

ZONING TOPICS: MEDICAL MARIHUANA

PREPARING COMMUNITIES FOR NEW LEGISLATION REGARDING

Medical Marihuana

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Why Examine This Issue?

Recent legislative changes in Michigan's medical marijuana laws are prompting communities to examine their current ordinances on medical marijuana.

Medical Marijuana laws in Michigan

- Michigan Medical Marijuana Act (MMMA) – 2008
 - Initiated Act 1 of 2008 (ballot measure approved by Michigan voters)
- Medical Marijuana Facility Licensing Act (MMFLA) – 2016
 - Public Acts 281, 282, and 283 of 2016

Medical Marihuana

What was allowed prior to new bill?

Michigan Medical Marihuana Act (MMMA), November 2008

- Physicians are allowed to prescribe marihuana to registered patients upon diagnosis of certain medical conditions.
- Michigan Department of Community Health established an identification card system for qualified patients and caregivers (small-scale growers).
- Allows permitted individuals (caregivers) to grow limited amounts of marihuana for qualifying patients following specific regulations (up to 12 plants per patient, serving up to 5 patients). Certified patients may grow up to 12 plants for their personal use.
- Accommodated small-scale grow operations for medical purposes.
- Treats grow operations like other uses—zoning may not entirely exclude them.

Dispensaries were not explicitly authorized.

Medical Marihuana

What has changed?

On September 21, 2016 Governor Synder signed three bills that created the **Medical Marihuana Facility Licensing Act (MMFLA)** that **expanded the types of medical marihuana activities** permitted under state law to include:

- Growers (commercial-scale operations)
- Processors (resins, edibles, etc.)
- Transporters (secure transportation)
- Safety Compliance Facilities (testing labs)
- Provisioning Centers (dispensaries)

More on MMFLA

- The state will establish a seed-to-sale tracking system to ensure compliance and taxability (Public Act 282).
 - This tracking system will be shared with local law enforcement
- A licensing board, the **Bureau of Medical Marihuana Regulation (BMMR)** has been established within LARA to issue licenses for newly permitted activities. Each of the aforementioned activities will be required to apply for a license with the state.
- Medical Marihuana applicants do not apply directly to municipalities—they must approach the state first, which provides notice of application to the community.

Growers

Growing operations will be classified as either:

- Class A – up to 500 plants
- Class B – up to 1,000 plants
- Class C – up to 1,500 plants

People who are **licensed as caregivers will still be limited to 12 plants per patient**, up to 5 patients, as allowed in the 2008 legislation.



*Climate-controlled growing facility in Smith Falls, ONT CA
Source: James MacDonald, Bloomberg*

More on Growers

- Can ONLY sell harvest to a processor or provisioning center.
- Harvest can ONLY be transported by a secure transporter.
- Grower and investors CANNOT have an interest in any secure transporter or safety compliance facility.
- Until the year 2022, all growers MUST have at least 2 years experience as a primary caregiver under previous legislation.
- Licensee may not be a primary caregiver while holding grower license
- MUST comply with the seed-to-sale tracking system,
- May NOT operate in any area unless zoned agricultural or industrial.

Processors

- Processors take harvested marijuana and turn it into **marihuana products**, including edibles, resins, oils, etc.
- Processors will be subject to rules and regulations of extraction as set forth by the state (rules are forthcoming).



Employee overseeing marijuana oil extraction at a California-based processor.

More on Processors

- Can ONLY sell products to provisioning centers.
- Products can ONLY be transported by a secure transporter.
- Processor and investors CANNOT have an interest in any secure transporter or safety compliance facility.
- Until the year 2022, all processors MUST have at least 2 years experience as a caregiver under previous legislation.
- Licensee may not be a primary caregiver while holding processor license
- MUST comply with the seed-to-sale tracking system.
- May NOT operate in any area unless zoned agricultural or industrial.

Transporters

- Also known as a **secure transporter**, this operation type is responsible for the storage and transport of marihuana harvests and products, as well as the financial transactions of the medical marihuana business, between licensed facilities.



An armored vehicle, not unlike a Brink's truck, would be used to transport products and money.

More on Transporters

- CANNOT transport directly to patients or caregivers.
- Transporter or investor of transporter operation CANNOT have an interest in any other marihuana operation.
- MUST comply with the seed-to-sale tracking system.
- Drivers MUST obtain valid chauffeur license and undergo background checks.
- All vehicles MUST have 2-person crews, scheduled route plans, use sealed containers, among other regulations.
- Vehicles MUST be inconspicuous in the transportation of marihuana and related products.
- Subject to administrative inspection at any time.

Safety Compliance Facilities

- Test marijuana products for potency and contamination before being returned or sent to another licensed marijuana facility.
- Are part of the greater seed-to-sale compliance system.
- Can ONLY receive from and test for a licensed facility.
- Lab or investor of lab operation CANNOT have an interest in any other marijuana operation.
- Lab staff MUST meet certain educational and skill requirements.
- Lab MUST be secured and not accessible to the general public.
- Can ONLY send and receive products via secure transporter.

Provisioning Centers

- Informally known as **dispensaries**, these centers purchase medical marihuana from a grower or processor to sell to patients or caregivers.
- RESTRICTED to a daily limit of product sales to an individual patient or caregiver.
- All transportation of goods to a provisioning center or between a center and a safety compliance facility MUST be completed by a secure transporter.
- Provisioner and investors CANNOT have an interest in any secure transporter or safety compliance facility.
- CANNOT also sell alcohol or tobacco products.
- CANNOT host medical exams or certify patients for medical marihuana use.

Permitting Medical Marihuana Facilities

Municipalities have the option to allow any of these facilities within their jurisdiction. If communities “opt-in,” they may:

- Determine which type of facilities can operate within the community.
- Limit the number of facilities that can operate within the community.
- Adopt ordinances regarding such activities. This includes zoning regulations.
- Charge annual fees up to \$5,000 per facility to offset increased administrative and enforcement costs

Permitting Medical Marijuana Facilities

Municipalities have the option to allow any of these facilities within their jurisdiction. If communities “opt-in,” they may NOT:

- Impose regulation on purity or pricing or products, nor conflict with any state regulations.
- Delay response to state licensing board; community must respond within 90 days of notice of application

Local Regulation Of Medical Marihuana Operations

Land use regulations typically involve issues such as buffering or separation from sensitive uses, restrictions by zoning district, and density controls. Other issues include environmental impacts, property values, and crime.

Buffering and/or Separation

Buffering and/or separation from homes, schools, day care, places of worship, parks, libraries, and rehab centers varies from community to community. What distance is appropriate? Is screening or buffering necessary?

Michigan Public Health Code

- PA 368 of 1978 regulates possession and distribution of substance recognized as a drug in the official United States Pharmacopeia.
- Marihuana is included in this code, which provides additional penalties for an individual 18 years of age or over who violates the Act by possessing or distributing controlled substance on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both.
- It is unclear how this code might impact siting based on the MMFLA.

Local Regulation Of Medical Marihuana Operations

Zoning Districts

The MMFLA restricts growers and processors to agricultural and industrial zoning districts; municipalities may opt in to one or more.

Municipalities must determine appropriate districts for other uses they wish to permit.

- Limit to industrial districts?
- Consider character of commercial districts
- Allow in all commercial districts except downtown?
- Principally permitted use or special land use?

Local Regulation Of Medical Marihuana Operations

Density Controls

The size or number of facilities to be permitted is another issue that must be reviewed if municipalities choose allow medical marihuana facilities.

- Limit number based on a population ratio
- Limit number based on land area ratio
- Limit based on flat maximum number for the community
- Minimum / maximum lot area?
- Minimum / Maximum floor area?

Local Regulation Of Medical Marihuana Operations

Consider how to manage the following:

- Odor nuisance from growers and processors
- What is the parking demand for each of these uses?
- Exterior lighting, including security lighting
- Physical appearance
- Signage
- Traffic and circulation concerns

Impact of Medical Marijuana Operations on Local Utilities

Need for water and electricity

- The average plant consumes 6 gallons of water a day.
- Grow facilities have to maintain warm temperatures and high humidity.
- Lighting needs/electricity demand can be intense.

Other Community Impact Considerations

Environmental Impact

- Provisioning centers are commercial uses with similar impacts.
- Secure transporters likely to have similar impact to small warehouses, storage.
- Grower, processor, safety compliance impacts will be similar to light industrial uses.

Other Community Impact Considerations

Property Values

- Industrial property values have increased in states that allow for medical marijuana facilities.
- Research from the Wisconsin School of Business at the University of Wisconsin–Madison found that property values in the immediate vicinity of Denver’s retail marijuana establishments increased by more than eight percent since Colorado’s recreational marijuana law took effect on January 1, 2014.

Other Community Impact Considerations

Crime

- Correlation between medical marijuana facilities and an increase in crime has not been established. There have been several studies, but outcomes vary.

Other Community Impact Considerations

Sale and User Responsibility (Provisioning Center)

- Colorado's Retail Marijuana Public Health Advisory Committee in January 2015 issued a report that found the risk of motor vehicle crash doubles among drivers with recent marijuana usage, and that using alcohol and marijuana together increases the risk of a motor vehicle crash more than using either substance alone.

Medical Marijuana

Revenue: Local

- Municipalities may charge annual fees up to \$5,000 per facility to off-set increased administrative and enforcement costs

Medical Marihuana

Revenue: State

- Act 281 establishes a 3% excise tax on a provisioning center's gross retail receipts.
- The Act also creates a medical marihuana excise fund. The fund is comprised of all money collected from the tax imposed on provisioning centers as well as all other fees, fines, and charges imposed by the state under the Act. Licensing fees charged by local municipalities are not part of this fund.

Medical Marihuana

Revenue: State

- The Act provides that 25% of the monies in the excise fund at the close of every fiscal year shall be appropriated to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality.

Lathrup Village Considerations

- There is no deadline for municipalities to adopt authorizing ordinances.
- Municipalities are not required to “opt out” or prohibit marijuana facilities within their boundaries. If municipalities do nothing, marijuana facilities will be unable to be licensed at the state level to operate in their locality (municipalities opting out still must respond to notices of application received from the state).

Marijuana is still illegal at the federal level. States that have adopted medical marijuana and recreational marijuana laws have done so on the assumption that the federal government won't enforce its own laws.

Lathrup Village Considerations

What does this mean for Lathrup Village?

- Currently, Lathrup Village allows caregiver growing facilities.

Under MMFLA, the city may adopt an ordinance authorizing one or more types of marihuana facilities to operate within its boundaries. The state intends to rely on the local municipality's authorizing ordinance to determine if an applicant is in compliance with certain provisions of the MMFLA, including the following:

- **What is permitted:** The types of marihuana facilities – growers, processors, secure transporters, safety compliance facilities, and provisioning centers.
- **How many are permitted:** The maximum number, if applicable, of each type of marihuana facility permitted.
- **How are they permitted:** Local zoning regulations that apply to marihuana facilities, including whether or not licensees may apply for special use permits.

Lathrup Village Master Plan

Goals of the 2015 Master Plan Update:

- **Create a Village Center.** Redevelop properties in the historic center of the City, transforming this area from suburban strip-style development into a mixed use, multiple story, walkable downtown for the City. Include residential housing, retail, restaurants, office, and entertainment uses.
- **Improve the appearance of other commercial areas** Attractive curb appeal will improve the City's image and attract new business and residents.
- **Support economic vitality throughout the City.** Assist local business development through job creation, improved property values, and the provision of needed goods and services for City residents.

Lathrup Village Master Plan

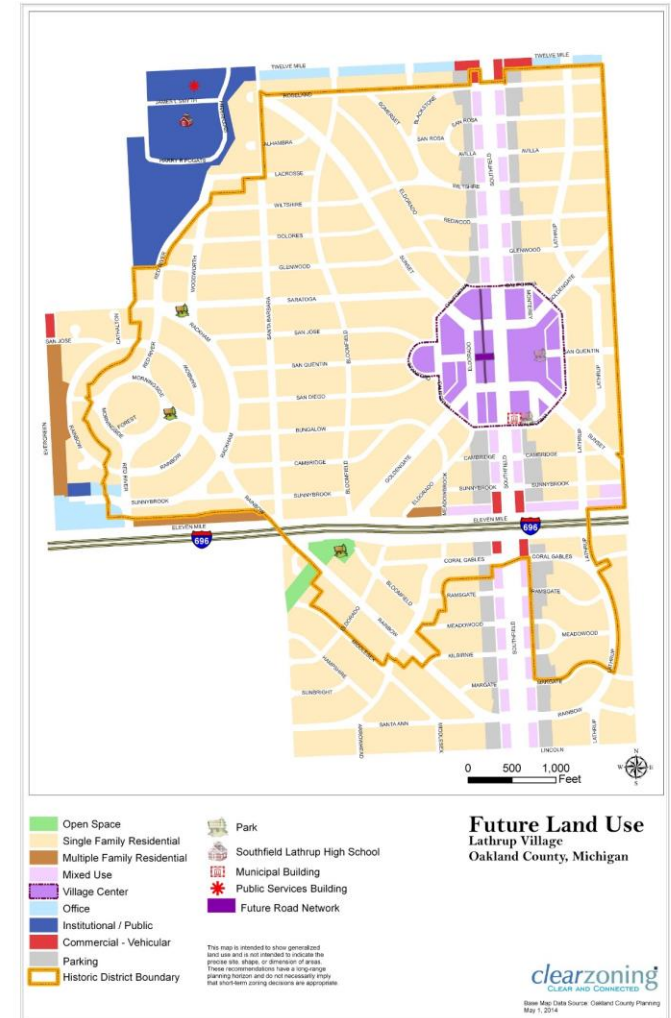
- **Improve connectivity in the City.** Promote the independence and health of all City residents by improving transportation options within the City. Unite all quadrants of the City by improving vehicular and non-motorized transportation access.
- **Support placemaking efforts.** Identify and pursue opportunities to create a sense of place in the City of Lathrup Village, building upon the City's identity as a diverse, caring, and welcoming community that has events and activities for all ages.

Lathrup Village Master Plan

- **Preserve and protect the quality and character of residential neighborhoods.** Encourage preservation and maintenance of existing homes in neighborhoods as well as encourage a variety of new housing that is compatible with existing residential neighborhoods.

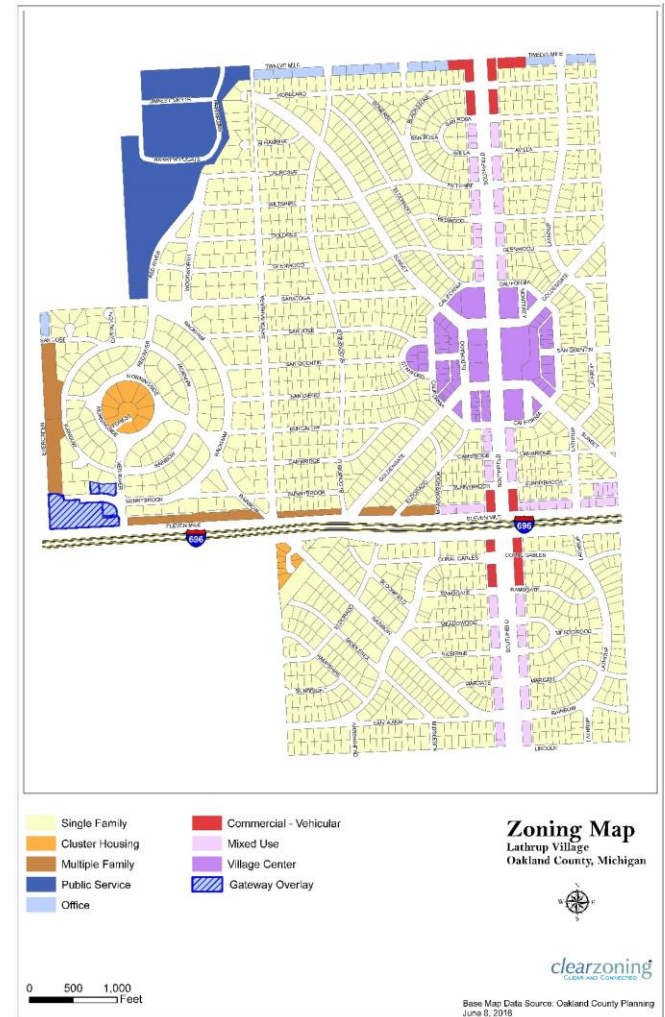
Lathrup Village Master Plan

- City Master Plan: Non-residential land use designations include:
 - **Mixed Use:** Residential, office, and “lower trip-generation retail businesses.”
 - **Village Center:** A vibrant, compact, pedestrian-oriented downtown area with a mix of residential, commercial, entertainment, gathering spaces, recreation areas, and civic activities
 - **Commercial Vehicular:** An area to serve transient customers creating higher trip generation to the commercial site, primarily along Southfield Road at the intersections of 11 Mile Road and 12 Mile Road



Lathrup Village Zoning Ordinance

- **City Zoning Ordinance: Consistent with the Future Land Use Map**
 - **Mixed Use:** Permits a mix of residential, office, retail businesses. Drive-through uses and more intense retail may be permitted with special land use approval.
 - **Village Center:** Similar to the Mixed Use district, but with additional form-based standards to create a walkable downtown setting.
 - **Commercial Vehicular:** A variety of non-residential uses; more intense commercial activities may be permitted with special land use approval.



Other Oakland County Communities

- **Opting Out:**

- Holly Township
- Oxford Township
- Rose Township
- Commerce Township
- Waterford Township
- City of Oak Park
- City of Troy

- **Opting In:**

- City of Hazel Park
- City of Walled Lake
- Orion Township

Other Oakland County Communities

- **City of Hazel Park**
 - Limited to four of each type listed below:
 - Permits Growers, Processors, Secure Transporters, Safety Compliance Facilities, Provisioning Centers
 - Generally allowed in business and industrial districts
 - Special standards include additional lighting around doors and parking areas, on-site security, and odor control equipment. Additional standards for waste disposal, outdoor storage, and handling of chemicals.
 - Provisioning Centers limited to the hours of 8 a.m. to 8 p.m.

Other Oakland County Communities

- **City of Walled Lake**

FACILITY	ZONING DISTRICT	NUMBER
<i>Grower</i>	I-1	<i>Three (3)</i>
<i>Processor</i>	I-1	<i>Three (3)</i>
<i>Secure Transporter</i>	I-1	<i>Three (3)</i>
<i>Provisioning Center</i>	C-2, C-3	<i>C-2: Two (2) C-3: One (1)</i>
<i>Safety Compliance</i>	I-1, C-2	<i>I-1: One (1) C-2: One (1)</i>

- Permitted in industrial and commercial districts
- Distance requirement: 500 ft from all schools

Other Oakland County Communities

- Orion Township
 - Limited to Six Growers and Two each Processors, Secure Transporters, Safety Compliance Facilities, Provisioning Centers
 - IP (Industrial Park District) zoning district.
 - 1,500 feet from a “church” in the Township.
 - 2,000 feet from a residence located in a R-1, R-2, R-3, SF, SE, SR, RM, or MHP zoning district.
 - 2,500 feet of a registered “school” within the Township.
 - Ingress or egress on a street or road that has an average traffic volume in excess of 6,000 vehicles per day, but not serving a R-1, R-2, R-3, SF, SE, SR, RM, or MHP zoning district.

Possible Zones for Facilities

The city is under no obligation to opt in. If it does opt in for one or more related uses:

Facility Type	Suggested Permitted District
Grow Facilities	Most communities who permit these uses allow them in limited fashion in their industrial zoning districts. Lathrup Village does not have similar districts; however, recognizing the potential economic impact associated with new investment, there may be opportunities to retrofit underutilized parcels on a limited basis to accommodate these facilities.
Processors	
Transporters	
Safety Compliance	
Provisioning Centers	Provisioning Centers are retail establishments. If the City of Lathrup Village decides to permit provisioning centers, it will have to determine if placement of this use in a commercial district would be appropriate, including <i>which</i> commercial district

Ongoing Changes

- This presentation does not reflect temporary emergency rules that have been put in place by the State of Michigan, as they are subject to change.
- There is also pending legislation that could impact the findings in this presentation.

Resources

Michigan Bureau of Medical Marihuana Regulation

- <http://www.michigan.gov/lara/0,4601,7-154-79571---,00.html>

Michigan LARA FAQs http://www.michigan.gov/documents/lara/MM_FAQs_536290_7.pdf

MML Fact Sheet – MMFLA

- https://www.mml.org/resources/publications/one_pagers/opp_med_marihuana_%20facilities_%20licensing.pdf

Cannalex Lawyers and Counsels (*Grand Rapids Law Firm specializing in medical marihuana business*)

- <http://www.cannalexlaw.com>

Pot Report. *Planning Magazine*, July, 2015.

- <https://www.planning.org/planning/2015/jul/potreport.htm>

A Real Estate Boom, Powered by Pot. *New York Times Magazine*, April, 2017.

- <https://www.nytimes.com/2017/04/01/business/a-real-estate-boom-powered-by-pot.html>

Legalization of Retail Marijuana in Colorado Had Positive Impact on Property Values in Denver. Wisconsin School of Business, University of Wisconsin – Madison, September 2017.

- <https://bus.wisc.edu/knowledge-expertise/newsroom/press-releases/2017/09/26/legalization-of-retail-marijuana-in-colorado-had-positive-impact-on-property-values-in-denver>