

memorandum

DATE: July 16, 2021
TO: City of Lathrup Village Planning Commission
FROM: Jill Bahm, Giffels Webster
SUBJECT: Zoning Discussion - Cannabis

Recent Action

- **July 20, 2021.** The Planning Commission will hold a public hearing and make a recommendation on the draft ordinance. City Council will consider action on the zoning amendment and the second reading of the license amendment at their July 26, 2021 meeting. Note that due to a change directed by City Council to allow medical cannabis provisioning centers with cannabis retailers. The total number of such facilities will not exceed two, per the license ordinance, even if two licenses are held (retail and medical) at one physical location.
- **June 15, 2021.** The Planning Commission discussed the final draft and made one last change to remove the hours of operation for retailers; they will operate under the current City hours of operation as provided in the Zoning Ordinance. The Planning Commission set the public hearing for July 21, 2021.
- **May 26, 2021.** An open house was held to present general cannabis information and the draft ordinance language to the public. Comments received will be shared with the Planning Commission and City Council.
- **April 20, 2021.** The Planning Commission will discuss the final draft zoning ordinance, with minor changes that cross-reference to the draft licensing ordinance. Once satisfied with this language, the Planning Commission may wish to set a public hearing.
- **February 8, 2021.** The Planning Commission held a public hearing on a separate ordinance related to primary caregiver facilities as permitted by the Michigan Marihuana Facilities Licensing Act (MMFLA). This ordinance provides for such uses in a specific district in the City and prohibits them from residential districts.
- **January 19, 2021 Planning Commission Meeting.** The Planning Commission discussed the draft ordinance and changes to mitigate odors and impacts on adjacent uses.
- **October 20, 2020 Planning Commission Meeting.** The Planning Commission discussed a general concept and the background considerations for cannabis regulation in the City.

The remainder of the memo that follows includes that background as well as a summary of the proposed draft ordinance language and questions discussed earlier in the process.

Introduction

What prompted this discussion?

- On November 6, 2018, Michigan voters approved Proposal 18-1, which legalized recreational marijuana and created the Michigan Regulation and Taxation of Marihuana Act (MRTMA). The law required all Michigan communities to decide if it would allow or prohibit state-licensed recreational marijuana establishments.
- The city of Lathrup Village held an informational town hall meeting in January 2019 and the city, along with many other communities across the state, opted out of the MRTMA. City Council included a “sunset” on the opt-out, to encourage discussion on the issue.
- A subcommittee has been researching how other communities regulate cannabis facilities and, in August 2020, recommended that the city allow a limited number of facilities.
- City Council extended the sunset on the opt-out through August 2021, allowing for time to create ordinances that are appropriate to the city of Lathrup Village. This will include general code and zoning amendments.

What types of facilities are permitted by the MRTMA?

The MRTMA and its associated administrative rules define the following uses:

- **“Designated consumption establishment”** means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license issued under the Michigan regulation and taxation of marihuana act.
- **“Grower”** means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.
- **“Microbusiness”** means a person or entity licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a Marihuana Safety Compliance Facility, but not to other marihuana establishments.
- **“Processor”** means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center or another processor.
- **“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. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.
- **“Safety compliance facility”** means a licensee that is a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the

marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

- **"Secure transporter"** means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.
- **"Temporary marihuana event license"** means a state license held by a marihuana event organizer under the Michigan regulation and taxation of marihuana act, for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license.

What is the difference between cannabis, marihuana and marijuana?

According to the Michigan Marihuana Regulatory Agency (MRA), Michigan's spelling with an "h" was chosen for the Marihuana Tax Act of 1937. As governing state laws spell marihuana with an "h," MRA legal communication and references to statutes in relation to the Michigan Medical Marihuana Act or the Michigan Medical Facilities Licensing Act or the Michigan Regulation and Taxation of Marihuana Act – and the corresponding administrative rules will use an "h" in the spelling of Marihuana. In non-formal communication, "j" will generally be used.

Regardless of the spelling, there are some people who consider the word marijuana to be pejorative and racist, due to the classification given by drug enforcement agencies during and after prohibition and again in the 1960's. We recommend using the term cannabis to refer to the industry from a more objective perspective that removes any historical stigma and negative connotations coming from the use of the word marijuana.

Current Language

What does the Zoning Ordinance say?

- Since cannabis facilities are not currently permitted in the city, the zoning ordinance does not address them. If the city did permit them without specific zoning standards, the Planning Commission would determine which permitted uses are the most similar and those standards would apply.
- For example, a provisioning center is essentially a retail use and would be permitted wherever retail uses are permitted and any standards, such as parking, etc. that apply to retail establishments would apply to provisioning centers. Other establishments, such as a transporter, may be more industrial in nature and be permitted as such.

Potential impacts and considerations

The MRTMA allows communities to select which types of facilities and how many it wishes to permit. The recent petitions submitted vary from two provisioning centers to as many as seven provisioning centers and each of the other facilities. Zoning standards may be developed to protect the public health, safety, and welfare. The city may wish to consider potential impacts of cannabis facilities to determine if any specific standards should apply to mitigate those impacts. Some of those issues may include:

- Safety. Are there safety concerns for employees of the facilities, patrons of the facilities or the public in surrounding areas? What about the appearance of security measures like shutters, bars and the like?

- Parking and traffic. Are there any unusual parking or traffic considerations associated with these uses?
- Energy and water consumption. In particular, grow and processing facilities can be high-demand uses for energy and water. Are there any areas of the city in which this could be problematic? Could this be mitigated by including renewable energy and water re-use in the scoring criteria and rewarding businesses that address these issues effectively with additional points?
- Nuisances. What nuisances are typically associated with these facilities? These concerns generally include odor, but are there other concerns?

These concerns may be addressed through some of the following approaches:

- Location. Where in the community should such uses be permitted?
 - Facilities are generally grouped as follows:
 - Grow, processing, testing and transport facilities, in urban areas, are mainly indoor uses, and are generally industrial in nature.
 - Microbusinesses have a grow component but also may sell to the public, similar to a micro-brewpub.
 - Provisioning centers are retailers and designated consumption establishments are similar to bars. Many communities recognize that these centers may be perceived as safer when located in a standard retail-type setting, rather than in an industrial setting.
 - Issues to be explored:
 - Are there any compatibility issues with existing uses?
 - State law requires uses to be located at least 1,000 ft from schools, which precludes several areas of the city, including most of downtown – but should these uses be permitted downtown? Should there be setbacks from residentially zoned areas? Is a setback from residential zoning practical given that nearly all non-residential properties in the city abut residential zoning?
 - Is there a concern about concentration of such uses or should they all be located together?
 - Are there any accessory uses that should be considered, like drive-through facilities, or the sales of other products, including alcohol?
- Trash. How is waste handled? Where is it stored?
- Hazardous materials. Specific standards related to the storage of hazardous materials should apply.
- Hours of operation. Should any of these uses be limited in their hours of operation?
- Parking. How is visitor parking accommodated? What should the standards be? How are deliveries accommodated?
- Outdoor activities. Should any outdoor sales, storage or seating be permitted?
- Signage. Signs will be regulated through the city’s sign ordinance; any cannabis-related facilities should be treated the same way in terms of time, place and manner. While the MRTMA does

allow some content-based regulation, it is unclear if this is consistent with general sign-based case law.

- Lighting. How is the site lit to ensure safety while limiting an overly bright site, glare and excessive energy usage?
- Building design. Are there standards for building design and/or form that should be included? Should facilities have any energy-related standards?
- Fencing/screening and landscaping. Are there any additional site improvements needed to screen or buffer any of these facilities from surrounding uses?
- Permitted uses. With use and site standards in place, should these uses be permitted by-right or as special land uses (which require public hearings)?

Recommendation

- See draft ordinance attached.

ORDINANCE NO. ____
CITY OF LATHRUP VILLAGE
OAKLAND COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CITY OF LATHRUP VILLAGE ZONING ORDINANCE

ARTICLE 2, TO ADD DEFINITIONS FOR CANNABIS FACILITIES, ARTICLE 3, TO ADD SPECIFIC CANNABIS FACILITIES TO THE MIXED USE AND COMMERCIAL VEHICULAR DISTRICTS AS SPECIAL LAND USES, AND TO ARTICLE 4, TO ADD SPECIFIC STANDARDS FOR PERMITTED CANNABIS FACILITIES.

THE CITY COUNCIL OF THE CITY OF LATHRUP VILLAGE ORDAINS:

PART I. DEFINITIONS.

Amend Section 2.2 – Definitions, to add the following definitions:

Cannabis facilities. Cannabis facilities mean “marihuana facilities” as defined by the State of Michigan. Additional terms are defined in Section 18-282 of the City of Lathrup Village municipal code. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air contaminants. Stationary local sources producing air-borne particulates, heat, odors, fumes, spray, vapors, smoke or gases in such quantities as to be irritating or injurious to health.

Cannabis facility. A location at which a license holder is licensed to operate under the Michigan Medical Marihuana Facilities Licensing Act (MMFLA) and the Michigan Regulation and Taxation of Recreational Marihuana Act (MRTMA)

Cannabis provisioning center. A licensee that is a commercial entity located in the city that purchases cannabis from a grower or processor and sells, supplies, or provides cannabis to registered qualifying patients, directly or through the patients' registered primary caregivers.

Cannabis retailer. A person licensed to obtain cannabis from cannabis establishments and to sell or otherwise transfer cannabis to cannabis establishments and to individuals who are 21 years of age or older.

Person. An individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

Safety compliance facility. A facility authorized to receive cannabis from, test cannabis for, and return cannabis to a licensed cannabis facility.

Separation Distance Measurements. The distance computed by measuring a straight line from the nearest property line of the parcel used for the purposes stated in this ordinance to the nearest property line of the parcel used as a cannabis facility.

PART 2. AMEND ARTICLE 3 TO ADD CANNABIS FACILITIES AS FOLLOWS:

Section 3.1.7.C. Commercial Vehicular District. Special land uses

- xi. Cannabis Facilities: Cannabis retailer, provisioning center and safety compliance facility

Section 3.1.9.C. Mixed Use District. Special land uses

- x. Cannabis Facilities: Cannabis retailer, provisioning center and safety compliance facility

PART 3. AMEND ARTICLE 4 TO ADD A NEW SECTION 4.17 AS FOLLOWS:

Section 4.17 Cannabis Facilities

1. **Purpose.** It is recognized by this Chapter that certain unique uses cannot easily be evaluated in the same manner as other uses because of their potential to adversely affect public health, safety and welfare; establish a public nuisance; conflict with the character of a neighborhood; impair the social and economic well-being of neighboring properties; impair the general development of an area; or operate in a manner contrary to the purpose and intent of this Chapter. However, when properly regulated, these uses can make a positive contribution to the economic vitality of the city. Therefore, it is the purpose of this Article to impose reasonable regulations upon certain uses to provide an adequate approval process while moderating their potential adverse effects on surrounding and neighboring properties.
2. **Applicability.** Any land use that requires a license from the Department of Licensing and Regulatory Affairs (LARA) in the administration of Michigan Medical Marihuana Facilities Licensing Act (MMFLA), Michigan Regulation and Taxation of Marihuana Act (MRTMA) or other state law providing for the sale, transport, testing, growing, distribution, and processing of cannabis or any other activity involving a cannabis-related use shall require review and approval pursuant to Article 6. Any facility not specifically authorized in this Ordinance is prohibited. Provisions of this section do not apply to the medical use of cannabis in compliance with the Michigan Medical Marihuana Act (MMMA).
3. **Approval Procedures for Cannabis Facilities.**
 - A. **Zoning approval.** Zoning approval shall be required prior to issuance of any license. Zoning approval does not guarantee a license for any proposed facility.
 - B. **License Required.** Licensing for cannabis facilities is required per Chapter 18 of the City of Lathrup Village Municipal Code.
4. **Zoning review application requirements.** Zoning applications for cannabis facilities shall be submitted as required in Section 6.2. In addition, the following information is also required:
 - A. As provided in Section 6.1, a site plan shall be required, showing the proposed building(s) to be used, remodeled or reconstructed, along with the parking, landscaping and lighting plans. Existing and proposed building elevations shall be provided, including building materials, window glazing calculations, descriptions of glass to be used, and other pertinent information that describes building construction or structural alterations.
 - B. A plan for general waste disposal, chemical disposal and plant waste disposal.
 - C. A notarized statement by the property owner that acknowledges use of the property for a cannabis facility and agreement to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising out of, or in connection to, the operation of a cannabis facility. Written consent shall also include approval of the owner and operator for the City to inspect the facility at any time during normal business hours to ensure compliance with applicable laws and regulations.
 - D. A copy of official paperwork issued by LARA as follows: paperwork indicating that the applicant has successfully completed the prequalification step of the application for the state

operating license associated with the proposed land use, or proof that the applicant has filed such application for the prequalification step with LARA, including all necessary application fees.

- E. A map, drawn to scale, containing all schools, publicly owned parks or playgrounds, temporary emergency shelters, Substance Use Disorder Programs, Residential Districts, and any marihuana facilities within one-thousand (1,000) feet of the proposed location. Distances shall be measured in accordance with the Separation Distance Measurements, as defined in Section 2.2.
 - F. Operations and Management Plan. An operations and management plan shall be submitted. The plan should describe security measures in the facility as required by Section 18-285 (18); this may include the movement of the product, methods of storage, cash handling, etc.
 - G. All permitted facilities shall be bonded to guarantee that all accounting and taxes are paid in full according to the law and that the operation or facility performs in accordance with all government standards
5. **Separation Distances.** It has been observed that without separation distances between cannabis facilities and certain other land uses, cannabis facilities can tend to concentrate in clusters. It is further recognized that these uses which, because of their very nature, have serious objectionable operational characteristics, particularly when concentrated under certain circumstances. In addition, special regulations of cannabis facilities have been deemed necessary to limit the intensity and density of this use, and to recognize that separation distances are necessary from certain uses as described in this Section. No cannabis facilities are permitted within one thousand (1,000) feet of the following uses:
- A. K through 12 public or private school building or licensed child care center
 - B. A government or nonprofit facility that offers regular, on-site programs and services primarily to persons 18 years of age and under and is used for said programs and services for a minimum of three (3) days a week year-round. Programs and services may include, but are not limited to, social, training, cultural, artistic, athletic, recreational or advisory services and activities and includes private youth membership organizations or clubs and social service teenage club facilities.
 - C. A publicly owned park or playground
 - D. A facility is licensed by the State of Michigan as a Substance Use Disorder Program
 - E. A facility that serves as a temporary emergency shelter. This distance may be reduced to 500 ft by the approving body.
6. **General requirements for cannabis facilities.** In addition to the licensing requirements of Section 18-293, the following general requirements apply:
- A. Consumption of cannabis shall be prohibited in all facilities, and a sign shall be posted on the premises of each facility indicating that consumption is prohibited on the premises.
 - B. Residential uses within the same structure/building are prohibited.
 - C. Outdoor storage of any kind is prohibited. The discharge of toxic, flammable or hazardous materials into city sewer or storm drains is prohibited. All waste shall be kept secure and shall be disposed of in a manner consistent with local, state and federal laws.

- D. No cannabis facilities shall be operated in a manner that creates noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the facility is operated.
 - E. Air contaminants must be controlled and eliminated by the following methods:
 - i. The building must be equipped with an activated air scrubbing and carbon filtration system that eliminates all air contaminants prior to leaving the building. Fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three (3). The filter(s) shall be rated for the applicable CFM.
 - ii. Air scrubbing and filtration system must be maintained in working order and must be in use at all times. Filters must be changed per manufacturers' recommendation to ensure optimal performance.
 - iii. Negative air pressure must be maintained inside the building.
 - iv. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
 - v. The building official may approve an alternative odor control system, in accordance with the Michigan Mechanical Code, if a mechanical engineer licensed in the State of Michigan submits a report that sufficiently demonstrates the alternative system will be equal to or better than the air scrubbing and carbon filtration system otherwise required.
7. **Specific requirements for cannabis retailers and provisioning centers.** Such uses shall be presented as being for retail purposes and shall contribute to the vibrancy and walkability of the district. The sale or dispensing of alcohol or tobacco products at a cannabis retail facility **or provisioning center** is prohibited.
- A. **Facility Exterior.** The exterior appearance of a facility must be compatible with surrounding businesses and any descriptions of desired future character, as described in the Master Plan. All standards of the MX and CV district apply.
 - i. No cannabis or equipment used in the sale, testing or transport of cannabis can be placed or stored outside of an enclosed building. This section does not prohibit the placement or storage of motor vehicles outside of an enclosed building so long as money or cannabis is not left in an unattended vehicle.
 - ii. Site and building lighting shall be sufficient for safety and security, but not cause excessive glare or be designed so as to be construed as advertising with the intent to attract attention. Outdoor lighting will comply with Section 5.8.
 - iii. Drive-through facilities and mobile facilities are prohibited.
 - B. **Facility Interior.**
 - i. Interior construction, design and use of a facility will not impede the future use of a building for other uses as permitted in the assigned zone district.
 - ii. Neither cannabis nor cannabis-infused products may be placed within twenty (20) feet of the front façade, nor illuminated such that they are visible from a public way.

- iii. Interior security measures other than security cameras shall not be visible from the public right-of-way (e.g. security shutters, bars, or other methods) during operating business hours.
 - iv. Interior lighting shall not be so bright so as to create a nuisance to neighboring property owners or passersby.
 - v. Ventilation, by-product and waste disposal, and water management (supply and disposal) for the facility will not produce contamination of air, water, or soil; or reduce the expected life of the building due to heat and mold; or create other hazards that may negatively impact the structure and/or surrounding properties.
8. **Specific requirements for Safety Compliance Facility.** In addition to the general standards, the following standards apply:
- 1. Such facilities shall have a secured laboratory space and cannabis storage areas that cannot be accessed by the general public.
 - 2. All employees at such facilities shall have appropriate education, training and/or experience to comply with state regulations on testing medical cannabis.
 - 3. There shall be no other accessory uses permitted within the same facility other than those associated with testing cannabis.
 - 4. Cannabis that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.

PART 4. AMEND SECTION 5.13 AS FOLLOWS TO PROVIDE PARKING STANDARDS FOR CANNABIS FACILITIES:

Section 5.13.13. Minimum numbers of parking spaces required.

C. Business & Commercial

- i. Professional and administrative offices, **including cannabis safety compliance facilities:** One (1) per 275 sq ft of gross leasable area
- iv. Personal services and retail uses, **including cannabis retail facilities and provisioning centers:** One (1) per 200 sq ft of usable area...

PART 5. SAVINGS CLAUSE.

The amendments referenced herein do not affect or impair any act done, offense committed, or right accruing or acquired, or liability, penalty or forfeiture or punishment pending or incurred prior to the effective date of this amendment.

PART 6. SEVERABILITY.

This Ordinance and its various parts, sentences, paragraph, sections, clauses and rules promulgated hereunder are hereby declared to be severable. If any part, sentence, paragraph, section, clause, or rule promulgated hereunder is adjudged to be unconstitutional or invalid for any reason, such holdings shall not affect the remaining portions of this Ordinance.

PART 7. REPEALER.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

PART 8. EFFECTIVE DATE; PUBLICATION.

This Ordinance shall become effective after publication of a brief notice in the newspaper circulated in the City, stating the date of the enactment and the effective date of the Ordinance, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk, and such other facts as the City Clerk shall deem pertinent.

MADE, PASSED AND ADOPTED BY THE CITY COUNCIL, CITY OF LATHRUP VILLAGE, OAKLAND COUNTY, MICHIGAN THIS ___ day of ____, 2021

Yvette Talley, City Clerk

Date of Introduction:

Date of Adoption:

Date of Publication of Notice of Adoption:

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing is a true and complete copy of the ordinance passed at a meeting of the City of Lathrup Village held on the ___ day of ____, 2021

Yvette Talley, City Clerk