



CITY OF MARINE CITY

Marijuana Town Hall Agenda

Guy Community Center, 260 South Parker Street

Town Hall: Monday, February 20, 2023; 6:00 PM

1. CALL TO ORDER

2. MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE

3. ROLL CALL: Mayor Jennifer Vandenbossche; Commissioners Jacob Bryson, Elizabeth Hendrick, Michael Hilferink, William Klaassen, Rita Roehrig, Brian Ross; Interim City Manager James Heaslip.

4. APPROVE AGENDA

5. INFORMATIONAL DOCUMENTS PROVIDED BY CITY ATTORNEY

- a. Attorney Memo RE: Marihuana Facilities
- b. Michigan Municipal League Fact Sheet – *Medical Marihuana Facilities Licensing Act (MMFLA) compared with Proposal 1- the Michigan Regulation and Taxation of Marihuana Act (MRTMA)*

6. PRESENTATION

- a. Recreational Marijuana Presentation by: City Commissioner Michael Hilferink

7. PUBLIC COMMENT Anyone who signed in is welcome to speak at Public Comment. Your name will be called in the order in which you signed in. Comments will be limited to a time determined by the number of people who sign in. The Commission will not respond at this time as this Town Hall is meant as an informational gathering session.

8. ADJOURNMENT

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

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.
 - MRTMA 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.

2018 Ballot Initiative: Adult Use Recreational

In 2018, the people of Michigan approved the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

- Legalized recreational use for adults 21+.
- Provides for licensing, regulation, and taxation of commercial production, processing, and distribution of nonmedical marijuana.
- In 2019, Gov. Whitmer eliminated the Medical Marihuana Licensing Board and transferred its authority to the Marijuana Regulatory Agency ("MRA"). The MRA oversees licensing for medical and adult use marijuana.



Current Laws and Regulations in Michigan

- **Adult-Use Possession and Cultivation Limits**
 - Adults who are 21 or older may:
 - possess, use, purchase, or give away (to other adults) up to 2.5 ounces of marijuana;
 - within a residence, grow up to 12 marijuana plants and/or possess up to 10 ounces of marijuana (provided that any amount greater than 2.5 ounces is stored under lock and key)
 - possess, manufacture, or purchase marijuana paraphernalia or accessories, or sell them to other adults.

The MRTMA

Core purposes:

- Legal recreational use by adults 21+.
- Distinguish industrial hemp (THC <0.3%) from marijuana (which also occurred at the federal level).
- License and regulate production, processing, testing and distribution.
- Eliminate the black market and prevent revenue from supporting criminals/gangs.



The MRTMA (cont.)

Created seven categories of establishments:

1. Growers
2. Processors
3. Secure transporters
4. Safety compliance facilities
5. Retailers
6. Microbusiness
7. Other types as may be created by LARA
 - (Including, among others, Designated Consumption Establishment and Marijuana Event Organizer)



Adult-Use Licenses

Grower: authorizes cultivation of up to the following number of marijuana plants:

- Class A – 100 plants
- Class B – 500 plants
- Class C – 2,000 plants (stackable, with a limit of five)

Processor: authorizes purchase of marijuana from a grower and sale of marijuana and marijuana-infused products to a retailer.

Secure transporter: authorizes storage and transportation of marijuana and money associated with the purchase or sale of marijuana between marijuana facilities.

- Growers and processors are generally required to use secure transporters for moving marijuana and cash except in limited circumstances.



Adult-Use Licenses (cont.)

Retailer: can buy from licensed establishments and sell to adults 21+. Licensees must:

- Test products in compliance with MRTMA.
- Ensure that products bear required labels.
- Verify customer identification/age.

Microbusiness: authorizes:

- Cultivation of up to 150 mature plants.
- Processing of marijuana products.
- Retail sales to adults 21+ from a single location.
Licensed microbusinesses cannot purchase from or sell marijuana to other licensed establishments.



Adult-Use Licenses (cont.)

Safety compliance facility (testing lab): authorizes the facility to receive marijuana, test it, and return it to a licensed marijuana facility.

Designated Consumption Establishment: allows adults 21+ to consume marijuana at the licensed location.

Marijuana Event Organizer: allows for a temporary marijuana event



Special Limitations for MRTMA Licenses

- Until December 6, 2021:
 - Applicants for MRTMA licenses must be Michigan residents (if they are individuals), and must have a state operating license under the MMFLA to apply for a retailer, processor, class B or C grower, or a marijuana secure transporter license.
 - The restriction to those holding MMFLA licenses was terminated by MRA, effective March 1, 2021.
- A holders of a license may be restricted from holding an ownership interest in a different type of licensed establishment.
 - Holder of a grower license cannot own an interest in a safety compliance facility, secure transporter, or microbusiness, or hold an interest in more than five growers.
 - Holder of a microbusiness license is restricted to one license and cannot have ownership in a grower, processor, retailer, safety compliance facility, or secure transporter.



Municipal Regulation of Marijuana

- Municipalities are defined as cities, villages and townships. Approximately 1750 “municipalities” in the state of Michigan.
- Under the MMFLA, municipalities which desire to allow medical marijuana facilities within their jurisdictions must “opt in.”
 - a license will only be granted if the municipality has affirmatively approved that type of medical marijuana establishment.
- In contrast, MRTMA requires a municipality which desires to prohibit adult use marijuana establishments to “opt out.”
 - A license may be granted unless the municipality has adopted an ordinance against it.
 - At least 1,400 municipalities have prohibited adult use marijuana businesses.
- Municipalities can also limit the number of recreational facilities, and/or impose a local license requirement that does not conflict with MRTMA.



Municipal Regulation

- Zoning and spacing
- Limitation on the number and types of facilities allowed
- Application and annual renewal fee up to \$5,000
- Security
- Signage

Security

- Surveillance cameras on all entrances as well as the interior and exterior of premises
- Robbery and burglary alarm systems
- Locking safe permanently affixed to premises and out of view (Rule 38)
- Emergency Rules: Rule 35 addresses security measures

https://www.michigan.gov/documents/lara/Adult_Use_Marihuana_Establishments_659804_7.pdf

Surveillance requirements

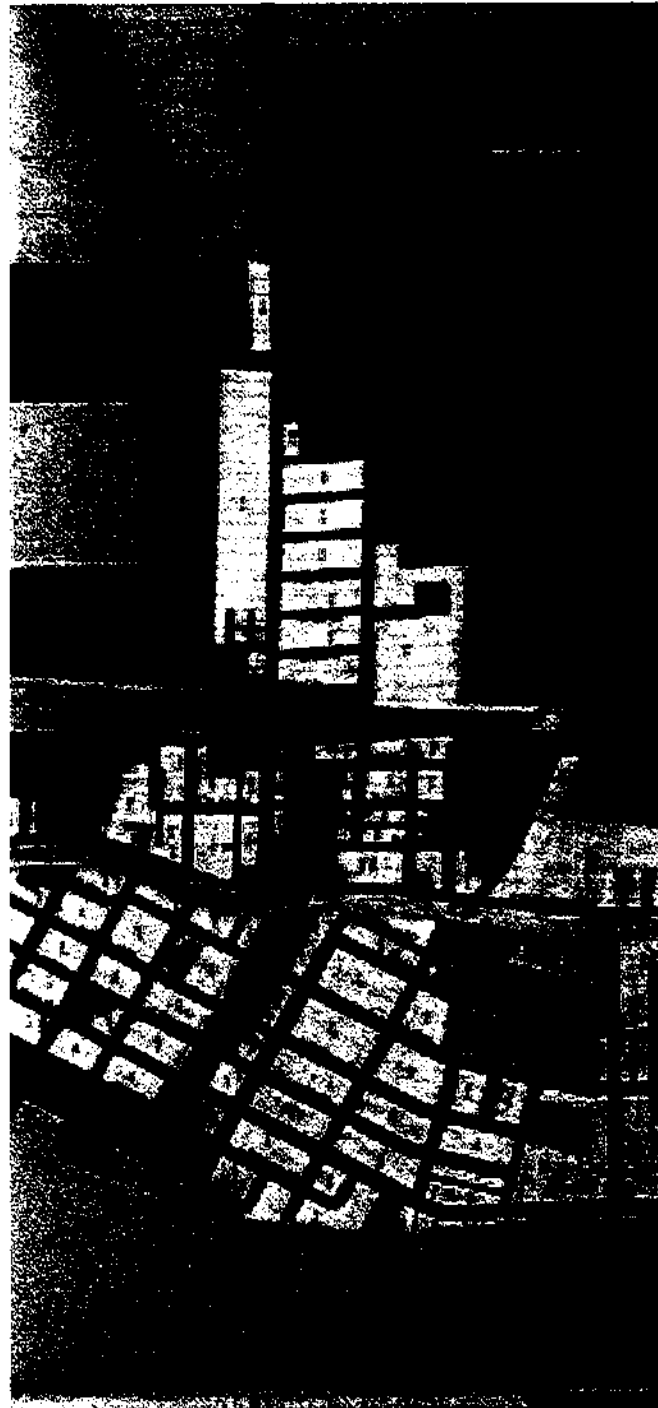
- Facilities are required by law to have video surveillance that can be remotely accessed from the internet
- Video footage must have an accurate time and date stamp
- Recorder must be contained within a protective case that cannot be tampered or accessed by unauthorized individuals
- Must cover entire interior, all entrances from the outside and inside as well as all approaches to the premises
- Must be capable of recording video in low light conditions (infra-red)
- Footage must be archived for a minimum of 30 days.

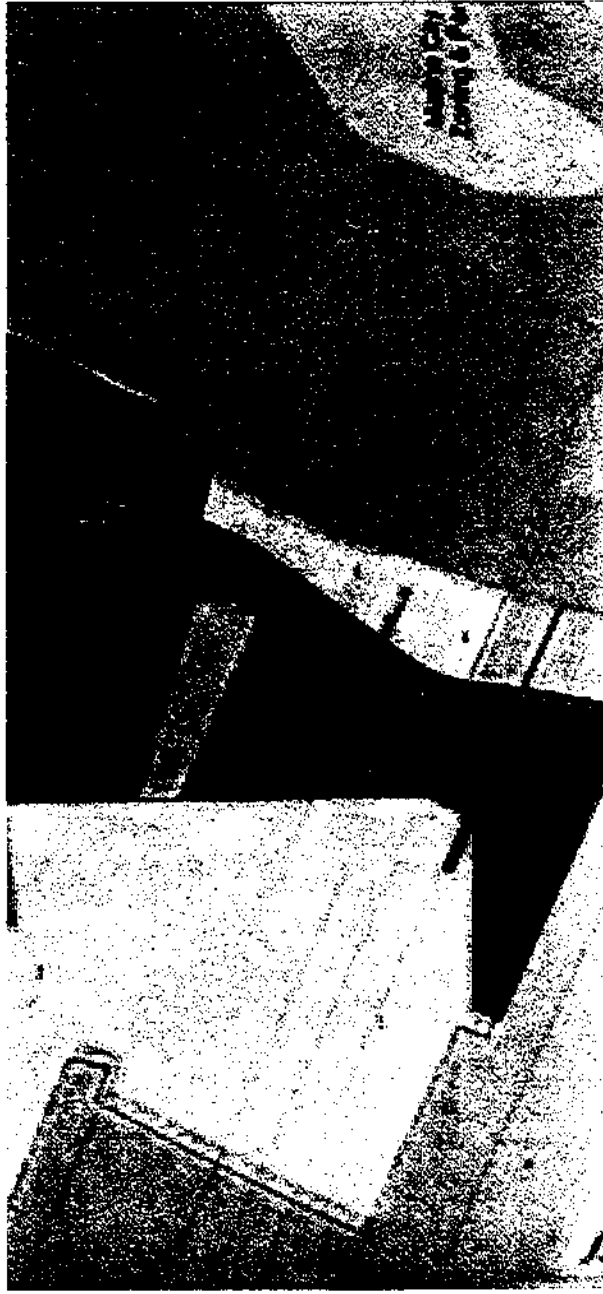
Testing

- Mandated by the state prior to sales
- Performed by Licensed “Safety compliance centers”
- What does testing accomplish?
 - Ensures safety of products
 - Monitors potency for dosage and labeling
- What type of tests are performed?
 - Mass Spectrometry
 - Analytical Chromatography
 - Nuclear Magnetic Resonance Spectroscopy
- What are these tests looking for?
 - Levels of potency of THC and CBD
 - Residual Pesticides
 - Mold and Mildew

Zoning restrictions

- MRTMA requires a minimum distance of 1,000 feet between schools and a marijuana facility.
- A municipality can reduce this distance via ordinance





Application Process

- MRA uses a two-step application process for licenses under the MRTMA and MMMA.
 - Step 1: vetting the applicants
 - Step 2: vetting the facility
- “Applicants” are broadly defined to include most ownership participants (holding more than 10% equity) and managerial employees. Spouses are often also included.
- Application fee is \$6,000, but reduced fees may be available under a social equity program.



Application Process (cont.)

Step 1: Prequalification of the main applicant and any "supplemental applicants."

- This step involves background checks of the relevant persons.
- The category of "Supplemental Applicant" is expansive: includes managerial employees, 10% owners, LLC members, managers (and spouses), partners and spouses, corporate officers and directors and their spouses, etc.
- Prequalification is valid for 2 years.

MRA advises not to proceed to step 2 until facility is ready to pass an inspection because MRA must issue a decision within 90 days.



Application Process (cont.)

Step 2: Vetting the physical establishment.

- This step involves review of business specifications, proof of financial responsibility, municipality information, and general employee information.
- Must pass inspections conducted by MRA and Bureau of Fire Safety.
- Must pass MRA inspection within 60 days of application submission.



Annual Regulatory Assessments and License Renewal Fees

MMFLA imposes an annual regulatory assessment on all licensees except the testing labs.

- The assessment is intended to impose the financial burden of regulation on the medical marijuana industry.
- For fiscal year 2021, this assessment ranges from \$4,667 to \$28,000.

Pursuant to rule, MRTMA imposes a similar annual license fee ranging between \$3,000 and \$50,000.



Common Concerns About Opting In

- **Crime Rates**
 - Canada became the second country in the world to legalize recreational cannabis use nationwide in October 2018. Since then there has been a decrease in incarceration rates.
 - If anything, legalization has resulted in reduced crime
 - Reduced black market sales – less money to gangs and drug dealers
- **Diversion, theft, loss, or criminal activity? Rule 17, emergency rules**
 - Strict seed-to-sale tracking system
 - Required to report to law enforcement within 24 hours.
 - A grow facility is better monitored than pharmaceutical production facilities.
- **Smell**
 - Activated Carbon Filtration
 - Bipolar Ionization
 - Causes odor particles to clump together making it easier to be captured in standard air filters
 - Produces Oxygen Ions which degrade particles causing odor
 - Sealed Grow Rooms

Positives to Opting in

- Jobs

- A typical 2,000 plant grow would have about 6 full time and up to a dozen part time employees.

- Taxes -Capital improvements to properties increase property value

- Higher property value means more tax revenue

- Revenue from Application and Renewal fees

- Reduced black market sales

- Less money going to illegitimate growers and drug dealers