

ROBERT CHARLES DAVIS
City of Marine City Attorney

TO: City of Marine City Commissioners/City Website
FROM: Robert Charles Davis
RE: Marihuana Facilities
DATE: February 8, 2023

I. PURPOSE

The purpose of this document is to provide very basic information relating to the discussion on Recreational Marihuana facilities in the City of Marine City.

II. HISTORY

A. The Medical Marihuana Facilities Licensing Act (“Medical”).

The Medical Marihuana Facilities Licensing Act, MCL 333.27101 et. seq. (“MMFLA”), was enacted in 2016. The MMFLA required a municipality to affirmatively “opt in”. Pursuant to the MMFLA, if the municipality did nothing, then that municipality was considered to have opted out. Here, the City of Marine City did not choose to affirmatively opt in and, as a result, opted out of MMFLA. As it stands, the City of Marine City is out on medical facilities.

B. The Michigan Regulation And Taxation Of Marihuana Act (“Recreational”).

The Michigan Regulation And Taxation Of Marihuana Act, MCL 333.27951 et. seq. (“MRTMA”), was initiated in 2018 for recreational uses. The MRTMA process required a municipality to affirmatively “opt out” or that municipality would be considered in and would need to develop an ordinance. Specifically, the MRTMA states that a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries.

“1. Except as provided in section 4, **a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries.** 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. A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.”

The City Of Marine City took action to opt out under MRTMA by ordinance. On March 7, 2019, the City of Marine City passed an ordinance titled the City of Marine City Prohibition of Marihuana Establishments Ordinance. The vote was unanimous at the first reading and the vote was unanimous at the second reading.

“CHAPTER 119: MARIHUANA ESTABLISHMENTS

Section

119.01 Title

119.02 Definitions

119.03 No marihuana establishments

119.99 Violations and penalties

§ 119.01 TITLE.

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

(Ord. 2019-004, passed 3-7-2019)”

The City of Marine City Prohibition of Marihuana Establishments Ordinance, at Section 119.03, expressly states that the City of Marine City hereby prohibits all marihuana establishments within the boundaries of the City of Marine City. Set forth below is the currently controlling position and ordinance language in the City of Marine City:

“§ 119.03 NO MARIHUANA ESTABLISHMENTS.

The city hereby prohibits all marihuana establishments within the boundaries of the city pursuant to Initiated Law 1 of 2018, M.C.L.A. §§ 333.27951 et seq., specifically at M.C.L.A. § 333.27956, or as otherwise codified or amended.”

III. RECREATIONAL FACILITIES UNDER MRTMA

The MRTMA states that a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries.

The MRTMA defines “marihuana establishments” to mean a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.

“(i) “Marihuana establishment” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the marijuana regulatory agency.” (MCL 333.27953) (Emphasis Added)

The MRTMA, at MCL 333.27956, states that a municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with MRTMA. (MCL 333.27956) By way of example, the MRTMA -- at MCL 333.27956(2)(b) -- allows for municipal ordinances that regulate the time, place and manner of operation of marihuana establishments and of the production, manufacture, sale or display of marijuana accessories. A proactive ordinance is allowed to address all of these site planning issues.

The MRTMA contains certain setback requirements. Specifically, the MRTMA states that the property where the proposed marihuana establishment is to be located cannot be within an area zoned exclusively for residential use and cannot be within 1,000 feet of a pre-existing public or

private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement.

“3. Except as otherwise provided in this section, the department shall approve a state license application and issue a state license if:

(a) the applicant has submitted an application in compliance with the rules promulgated by the department, is in compliance with this act and the rules, and has paid the required fee;

(b) the municipality in which the proposed marihuana establishment will be located does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of this act and in effect at the time of application;


(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;”

This statutory requirement expressly refers to the “property” where the proposed marihuana establishment is to be located and not the exterior wall of the building where the proposed marihuana establishment is to be located. Given this fact, the 1,000 foot distance should be measured from the property line of the parcel where the marihuana establishment is to be located. However, I do think the point of measurement is not clear and could be implemented at the closest wall for the proposed location. Regardless how it is measured, the property line of any proposed marihuana establishment cannot be within 1,000 feet of a pre-existing public or private school providing education in kindergarten or grades 1 through 12 unless a municipality adopts an ordinance that reduces this distance requirement. These setbacks, under the law, do not apply into the zoning of an adjoining community but, when possible, it is wise to respect those distances.

C. Citizen Initiative

MRTA expressly allows for a citizen initiative process beyond the referendum rights in the law. The initiative process can be brought to provide for the number of facilities to be allowed or for a complete prohibition as to all facilities. Any such initiated ordinance shall be submitted to the electors at the next regular election when a valid petition is signed by qualified electors in a number greater than five (5%) percent of the votes cast in the most recent gubernatorial election.

If the ballot language is approved and it passes in a lawful manner, then the number of facilities to be allowed could be fixed. However, the City of Marine City would still be allowed, under most circumstances, to draft the governing ordinance with respect to those facilities.



Robert Charles Davis