses is that the latter arguably cannot be limited through lottery or first-come-first-serve systems. If numerical limits are imposed on MRTMA businesses, the statute may require use of a “merits-based” selection system. This creates increased risks of legal challenges.
5. Because of the complications of imposing numerical limits, the City might consider creating “natural” limitations on businesses by allowing them only in small areas of the City and by imposing spacing requirements between businesses.

Medical Marihuana Facilities Licensing Act

Introduction

On September 21, Governor Snyder signed a package of bills (2016 PA 281-283) that significantly expand the types of medical marihuana facilities permitted under state law, and establishes a licensing scheme similar to the scheme for liquor licenses. Notably, these bills do not require a state license to operate as a primary caregiver under the Michigan Medical Marihuana Act, nor do they allow municipalities to prohibit operation as a primary caregiver. The existing regulatory scheme regarding primary caregivers remains in effect.

Requirements under the new Act

Among other things, the legislation:

1. Legalizes the medical use of marihuana-infused products, commonly known as “edibles,” for purposes of state law.
2. Creates the Medical Marihuana Licensing Board within the Michigan Department of Licensing and Regulatory Affairs (LARA) to issue licenses for various medical marihuana facilities.
3. Requires an annual license for any of the following entities to operate a marihuana facility:
 - Growers—licensees that cultivate, dry, trim, or cure and package marihuana for sale to a processor or provisioning center. Registered patients and primary caregivers who lawfully cultivate marihuana in the quantities and for the purposes permitted under the Medical Marihuana Act are not considered “growers” under the new legislation.
 - Processors—licensees that purchase marijuana from a grower and extract resin from the marijuana or create a marijuana-infused product for sale and transfer in packaged form to a provisioning center.
 - Provisioning centers—licensees that purchase marihuana from a grower or processor and sell, supply, or provide marihuana to patients, directly or through the patient’s caregiver.
 - Secure transporters—licensees that store marihuana and transport it between marihuana facilities for a fee.
 - Safety compliance facilities—licensees that receive marihuana from a marihuana facility or primary caregiver and test it for contaminants and other substances.
4. **Allows municipalities to choose whether to allow any of these marijuana facilities within their jurisdictions.** If the municipality takes no action, none of the facilities are allowed. A municipality that wishes to allow these facilities must enact an ordinance explicitly authorizing them.
5. Authorizes municipalities to charge an annual fee of up to \$5,000 on licensed marihuana facilities to defray administrative and enforcement costs.
6. Authorizes municipalities to adopt ordinances relating to marihuana facilities within their jurisdiction, including zoning ordinances.
7. Prohibits municipalities from imposing regulations regarding the purity or pricing of marihuana or interfering or conflicting with statutory regulations for licensing marihuana facilities.
8. Requires municipalities to provide to the Medical Marihuana Licensing Board within 90 days after notice that a license application was filed: (a) a copy of any ordinance authorizing the marihuana facility, (b) a copy of any zoning regulation applicable to the facility, and (c) a description of any previous medical-marihuana related ordinance violation.
9. Exempts from FOIA disclosure any information a municipality obtains in connection with a license application.
10. Requires the state to establish a “seed to sale” computer tracking system to compile data regarding marihuana plants throughout the chain of custody from grower to patient. The system will be able to provide this data in real-time to local law enforcement agencies.

This publication was written by the law firm of Dickinson Wright.

Medical Marihuana Facilities Licensing Act (MMFLA) compared with Proposal 1—the Michigan Regulation and Taxation of Marihuana Act (MRTMA)

Votes required for future amendments:

- MMFLA (PA 281 of 2016) requires a simple majority of vote of the Legislature (56 House votes and 20 Senate votes).
- Proposed MRTMA will require a 3/4 vote of the Legislature (83 House votes and 29 Senate votes).

Local Control:

- MMFLA requires municipality to OPT IN.
- Proposed MRTMA requires a municipality to OPT OUT. Municipal decision to limit the number of marihuana establishments or opt out is subject to override by the voters of that municipality through initiative petition.
- MMFLA, a state operating license may not be issued to an applicant unless the municipality in which the proposed facility will be located in has adopted an ordinance authorizing that type of license.
 - If municipality does nothing, no marihuana facilities can be licensed/operate in that municipality.
 - If municipality adopts ordinance (opts in), then it may:
 - Authorize any specific or all license types
 - Limit the number of each license type
- Proposed MRTMA, a state operating license shall be issued to operate in every municipality unless a municipality enacts an ordinance to opt out.
 - Municipality can completely prohibit all license types or limit the types of establishments allowed and the total number of each license type.
 - If the municipal limit on licenses prevents the State from issuing a license to all qualifying applicants, the municipality, not the State, is required to select from the competing applicants using a competitive process intended to identify those who are best suited to operate in compliance with the Act.
- Nothing under the MMFLA nor the proposed MRTMA has direct effect on the Michigan Medical Marihuana Act (MMMA, Initiated Law 1 of 2008; patient caregiver model).
- Proposed MRTMA broadens the prohibition on the separation of plant resin by butane extraction on residential premises under the MMMA to include methods using a substance with a flash point below 100 degrees Fahrenheit within the curtilage of a residence.
- Proposed MRTMA substantially increases the amount of marihuana that may be lawfully possessed from 2.5 ounces and 12 plants by a qualifying patient to 2.5 ounces on one's person, 10 ounces secured in one's residence, and no more than 12 plants at a time.
- While a municipality may regulate the time, place and manner of operation of marihuana establishments, the State must approve and issue a license to a proposed marihuana establishment that is not within an area exclusively zoned for residential use and is not within 1000 feet of a pre-existing K-12 public or private school. A municipality may reduce this distance by ordinance.

License Types:

- MMFLA has five license types:
 1. Grower
 - Class A – 500 plant limit
 - Class B – 1,000 plant limit
 - Class C – 1,500 plant limit

2. Processor
 3. Secure transporter
 4. Provisioning center
 5. Safety compliance facility
- Proposed MRTMA has six “marihuana establishment” license types:
 1. Grower (plant limits are different than MMFLA)
 - Class A – 100 plant limit
 - Class B – 500 plant limit
 - Class C – 2,000 plant limit
 2. Processor
 3. Secure transporter
 - Provides for license, but nowhere in the language is there a requirement that marihuana must only be transported by a secure transporter.
 4. Retailer
 - MMFLA license is a provisioning center, not retailer.
 5. Safety compliance facility
 6. Microbusiness
 - Person licensed to cultivate not more than 150 plants; process and package; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a safety compliance facility, but not to other marihuana establishments.
 - MRMTA also defines an “establishment” as, “any other type of marihuana-related business licensed” by the State, which would include licensed “marihuana facilities” under the MMFLA.
 - MMFLA prohibits a caregiver from grower, processor, or secure transporter license types.
 - Proposed MRTMA does not prohibit a caregiver from holding any of the six license types.
 - A person may be licensed under both the MMFLA as well as the proposed MRTMA.

Unreasonably Impracticable:

- MMFLA does not reference this term, found in proposed MRTMA.
- Proposed MRTMA prohibits any administrative rule or municipal ordinance that subjects the licensee to unreasonable risk or requires such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.
 - Any rule or ordinance could be legally challenged if a person considers it to require too much time, money, etc.

Additional information:

- Definitions of key statutory terms are not consistent between the MMFLA and the proposed MRTMA.
- Grower license plant limits are not consistent between the MMFLA and the proposed MRTMA.
- Application process is not consistent between the MMFLA and the proposed MRTMA.
 - If the State does not begin accepting/processing MRTMA applications within one year of the effective date of the Act, applicants can submit an application to a municipality that has not opted out of the act. Municipality shall issue a municipal license to applicant within 90 days. Municipal license has same force and effect as state license, but the municipal license holder is not subject to regulation or enforcement by the State during the municipal license term.
- If proposed MRTMA passes, the MMFLA requirement that a three percent tax is imposed on each provisioning center’s gross retail receipts is no longer applicable. However, a 10 percent tax will be imposed on marihuana retailers on sales price of marihuana sold or otherwise transferred to anyone other than a marihuana establishment.
- The percent of the municipal portion of the excise tax collected is reduced from 25 percent under the MMFLA to 15 percent under the MRTMA and is paid only after the State is compensated for its implementation, administration, and enforcement of the Act; and until 2022 or for at least two years, \$20 million annually is provided to FDA-approved clinical trials researching the efficacy of marihuana in treating U.S. armed services veterans for medical conditions and suicide prevention.
- If proposed MRTMA passes, it goes in to effect 10 days after the election is certified by the State Board of Canvassers.