

MANISTEE CITY PLANNING COMMISSION

Special Meeting of Thursday, February 24, 2011
7:00 p.m. - Council Chambers, City Hall, 70 Maple Street,
Manistee, Michigan

AGENDA

I Call to Order

II Roll Call

III Approval of Agenda

At this time the Planing Commission can take action to approve the February 24, 2011 Agenda.

IV Approval of Minutes

At this time Planning Commission can take action to approve the February 3, 2011 meeting Minutes.

V Public Hearing

Proposed Ord 11-03 Medical Marihuana

A Public Hearing is being held to allow input from the public as it relates to the proposed ordinance to regulate and license certain aspects of Medical Marihuana cultivation, use and distribution in the City of Manistee.

At this time the Chair shall open the hearing.
City Staff shall present the proposed Ordinance
The hearing will be opened for public comments
The hearing will be closed

VI Public Comment on Agenda Related items

VII New Business

Proposed Ord. 11-03 Medical Marihuana

A Public Hearing was held to allow input from the public as it relates to the proposed ordinance to regulate and license certain aspects of Medical Marihuana cultivation, use and distribution in the City of Manistee.

At this time the Planning Commission may make recommendation to City Council on Proposed Ord. 11-03 Medical Marihuana.

VIII Old Business

IX Public Comments and Communications

At this time the Chair will ask if there are any public comments.

X Correspondence

At this time the Chair will ask if any correspondence has been received to be read into the record.

XI Staff/Sub-Committee Reports

At this time the Chair will ask Staff for their report.

At this time the Chair will ask if any of the Sub-Committees have anything to report.

XII Members Discussion

At this time the Chair will ask members of the Planning Commission if they have any items they want to discuss.

XIII Adjournment



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546
www.ci.manistee.mi.us

MEMORANDUM

TO: Planning Commissioners

FROM: Denise Blakeslee 

DATE: February 11, 2011

RE: Worksession Cancelled
Special Meeting

Commissioners, The Worksession for Thursday, February 17, 2011 has been **cancelled**.

A **Special Meeting/Public Hearing** has been scheduled for Thursday, February 24, 2011 at 7:00 pm. We will be holding a Public Hearing to allow comments on the proposed Medical Marihuana Ordinance.

If you are unable to make the meeting please call or leave a message 398-2805.

NOTICE OF PUBLIC HEARING
City of Manistee Planning Commission

The City of Manistee Planning Commission will hold a Public Hearing on Thursday, February 24, 2011 at 7:00 p.m. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan. Purpose of the hearing is to allow Public Comments on proposed Ordinance 864, Medical Marihuana.

Interested parties are welcome to attend the hearing, or written comments with signature can be submitted to: Jon Rose, Community Development, City of Manistee, P.O. Box 358, Manistee, MI 49660, (231) 398-2805.

A copy of Ordinance 864 Medical Marihuana is available for review on the City of Manistee Web Page www.ci.manistee.mi.us or at City Hall in the office of the City Clerk.

Run Ad: **Next Issue of News Advocate**

Special Notice - Classified Ads

Please send an affidavit to:

Jon Rose
City of Manistee
P.O. Box 358
Manistee, MI 49660

AFFIDAVIT OF PUBLICATION

State of Michigan)
)SS
County of Manistee

Marilyn J. Barker , being duly sworn, deposes and says that he/she is one of the editors, publishers of the Manistee News Advocate , a newspaper printed, published and circulated in said County of Manistee , and that the annexed notice of

NOTICE OF PUBLIC HEARING/CITY OF MANISTEE PLANNING COMMISSION was duly printed and published in said newspaper at least once each week for ONE (1) weeks in succession commencing on the 8TH day of FEBRUARY A.D. 2011 and ending on the 8TH day of FEBRUARY A.D. 2011


Marilyn J. Barker, Publisher

Subscribed and sworn to before me, this 8TH day of FEBRUARY , A.D. 2011


Notary Public Jeanine M. Barber, Manistee County
Acting Manistee County
My Commission Expires March 10, 2012

**NOTICE OF PUBLIC HEARING
City of Manistee
Planning Commission**

The City of Manistee Planning Commission will hold a Public Hearing on Thursday, February 24, 2011 at 7:00 p.m. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan. Purpose of the hearing is to allow Public Comments on proposed Ordinance 864, Medical Marihuana.

Interested parties are welcome to attend the hearing, or written comments with signature can be submitted to: Jon Rose, Community Development, City of Manistee, P.O. Box 358, Manistee, MI 49660, (231)398-2805. A copy of Ordinance 864 Medical Marihuana is available for review on the City of Manistee Web Page www.ci.manistee.mi.us or at City Hall in the office of the City Clerk.

NOTICE
City of Manistee
Planning Commission
Special Meeting/Public Hearing

The City of Manistee Planning Commission has scheduled a Special Meeting and Public Hearing for Thursday February 24, 2011. The Public Hearing is to allow input on a proposed Ordinance for Medical Marihuana. A copy of the ordinance is available on the City's Web Page or at the City Clerk's Office.

This notice was posted by Denise J. Blakeslee to comply with Sections 4 & 5 of the Michigan Open Meetings Act (P.A. 267 of 1976) at 12:00 noon, Tuesday, February 8, 2011 on the on the bulletin board at the south entrance to City Hall.

Signed: 
Denise J. Blakeslee

CHAPTER 864
Medical Marihuana

864.01	Intent	864.05	Restriction on Distribution
864.02	Definitions	864.06	No Vested Rights
864.03	Licensure Requirements	864.99	Penalty
864.04	Application for License		

CROSS REFERENCES

A Local Government View of the Michigan Medical Marihuana Act, Gerald A. Fisher, October 5, 2010;
2009 Michigan Administrative Code: 2009 AC, R 333.101 et seq.; and
Michigan Medical Marihuana Act, MCL 333.26421 et seq.

864.01 INTENT

It is the intent of this ordinance to protect the health, safety and welfare of persons in this community while authorizing permitted uses of medical marihuana as set forth in the Michigan Medical Marihuana Act (MCL 333.26421 et seq. (the Act)). This ordinance shall in no way prevent otherwise lawful activity that may be described in the Act or the Department of Community Health Regulations, 2009 Administrative Code: 2009 AC, R 333.101 et seq. or the amendment of said Act or Regulations.

864.02 DEFINITIONS

The words and phrases contained within this Ordinance shall be interpreted and construed in accordance with the definitions set forth in the Michigan Medical Marihuana Act, MCL 333.26421, et seq., and Michigan Administrative Rules, R 333.101, et seq.

864.03 LICENSURE REQUIREMENTS

Activities of a Licensee under this Ordinance shall only occur in accordance with this Ordinance and only after the licensure of the business of a Caregiver at a particular location. A Licensee shall fully comply with the requirements of the Act and Administrative Rules promulgated pursuant to the Act (MCL 333.26421 et seq. and 2009 Administrative Code: 2009 AC, R 333.101 et seq.)

864.04 APPLICATION FOR LICENSE

- (a) The requirement of this ordinance is to license a location and not to license persons. No license will be necessary for a patient who is growing and possessing marihuana of 12 plants or less for personal use. A confidential application for a license under this section shall be submitted the City of Manistee Police Department and shall be in a form as prescribed by the City of Manistee Police Department. The Application and all accompanying information shall be confidential and not subject for disclosure under the Freedom of Information Act.
- (b) Requirements and standards for approval of licensure and for the activity permitted.
- (1) Location shall not be within 250 feet from the site of any other caregiver location.
 - (2) Any Location where more than 13 plants are cultivated shall not be within 1,000 feet from a public or private elementary school, middle school, high school, or community college.
- Measurements for purposes of this sub-section shall be made from property boundary to property boundary.
- (c) All medical marihuana cultivation shall occur within the confines of a building licensed under this section, and such activities shall occur only in locations not visible to the public and adjoining uses, provided, this subsection shall not prohibit a caregiver from assisting a patient at the patient's principal residence.
- (d) An approval of licensure may include reasonable conditions requested in writing by the application during the application and review process.
- (e) All use of the property shall be in accordance with the granted license.

864.05 RESTRICTION ON DISTRIBUTION

A caregiver and any other person authorized under the Act to assist patients, if any, shall distribute medical marihuana only on a confidential, one-on-one basis, within the patient's private residence.

864.06 NO VESTED RIGHTS

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment of this ordinance.

864.99 PENALTY

Whoever violates any provision of this chapter is guilty of a civil infraction in accordance with Section 202.99.

CHAPTER 844
MEDICAL MARIHUANA CULTIVATION FACILITY

844.01	Definition	844.05	License Fee
844.02	License Required	844.06	Inspections
844.03	Conditions for Issuance	844.07	Revocations of License
844.04	Procedure for Application	844.08	Complaints, Appeals

844.01 DEFINITION.

- (a) "Owner" means any person who has equitable or legal title to any portion of the premises.
- (b) "Medical Marihuana Cultivation Facility" as used in this Chapter has the same meaning as defined in the Zoning Ordinance, Section 1320.07.

844.02 LICENSE REQUIRED.

No person shall operate a Medical Marihuana Cultivation Facility without first obtaining a license therefore as required by this chapter.

844.03 CONDITIONS FOR ISSUANCE.

A Medical Marihuana Cultivation Facility license shall be issued subject to the following conditions, which conditions, are in addition to conditions contained elsewhere in these Codified Ordinances:

- (a) A Medical Marihuana Cultivation Facility shall be inspected at the time of application; shall be compliant with applicable Building, Electrical, Fire, and Plumbing Codes; and shall be inspected yearly by the Police Chief or its designee.
- (b) The Application shall contain a diagram of the Medical Marihuana Cultivation Facility demonstrating the number of facilities within the premises to be utilized for cultivation of Medical Marihuana and compliance with the requirements of the Zoning Ordinance for a Medical Marihuana Cultivation Facility.
- (c) If the Applicant is not the Owner of the premises upon which the Medical Marihuana Cultivation Facility, the application shall include the Owner's consent to the use of the premises as a Medical Marihuana Cultivation Facility.

844.04 PROCEDURE FOR APPLICATION

Any person wishing to operate a Medical Marihuana Cultivation Facility shall file a Medical Marihuana Cultivation Facility license application with the City Clerk.

844.05 LICENSE FEE

The annual license fee shall be established by resolution of the City Commission.

844.06 INSPECTIONS.

A Medical Marihuana Cultivation Facility shall meet all conditions of this chapter and other applicable ordinances and laws.

844.07 REVOCATION OF LICENSE.

A license shall be revoked by the City Clerk if, upon receipt of written information or upon the Clerk's own investigation, the Clerk has reason to believe any of the following has occurred:

- (a) The Medical Marihuana Cultivation Facility has received a citation for a violation of the provisions of this chapter, the Traverse City Code, any statute of the State of Michigan, or federal law.
- (b) The Applicant has made a false material statement in the application or has otherwise become disqualified for the issuance of such a permit.
- (c) The Owner or Operator of, or any person occupying the Medical Marihuana Cultivation Facility has violated any provision of this Chapter, the Traverse City Code, any statute of the State of Michigan, or federal law, which violation has been documented by a written complaint certified by the City Clerk pursuant to §844.08.
- (d) The Medical Marihuana Cultivation Facility has been conducted in a manner adverse to the protection of the public health, safety or welfare of the City of Traverse City.

Immediately upon such revocation, written notice thereof shall be given by the City Clerk to the property owner in person or by certified mail addressed to his or her place of business or residence address set forth in the application. Immediately upon the giving of such notice, the permit shall become null and void.

844.08 COMPLAINTS; APPEALS.

If a written complaint is filed alleging that the Owner, Operator, or person occupying the Medical Marihuana Cultivation Facility has violated any provisions of this Chapter, the City Clerk shall promptly send a copy of the written complaint to the property owner, together with a notice that an investigation will be made as to the truth of the complaint. The property owner shall be invited to respond to the complaint and present evidence and respond to evidence produced by the investigation within twenty-one (21) days from the date of notice. If the City Clerk, after reviewing all relevant material, finds the complaint to be supported by a preponderance of the evidence, the complaint shall be certified.

If a permit is denied or revoked by the City Clerk, the applicant or holder of a permit may appeal to the City Manager within twenty-one (21) days from the date of the action appealed from. The City Manager shall hold a hearing and make a written determination, after presentation by the applicant and investigation by the City Clerk, as to whether or not the grounds for denial or revocation are true. If the City Manager determines that such grounds are supported by a preponderance of the evidence, the action of the City Clerk shall be sustained and the applicant may appeal the City Manager's decision to the City Commission within twenty-one (21) days from the City Manager's determination. Review by the City Commission shall be under the same standards of review as the determination by the City Manager and shall be in accordance with rules of procedure established by the City Commission. The City Commission's decision may be reviewed by a court of competent jurisdiction.

(Ord. 881. Passed 8-16-10.)

DEPARTMENT OF COMMUNITY HEALTH

DIRECTOR'S OFFICE

MICHIGAN MEDICAL MARIHUANA

(By authority conferred on the director of the department of community health by section 5 of initiated law 1 of 2008, MCL 333.26421 and executive reorganization order numbers 1996-1, 1996-2 and 2003-1, MCL 330.3101, MCL 445.2001 and MCL 445.2011)

R 333.101 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan medical marihuana act, Initiated Law 1 of 2008, MCL 333.26421.

(2) "Applicant" means a qualifying patient applying for a medical marihuana registry identification card on a form provided by the department of community health.

(3) "Code" means 1978 PA 368, MCL 333.1101.

(4) "Conviction" or "convicted" means a criminal conviction of an offense by a guilty verdict from a judge or jury, plea of guilty, or plea of no contest.

(5) "Debilitating medical condition" means 1 or more of the following:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or its treatment that produces, for a specific patient, 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(c) Any other medical condition or treatment for a medical condition approved by the department pursuant to a petition submitted under R 333.133.

(6) "Department" means the department of community health.

(7) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.

- (8) "Marihuana" means that term as defined in section 7106 of the code.
- (9) "Medicaid health plan" means the medical assistance program managed by the department.
- (10) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- (11) "Paraphernalia" means any item defined as "drug paraphernalia" pursuant to section 7451 of the code.
- (12) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for a qualifying patient who is under 18 years of age.
- (13) "Petition" means a written request for the department to add new medical conditions or treatments to the list of debilitating medical conditions under R 333.101(5).
- (14) "Physician" means an individual licensed as a physician under part 170 or 175 of the code. For purposes of the act, neither a physician assistant nor a nurse practitioner is authorized to sign the statement attesting to the patient's debilitating medical condition.
- (15) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
- (16) "Public place" means a place open to the public.
- (17) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (18) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.
- (19) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.
- (20) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.
- (21) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.
- (22) "Written certification" means a document signed by a physician stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.
- (23) Terms defined in the act have the same meanings when used in these rules.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.103 New registration application; qualifying patient and primary caregiver.

Rule 3. A qualifying patient applying for a registry identification card shall comply with all of the following:

(a) Submit a completed application on a form provided by the department, together with the requisite fee. The completed application shall include all of the following:

(i) Name, address, and date of birth of the qualifying patient. The address for the qualifying patient shall be a physical address located in this state. A qualifying patient who is homeless shall not be required to provide a physical address.

(ii) Name, address, and telephone number of the qualifying patient's physician.

(iii) The name, address, and date of birth of the patient's primary caregiver, if applicable. A qualifying patient may designate 1 primary caregiver to assist with his or her medical use of marihuana.

(iv) A designation of whether the qualifying patient or the patient's primary caregiver, if applicable, will be allowed to possess marihuana plants for the qualifying patient's medical use.

(v) An attestation by the primary caregiver named on the application that he or she agrees to serve as the patient's primary caregiver.

(vi) A primary caregiver shall authorize the department to use the information provided on the application to secure his or her criminal conviction history to determine if he or she has a felony conviction involving illegal drugs.

(b) Submit photographic identification of both the qualifying patient and the patient's primary caregiver, if applicable. If the qualifying patient is under the age of 18 and does not have photographic identification, no photographic identification is required. Photocopies of the following shall be considered acceptable forms of identification:

(i) Current driver's license or identification card, with photo, issued by a state.

(ii) Identification card with photo issued by a federal, state, or government agency.

(iii) Current military identification card.

(iv) Current passport.

(v) Current student identification card with photo.

(vi) Native American tribal identification with photo

(vii) Permanent resident card or alien registration receipt card.

(c) Submit a written certification, as defined in R 333.101(22), signed by a licensed physician. If the qualifying patient is under the age of 18, written certifications from 2 physicians are required.

(d) If the qualifying patient is under the age of 18, submit a declaration of person responsible form.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.105 Declaration of person responsible form.

Rule 5. A declaration of person responsible form is required for any qualifying patient who is under the age of 18. The form shall include all of the following:

(a) A statement that the qualifying patient's physician has explained to the patient and the patient's parent or legal guardian the potential risks and benefits of the medical use of marihuana.

(b) Consent of the qualifying patient's parent or legal guardian to allow the qualifying patient's medical use of marihuana.

(c) Consent of the qualifying patient's parent or legal guardian to serve as the patient's primary caregiver and to control the acquisition, dosage, and frequency of use of the marihuana by the patient.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.107 Incomplete application.

Rule 7. If an applicant fails to provide the information required under R 333.103 or R 333.105, as applicable, the application shall be denied. The department shall notify the applicant of the information that is missing in the event the applicant wishes to reapply. An applicant may reapply at any time.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.109 Verification of information.

Rule 9. The department shall verify the information contained in an application and the accompanying documentation, which may include, but is not limited to, the following:

(a) Contacting each applicant by telephone or by mail. If proof of identity cannot be determined with reasonable reliability, the department may require the production of additional identification materials.

(b) Contacting the parent or legal guardian of a qualifying patient who is under the age of 18.

(c) Verifying that a physician is licensed to practice in the state.

(d) Contacting the certifying physician directly to confirm the validity of the written certification.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.111 Fees; reduced fees; renewal.

Rule 11. (1) The fee for a new or renewal application is \$100.00, unless a qualifying patient can demonstrate his or her current enrollment in the Medicaid health plan or receipt of current Supplemental Security Income benefits, in which case the application fee is \$25.00. To qualify for a reduced fee, an applicant shall satisfy either of the following requirements:

(a) Submit a copy of the qualifying patient's current Medicaid health plan enrollment statement.

(b) Submit a copy of the qualifying patient's current monthly Supplemental Security Income benefit card, showing dates of coverage.

(2) The department shall deny the application of a qualifying patient who submits a reduced fee for which he or she is not eligible and shall notify the qualifying patient of the application denial. A qualifying patient may resubmit the correct fee with his or her qualifying documentation at any time.

(3) The fee for a revised or duplicate copy of the registration identification card for the qualifying patient or the primary caregiver is \$10.00. If a duplicate card is requested, the qualifying patient or primary caregiver shall submit to the department the fee with a statement attesting to the loss or destruction of the card.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.113 Registration approval; denial.

Rule 13. (1) Pursuant to section 6(c) of the act, the department shall approve or deny an application within 15 days of receiving a completed application and the requisite fee.

(2) If an application is approved, within 5 days of approving the application, the department shall issue a registry identification card to the registered qualifying patient and the registered primary caregiver, if applicable. The registry identification card shall include all of the following:

(a) The name, address, and date of birth of the registered qualifying patient.

(b) If the registered qualifying patient has designated a primary caregiver, the name, address, and date of birth of the registered primary caregiver.

(c) The issue date and expiration date of the registry identification card.

(d) A random and unique identification number.

(e) A clear designation showing whether the registered primary caregiver or the registered qualifying patient will be authorized to possess marijuana plants for the registered qualifying patient's medical use. The designation shall be determined based solely on the registered qualifying patient's

preference.

(3) When a registered qualifying patient has designated a primary caregiver, the department shall issue a registry identification card to the registered primary caregiver. The registered primary caregiver's registry identification card shall contain the information specified in subrule (2) of this rule, as appropriate.

(4) The department shall deny an application for any of the following:

(a) The applicant did not provide the physician's written certification.

(b) The department determines that any information provided by the applicant was falsified.

(c) An applicant fails to provide a physical address located in this state. This provision shall not apply if the applicant is homeless.

(d) The applicant failed to meet the requirements of R 333.107.

(5) If the department denies an application, the department shall mail the applicant a denial letter within 15 days of receipt of the completed application. The denial letter shall be sent by certified mail to the address listed on the application form and shall state the reasons for denial and when the applicant may reapply.

(6) Denial of a registry identification card shall be considered a final department action, subject to judicial review.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.115 Primary caregiver; number of qualified patients; compensation.

Rule 15. (1) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application. A registered primary caregiver may assist not more than 5 qualifying patients with their medical use of marihuana.

(2) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of a controlled substance.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.117 Annual renewal; expiration of registry identification card; fee.

Rule 17. (1) Pursuant to section 6(e) of the act, a registry identification card shall be renewed on an annual basis to maintain active status as a registered qualifying patient or a registered primary caregiver.

(2) A registry identification card shall expire on the first day of the month 1 year following issuance of the card.

(3) An applicant for renewal of a registry identification card shall submit an application and information as provided in R 333.103(a), (c) and (d).

(4) If an applicant fails to comply with subrules (1) and (3) of this rule by the expiration date on the registry identification card, the registry identification card shall be considered null and void and of no further effect. The applicant may submit a new application to the department.

(5) The department shall verify the renewal application information in the same manner as specified in R 333.109.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.119 Changes in status; notifications; requirements.

Rule 19. (1) In order to update registry information for a qualifying patient or primary caregiver, the registered qualifying patient, registered primary caregiver, or registered qualifying patient's parent or legal guardian, as applicable, is responsible for notifying the department of a change in any of the following:

- (a) The registered qualifying patient's name.
- (b) The registered qualifying patient's address.
- (c) The registered qualifying patient's primary caregiver.
- (d) The registered qualifying patient's legal guardian.

(2) The department may notify a registered primary caregiver by certified mail at the address of record within 14 days of any changes in status including, but not limited to, both of the following:

- (a) The registered qualifying patient's termination of the individual's status as primary caregiver or designation of another individual as the registered primary caregiver.
- (b) The end of eligibility for the registered qualifying patient to hold a registry identification card.

(3) If the department is notified by a registered qualifying patient that the registered primary caregiver for the patient has changed, the department may notify the initial primary caregiver by certified mail at the address of record that the caregiver's registry identification card is null and void and of no effect.

(4) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the department shall notify the patient within 14 days of receipt of the written notification that the patient's registry identification card is null and void and of no effect.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.121 Confidentiality.

Rule 21. (1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marijuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes,

but is not limited to, all of the following:

(a) Applications and supporting information submitted by qualifying patients.

(b) Information related to a qualifying patient's primary caregiver.

(c) Names and other identifying information of registry identification cardholders.

(d) Names and other identifying information of pending applicants and their primary caregivers.

(2) Names and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics.

(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) The department may release information to other persons only upon receipt of a properly executed release of information signed by all individuals with legal authority to waive confidentiality regarding that information, whether a registered qualifying patient, a qualifying patient's parent or legal guardian, or a qualifying patient's registered primary caregiver. The release of information shall specify what information the department is authorized to release and to whom.

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.123 Complaints.

Rule 23. The department shall refer criminal complaints against a registered qualifying patient or registered primary caregiver to the appropriate state or local authorities.

History: 2009 MR 6, Eff. Apr. 4, 2009.

R 333.125 Revocation; nullification.

Rule 25. (1) A registered qualifying patient or registered primary caregiver who has been convicted of selling marihuana to someone who is not allowed to use marihuana for medical purposes under the act, shall have his or her registry identification card revoked and may be found guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

(2) A registry identification card that is later determined to be based on fraudulent information is null and void and of no effect.

(3) Any person who has been convicted of a felony involving illegal drugs shall not serve as a qualifying patient's primary caregiver under the act.

(4) The department shall send written notice by certified mail to a registered qualifying patient or the patient's registered primary caregiver of any of the following:

(a) An intent to revoke or nullify a registry identification card.

(b) That a primary caregiver no longer qualifies for approval under the act based on a felony drug conviction.

(5) The notice referenced in subrule (4) of this rule shall include the right to request a contested case hearing. If the request for hearing is not filed with the department within 21 days from the date the notice was mailed by the department, the right to request a contested case hearing shall be waived.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.127 Management of medical marihuana.

Rule 27. (1) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with the act, if the qualifying patient possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana.

(b) If the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(c) Any incidental amount of seeds, stalks, and roots.

(2) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with the act, if the primary caregiver possesses an amount of marihuana that does not exceed the following:

(a) Two and one-half (2.5) ounces of usable marihuana for each registered qualifying patient to whom he or she is connected through the department's registration process.

(b) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked

facility.

(c) Any incidental amount of seeds, stalks, and unusable roots.

(3) An individual may simultaneously be registered as a qualifying patient and as a primary caregiver.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.131 Review panel for reviewing petitions for additional medical conditions or treatments.

Rule 31. (1) The department shall appoint a panel of not more than 15 members to review petitions to add medical conditions or treatments to the list of debilitating medical conditions under R 333.101 (5). A majority of the panel members shall be licensed physicians, and the panel shall provide recommendations to the department regarding whether the petitions should be approved or denied.

(2) Members of the review panel shall include, but not be limited to, the Michigan chief medical executive and 7 appointed members of the advisory committee on pain and symptom management as described in MCL 333.16204a. The 7 review panel members from the advisory committee on pain and symptom management shall include 4 licensed physicians and 3 non-physicians.

(3) The department shall provide staff support to the review panel to assist with the scheduling of meetings, conference calls, dissemination of petition-related materials, and to perform other administrative duties related to the performance of the panel's review.

(4) A quorum of the review panel shall concur with the recommendation in order to be considered an official recommendation of the panel. For the purposes of this subrule, a majority of the members appointed and serving on the review panel constitutes a quorum.

History: 2009 MR 6, Eff. Apr. 4, 2009.

Rule 333.133 Petition to add qualifying diseases or medical conditions; review panel; recommendations.

Rule 33. (1) The department shall accept a written petition from any person requesting that a particular medical condition or treatment be included in the list of debilitating medical conditions under R 333.101.

(2) The department shall submit the written petition to the review panel. Within 60 days of receipt of the petition, the panel shall make a recommendation to the department regarding approval or denial of the petition.

(3) Upon receipt of a recommendation from the review panel, the department shall do all of the following:

(a) Post the panel's recommendations on the department's website for public comment for a period of 60 days.

(b) Give notice of a public hearing not less than 10 days before the date

of the hearing.

(c) Hold a public hearing within the 60-day time period that the recommendation from the panel is posted on the department's website.

(4) After a public hearing, the department shall forward comments made during the hearing to the panel for review. If, based on a review of the comments, the panel determines that substantive changes should be made to its initial recommendation, the petition shall be denied, the department shall provide the petitioner with a copy of the initial recommendation and an explanation of the substantive changes, and the petitioner may resubmit the petition to the department at any time. If no changes are made to the initial recommendation or the changes are minor and do not affect the general content of the recommendation, the department shall forward the recommendation to the department director for a final determination on the petition.

(5) Within 180 days of the date the petition is filed with the department, the department director shall make a final determination on the petition. The approval or denial of the petition shall be considered a final department action subject to judicial review under the act.

(6) If the petition is approved, the department shall create a document verifying the addition of the new medical condition or treatment to the list of debilitating medical conditions identified under R 333.101. Until such time as these rules are amended to officially recognize the medical condition as a qualifying debilitating medical condition, the department shall develop a policy that allows the new medical condition to be used as a qualifier for a registry identification card.

History: 2009 MR 6, Eff. Apr. 4, 2009.

SENATE BILL No. 17

January 19, 2011, Introduced by Senator JONES and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 7421.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7421. (1) A PERSON SHALL NOT ORGANIZE OR OPERATE A
2 MARIHUANA CLUB.

3 (2) A PERSON SHALL NOT OPERATE A MARIHUANA BAR OR KNOWINGLY
4 ALLOW LAND OR A STRUCTURE ON LAND OWNED BY OR IN THE POSSESSION OF
5 THE PERSON TO BE USED AS A MARIHUANA BAR.

6 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
7 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR
8 A FINE OF NOT MORE THAN \$500.00, OR BOTH.

9 (4) AS USED IN THIS SECTION:

1 (A) "MARIHUANA BAR" MEANS, SUBJECT TO SUBDIVISION (C),
2 PROPERTY WHERE AN INDIVIDUAL IS ALLOWED TO USE MARIHUANA UNDER THE
3 MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL 333.26421 TO
4 333.26430, IF THE USE OF MARIHUANA ON THE PROPERTY IS CONDITIONED
5 ON THE PAYMENT OF A FEE.

6 (B) "MARIHUANA CLUB" MEANS, SUBJECT TO SUBDIVISION (C), AN
7 ASSOCIATION OF INDIVIDUALS WITH MEMBERSHIP RESTRICTED TO THOSE WHO
8 PAY MONEY OR ANY OTHER THING OF VALUE TO BECOME MEMBERS, THE
9 PURPOSE OF WHICH IS TO ALLOW MORE THAN 1 INDIVIDUAL TO USE
10 MARIHUANA UNDER THE MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL
11 333.26421 TO 333.26430, AT THE SAME TIME IN THE SAME PRIVATE PLACE.

12 (C) "MARIHUANA BAR" AND "MARIHUANA CLUB" DO NOT INCLUDE ANY OF
13 THE FOLLOWING:

14 (i) PROPERTY USED AS A HOSPICE LICENSED UNDER PART 214.

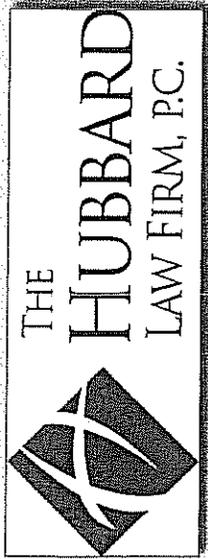
15 (ii) PROPERTY USED AS A NURSING HOME OR SKILLED NURSING
16 FACILITY LICENSED UNDER PART 217.

17 (iii) PROPERTY WHERE MARIHUANA IS LEGALLY DISPENSED UNDER THE
18 MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL 333.26421 TO
19 333.26430.

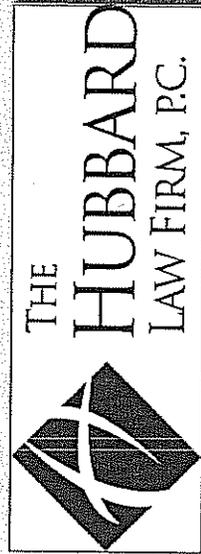
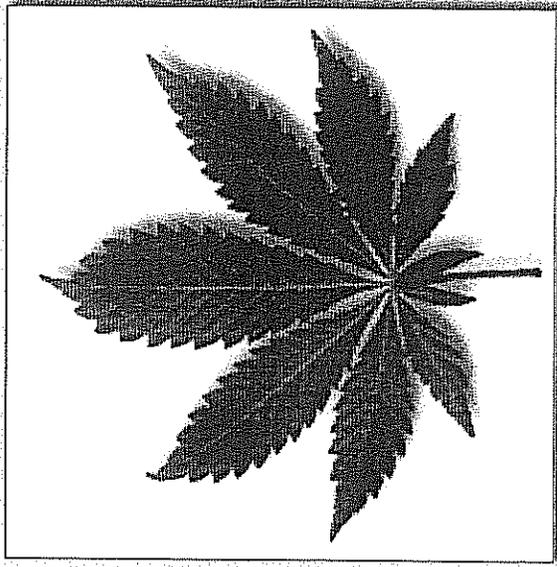
20 (D) "PAYMENT OF A FEE" MEANS THE PAYMENT OF MONEY OR ANY OTHER
21 THING OF VALUE. PAYMENT OF A FEE INCLUDES THE PURCHASE OF GOODS OR
22 SERVICES, INCLUDING GOODS OR SERVICES THAT ARE NOT INCIDENTAL TO
23 THE USE OF MARIHUANA, AND THE PAYMENT OF MONEY OR ANY OTHER THING
24 OF VALUE TO BELONG TO AN ASSOCIATION OF INDIVIDUALS.

ABOUT OUR LAW FIRM

The Hubbard Law Firm represents local units of government and elected officials throughout the state. It recognizes that the proper function of attorneys who serve municipalities is to timely identify legal issues, inform public bodies as to how these issues affect their communities, present available options in response and assist municipalities in adopting and implementing whatever courses of action they choose to take. The Hubbard Law Firm is not an advocate for or against the wisdom of Michigan's Medical Marihuana Act. However, the simple truth is that more than three million voters have approved this law and its provisions will impact every Michigan community in one way or another. Responsible local units of government will educate themselves about the new law's provisions and make informed decisions as to whether, and to what extent, it will react to them. The Hubbard Law Firm welcomes the opportunity to assist local units of governments as they pursue this important task.



MICHIGAN'S MEDICAL MARIHUANA ACT: MUNICIPAL IMPLICATIONS



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The Cultivation of the Michigan Medical Marijuana Act

Voter Initiated
 On November 4, 2008, a citizen initiated law known as the Michigan Medical Marijuana Act ("MMMA") was passed by sixty-three percent of Michigan voters. By doing so, Michigan became the 13th state to legalize the use of marijuana for medicinal purposes.

From Application to Harvest:

To qualify under MMMA an individual who suffers from a debilitating medical condition must obtain a written certification from a MD or DO. This certification must provide that, in the physician's professional opinion, the patient is likely to benefit from the use of marijuana. Once the Qualifying Patient receives the written certification, he or she must complete the application and send it, with the application fee, to the Department of Community Health. If the application is complete, the Department must issue the Registry Identification Card to the Qualifying Patient. When the Qualifying Patient receives the card they can grow their own marijuana or obtain marijuana grown and dispensed by a designated Primary Caregiver.

Department of Community Health

Administration and enforcement of the MMMA is the responsibility of the Department of Community Health. The Department is to review the applications and maintain a list of those individuals who have been issued registration cards.

By the Numbers

- ✿ \$100 - Annual application fee.
- ✿ 56,513 - Original and Renewal Applications received by the Department.
- ✿ 29,336 - Patient registrations issued.
- ✿ 7,039 - Applications denied.

The Michigan Medical Marijuana Act: Why Should a Municipality Care?



Freedom of Information Act ("FOIA") - The Department of Community Health maintains a list of those individuals who have been issued registration cards. This list is exempt from FOIA. The Department can provide a local law enforcement official with information to verify the authenticity of a Qualifying Patient's Registration Card. **How can a municipality determine where medical marijuana is grown and distributed? How should a municipality handle a FOIA request? What should a municipality do with information obtained from the Department?**

Zoning & Ordinance Enforcement - The MMMA permits a Primary Caregiver and Qualifying Patient to grow marijuana in an enclosed and locked facility. MMMA prohibits the use and possession of marijuana on school property. Similarly, an individual cannot smoke marijuana in any public place. **Can a municipality impose fees and licenses with respect to the growing and dispensing of marijuana? Can a municipality regulate activity permitted by the MMMA? How does a municipality enforce ordinances pertaining to the MMMA?**

Employment - The MMMA does not require a municipality to permit the ingestion of marijuana in the workplace or accommodate any employee while he or she is under the influence of marijuana. **How can a municipality determine whether an employee is "under the influence" of marijuana? Is a municipality permitted to implement policies pertaining to the medical use of marijuana? What should a municipality do if an employee fails a drug test and the employee is a Qualified Patient?**

Governmental Immunity - Generally a governmental agency is not subject to liability for injuries to third parties unless that governmental entity is grossly negligent. Under the MMMA, an individual cannot engage in any task while under the influence of marijuana if doing so would constitute negligence or professional malpractice. **How does the MMMA affect a municipality's potential exposure to liability?**

Preemption - The MMMA is a citizen initiated law approved by over three million voters. The MMMA permits a Primary Caregiver to grow up to 60 plants or 12 plants each for a maximum of 5 Qualifying Patients. Under Federal law, it is a crime to possess, manufacture, and distribute marijuana, but the MMMA permits Qualifying Patients and Primary Caregivers to engage in these activities. **What effect does the method of the MMMA's adoption have on other statutes pertaining to the possession and use of marijuana? Does the Right to Farm Act preempt local ordinances? How does this affect a municipality's ability to enact local ordinances?**

Responsible Governance - Your municipality should decide the most appropriate way to address the MMMA. Every decision involves risk. The Hubbard Law Firm is committed to minimizing your risk while helping you achieve your objectives. **What are the implications if your municipality chooses to ignore the MMMA or forbid activity authorized by it? Can a municipality offset the costs of regulation and, if so, how does a municipality achieve this objective? How will your municipality respond to the MMMA?**

MICHIGAN MEDICAL MARIHUANA ACT: TWO YEARS AND COUNTING

PRESENTED BY:

MICHAEL G. WOODWORTH

ATTORNEY AT LAW



THE
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in conjunction with the
Michigan Municipal League's
"The Medical Marihuana Act & Your Community"
Wyoming, Michigan

FEBRUARY 10, 2011



michigan municipal league
business alliance program



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Part 1

**THE FEDERAL CONTROLLED SUBSTANCES ACT
AND MICHIGAN LAW**

ACLU Litigation: *Lott v City of Livonia, City of Birmingham and City of Beverly Hills*, Wayne Co. Circuit Court No. 10-013917-CZ

A. Plaintiffs' Complaint:

The Birmingham Ordinance

Paragraph 59: "Although Ordinance No. 2026 contains no explicit reference to medical marihuana, its purpose and effect is to criminalize medical marihuana."

Paragraph 63: "Thus, although the MMMA provides that registered patients and their caregivers 'shall not be subject to arrest, prosecution, or penalty in any manner' for the medical use of marihuana, the medical use of marihuana in accordance with the MMMA is a crime within the City of Birmingham."

B. The City of Birmingham's Answer:

Paragraph 59: "Defendant, City of Birmingham admits the statement contained in paragraph number 59 that the ordinance contains no explicit reference to medical marihuana. However, the purpose of the ordinance is to place everyone on notice that they are to obey all local, state and federal laws. Moreover, it is MCL 333.26421 *et seq.*, that is in conflict with state law, the Public Health Code and the Federal Controlled Substance Act."

Paragraph 63: "Defendant, City of Birmingham admits the statement contained in paragraph number 51 [sic]. In further answer the ordinance is consistent with the Public Health Code and the Federal Controlled Substance Act, which are the statutes that prohibit the use of marihuana, medical or otherwise."

C. State Law

MCL 333.26421, et seq., the Michigan Medical Marihuana Act's first expressed purpose: "...to allow under state law for the medical use of marihuana..."

MCL 333.26427(e) "All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act."

MCL 333.7212, of Michigan's Public Health Code lists Marihuana as a schedule 1 drug, the manufacture, delivery, possession or use of which are made unlawful by subsequent provisions of the Public Health Code.

MCL 752.11 provides that "Any public official, appointed or elected, who is responsible for enforcing or upholding any law of this state and who willfully fails to uphold or enforce the law with the result that any person's legal rights are denied is guilty of a misdemeanor."

MCL 750.478 provides that "When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor..."

D. Federal Law

The federal Controlled Substances Act makes it a federal offense to manufacture, possess or distribute marihuana.

21 USC 903 provides: "No provision of this subchapter shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any state law on the same subject matter which would otherwise be within the authority of the State, unless there is *a positive conflict* between that provision of this subchapter and that State law so that the two cannot consistently stand together."

21 USC 885(d) provides: "...no civil or criminal liability shall be imposed by virtue of this subchapter upon...any duly authorized officer of any State, territory, political subdivision thereof, (who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.)"

reference to federal controlled substances act

E. State Law Preemption

State law preempts regulation by a county, township or municipality where the local regulation directly conflicts with a state statute. For purposes of this doctrine a direct conflict exists between a local regulation and a state statute when the local regulation prohibits what the statute permits. *McNeal v Charlevoix County*, 275 Mich App 686, 697 (2007).

F. Federal Supremacy Clause & Preemption

United States Constitution, Art VI, Cl 2: “This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land...any thing in the laws of any state to the contrary notwithstanding.”

When Congress includes a provision explicitly addressing preemption in the legislation it enacts, that indicia of intent will be relied upon by courts. See *California Federal Savings & Loan v Guerra*, 479 US 272, 282 (1987).

G. Just a Few of the Significant Questions Presented

1. What is a “Positive Conflict” for purposes of the federal Controlled Substances Act?

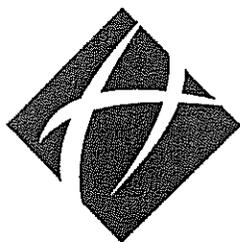
State allowance of behavior that is unlawful under federal law vs State participation or subsidizing of that behavior

2. Does 21 USC 885(d) protect the following from possible federal prosecutions: (a) local law enforcement officials who seize marihuana but are subsequently required by state court order to return it to a medical marihuana patient? (b) Members of a public body who adopt a local ordinance specifying where and under what conditions registered patients and caregivers can grow and transfer medical marihuana?
3. Does the MMMA affirmatively grant legal rights or just carve out limited exceptions to what would otherwise be criminal defenses?



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The above is intended only to provide general information and should not be construed as legal advice. As with every legal issue, the analysis of each fact/situation will have different results. You should consult with informed legal counsel for advice on how any laws, regulations and court opinions apply to your specific situation.



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Part 2

MORATORIUMS

Many Michigan municipalities have adopted moratoriums temporarily suspending decisions on whether and/or how they are going to address issues presented by the MMMA.

A. The proper goal of a moratorium is to allow a municipality to consider and craft an informed response to the MMMA consistent with its community's legitimate concerns and objectives.

B. To be legally defensible a moratorium should:

1. substantially advance a legitimate governmental interest;
2. not deprive owners of all productive or economically valuable use of their property;
3. be adopted in good faith;
4. not unreasonably interfere with the owners investment backed expectations;
5. be of limited duration

C. Adoption of a moratorium can be accomplished by ordinance or resolution.

D. The maximum duration of a moratorium, like moratoriums themselves, is not specifically addressed by Michigan statutes.

E. If an adopted moratorium is challenged a municipality should be prepared to demonstrate movement toward an ultimate resolution of the issues prompting the moratorium's adoption.

Disturbance to communities, law enforcement, zoning



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Part 3

PATIENT TO PATIENT TRANSFERS

A. The statutory basis: Section 7(a) of the MMMA provides that the medical use of marihuana is allowed under state law to the extent carried out in accordance with the Act. The “medical use” of marihuana is defined to specifically include: the “possession”, “delivery” and “transfer” of marihuana on the one hand, and the “acquisition” of marihuana on the other. This definition is sufficiently encompassing to allow for patient to patient transfers of medical marihuana.

B. *State of Michigan v McQueen, et al.*, Isabella County Circuit Court No 10-8488-CZ

1. **Facts taken from the court’s opinion:** Defendants lease lockers to qualifying patients and registered caregivers who are members of their business. Members store medical marihuana in these lockers and purchase it from, or sell it to, other members. Often, a registered caregiver receives permission from his or her registered qualifying patient to store that patient’s marihuana at the defendants’ business and sell it to other members. Registered qualifying patients retain ownership of the medical marihuana at all times. The defendants’ business does not own, purchase or sell any marihuana but defendants collect locker rental fees, membership fees and 20% of the sale price upon a transfer. The business pays Michigan sales tax for each transfer. No marihuana is grown or smoked on the premises. The Isabella County prosecuting attorney brought a civil action seeking an injunction to prevent defendants from operating their business. The court denied the request for an injunction in a written opinion dated December 16, 2010.

Make it about
the building through
Land Use & Zoning

2. **Opinion:** The circuit court relied upon the presumption of medical use in accordance with the MMMA that appears in section 4(d) of the Act. It found that: *“patient to patient transfers and deliveries of marihuana between registered qualifying patients fall soundly within medical use of marihuana as defined by the MMMA.”*
3. **The court explained:** “Even when a registered primary caregiver transfers medical marihuana to another member, such caregiver does so under the authorization of the patient to whom he or she is registered. The Legislature did not prohibit such transfers, and such registered primary caregiver conceivably serves as a person who assists a registered qualified patient with using or administering marihuana. MCL 333.26424(i)
4. **Current status:** On January 5, 2011, the Isabella County Prosecuting Attorney has filed a claim of appeal from the circuit court’s decision to the Michigan Court of Appeals. He is also seeking to have the appeal process expedited. Briefs on the merits have yet to be filed.



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Part 4

**THE DEPARTMENT OF DRUG ENFORCEMENT'S EFFORTS
TO SUBPOENA RECORDS CONFIDENTIAL
UNDER THE MMMA**

- A. State Confidentiality:** Section 6(h) of the MMMA provides: "Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential." Subsection (i) of Section 6 makes it a misdemeanor for a person, including an employee or official of the department of health or another state agency or local unit of government, to disclose confidential information in violation of the MMMA.
- B. The DEA's Subpoena:** In June 2010, the DEA issued a subpoena to the Michigan Department of Community Health seeking copies of "all documents, records, applications, payment method of any application for Medical Marijuana Patient Cards and Medical Marijuana Caregiver cards and the front and back of any cards located for" seven individuals.
- C. Court Proceedings:** On December 22, 2010, the U.S. Attorney's Office filed a petition with the U.S. District Court for the Western District of Michigan asking for judicial enforcement of the DEA's subpoena. The case is captioned: *United States of America v Michigan Department of Health*. Assigned to Judge Gordon Quist, its docket number is 1:10-mc-109.
- D. The Michigan Attorney General's Response:** State Attorney General, William Schuette, has told the court that "the DHC will comply with a valid order...requiring DCH to comply with the DEA subpoena. The order should also make clear that, pursuant to the Supremacy Clause of the U.S. Constitution, DCH, its employees and agents will be immunized from liability for providing information that is confidential under MCL 333.26426(h)."

E. Intervention. The Michigan Association of Compassion Clubs (“MACC”) and Cannabis Patients United (“CPU”) have sought to intervene in this case. CPU has argued that the DEA’s subpoena should be quashed because: (1) privacy interests “trump” the government’s interest in enforcing the subpoena; (2) the subpoena is an unwarranted invasion of the physician/patient relationship; (3) the constitution warrants that the subpoena be quashed; and (4) absent a showing of necessity and relevance, the subpoena is unreasonable. The MACC has argued that enforcement of the subpoena would have a chilling effect on medical marijuana patients who rely on the MMMA’s confidentiality provisions.

F. Status: Arguments on two issues were presented to a federal magistrate on February 1, 2011. These issues are whether MACC and CPU have standing to intervene in the case and whether the DEA’s subpoena should be enforced. The magistrate will either issue a written opinion deciding these issues or submit a report and recommendation for Judge Quist’s recommendation.



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PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546

MEMORANDUM

FROM: Denise Blakeslee 
DATE: February 25, 2011
RE: Handouts

Prior to the Public Hearing on February 24, 2011 on Medical Marihuana. Jeff Moffett requested that copies of the attached information be made.

I made copies for each Planning Commissioner and placed them at their seat prior to the meeting.

:djb

The EyePet was so compelling, it made us forget we were waving a controller over a piece of carpet

TECHLAND, PAGE 48

Life

□ ASSIGNMENT DETROIT □ SHOPPING □ TECHLAND



ASSIGNMENT DETROIT

Higher Learning. How yesterday's auto-industry workers are training to become Michigan's legalized-marijuana suppliers

BY STEVEN GRAY/SOUTHFIELD

THIS IS WHAT A MEDICAL-MARIJUANA CLASS looks like. Twenty-five or so students—men, women, young, middle-aged—listen attentively as an instructor holds up a leafy green plant and runs down the list of nutrients it needs. Nitrogen: stimulates leaf and stem growth. Magnesium: helps leaf structure. Phosphorous: aids in the germination of seeds. Michigan's Med Grow

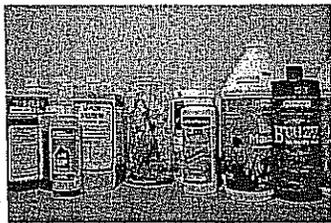
Cannabis College is one of several unaccredited schools to have sprung up in the 14 states and the District of Columbia that have legalized medical use of marijuana. Many of its students suffer from chronic pain. Others are looking to supply those in need of relief.

The Med Grow campus sits across the street from a KFC in Southfield, a relatively prosperous suburb of Detroit. Nearly one-fifth of its 90 or so students are former

A tree grows in Southfield Med Grow's Nick Tennant with a marijuana plant at his school

auto-industry workers. These recent enrollees—and the more than 1,000 people who have completed courses at Med Grow since it opened in September—are betting that studying such topics as bloom cycles and advanced pruning techniques will help them succeed in what may be one of the few growth industries in Michigan,

Green thumb
 Med Grow teaches students how to maximize marijuana growth using special lamps, nutrients and pruning techniques. More than 1,000 people have completed courses there since September



home of the nation's highest unemployment rate: 14%. With medical marijuana fetching as much as \$500 for 1 oz. (28 g), providing it to a mere five patients could generate \$10,000 a month in sales.

Six-week courses at Med Grow cost \$475, and the school is planning to open campuses in Colorado and New Jersey within roughly the next year. Meanwhile, the nation's first marijuana school, the three-year-old Oaksterdam University, has expanded from Oakland, Calif., to locations in Los Angeles and one in Flint, Mich., and may open more.

But as Med Grow founder Nick Tennant can attest, it's not easy being a leader of an emerging industry. Tennant, a very lean, very blond 24-year-old, grew up in the Detroit suburb of Warren and watched the auto-detailing business he started after high school founder along with the region's economy. Then, in 2008, a surprising majority of Michigan voters approved a measure to allow people with cancer, Crohn's disease, AIDS and other ailments to apply for state-issued cards to grow or obtain marijuana. He recalls thinking, "You could sit there and watch the industry evolve or step into the game."

So he wrote up a business plan for a marijuana-growers school and approached his car-detailing clients as potential investors. Many thought it was a

D **Assignment Detroit**
 For more stories from Time Inc.'s special project, go to time.com/detroit

joke, but enough took him seriously. He declines to say how much money he raised.

The next step was finding a landlord. One told him flatly, "I don't want to take on the risk." To which Tennant replied, "If you want to let your building sit vacant, go for it." He eventually settled on 5,000 sq. ft. (465 sq. m) in an office building in Southfield, a half-hour's drive north of downtown Detroit.

The first thing you notice when you walk into Med Grow is the pungent smell of marijuana. One of the school's two grow rooms showcases a single massive marijuana plant that, in terms of height and canopy, is about the size of a kitchen table.

Size matters, because Michigan limits

Tennant wrote up a business plan for a marijuana-growers school. Many thought it was a joke

the number of plants patients and caregivers may grow. Patients, more than 18,000 of whom have registered with the state since the law took effect in April 2009, may grow up to 12 marijuana plants. Caregivers—some 7,800 have registered so far—are restricted to a dozen plants for each of the five patients they're allowed to supply. But the law doesn't address where registrants can obtain plants or seeds. Nor does it address the issue of pharmacy-like dispensaries.

"This law is still brand-new, and it has a lot of gray areas," says James McCurtis, spokesman for Michigan's department of community health, which manages the state's medical-marijuana program.

Southfield's police chief, Joseph Thomas Jr., is keeping a close eye on Med Grow. His officers have let its students know that if they get caught with marijuana, then, as Thomas puts it, "we're going to drop you like a bad habit." Although he thinks the school has a right to exist, he uses this analogy: "You can teach people how to shoot a gun, but they can't go out and rob a bank with it."

Med Grow's curriculum includes classes on law, accounting and business development. But marketing yourself as a caregiver is tricky. Students are warned against telling acquaintances that they grow marijuana. Med Grow staffer Tom Schuster, 52, a former bank employee, provides a cautionary tale: a few weeks ago, someone ripped a hole in the wall of an apartment he managed and took \$15,000 worth of marijuana and \$5,000 worth of lamps and other growing equipment. "Stole my whole livelihood," he says of the incident, which he did not report to the police.

Fear of violent crime is one reason recreational use of marijuana is still illegal almost everywhere. And yet, ironically, the reason Detroit may follow Philadelphia's lead and liberalize restrictions on possession of small amounts of marijuana is to alleviate the strain on the local criminal-justice system.

In November, Californians will vote on a measure that would legalize marijuana for recreational use—and allow the drug to be taxed. Tom Ammiano, a Democratic assemblyman from San Francisco, estimates such a tax could generate up to \$2 billion in annual revenue for California. "When I speak about this issue, there's always a line of people with a business angle—an idea for a dispensary or a new grow light," he says. "We're a capitalistic society, and realistically, the tax will push people over the edge [to] realize, 'There's gold in them thar hills.'" And Nick Tennant will have his pickaxe at the ready. ■

Cannabis & Cancer

Many case studies have shown that Cannabis destroys cancer cells while leaving the healthy ones untouched.

A population-based case-control study of Marijuana in both lab & in animals have a significant effect on all major cancers.

Brain tumors
Breast cancer
Prostate cancer
Lung cancer
Colon cancer
Thyroid cancer
Skin cancer
Lymphoma Tumor
Leukemia
Pituitary cancer

They do this by promoting the death of cells that have forgotten how to die.

Endocannabinoids

We are all born w/ a form of cannabis already in our body. This is the E.C.S. (Endocannabinoid System). E.C.S. influences multiple physiological processes. This intricate system modulates (changes) Energy Intake as well as nutrient transport, Metabolism & Storage.

A completely natural collection of compounds, Endocannabinoids are our own form of Marijuana. They are involved in most of our cells & structures. They control a variety of functions in the Nervous system, Heart, Reproduction system, & Immune system.

Endocannabinoids messengers help the cells communicate. Typically they protect our good cells while killing the bad ones. Like cancer cells.

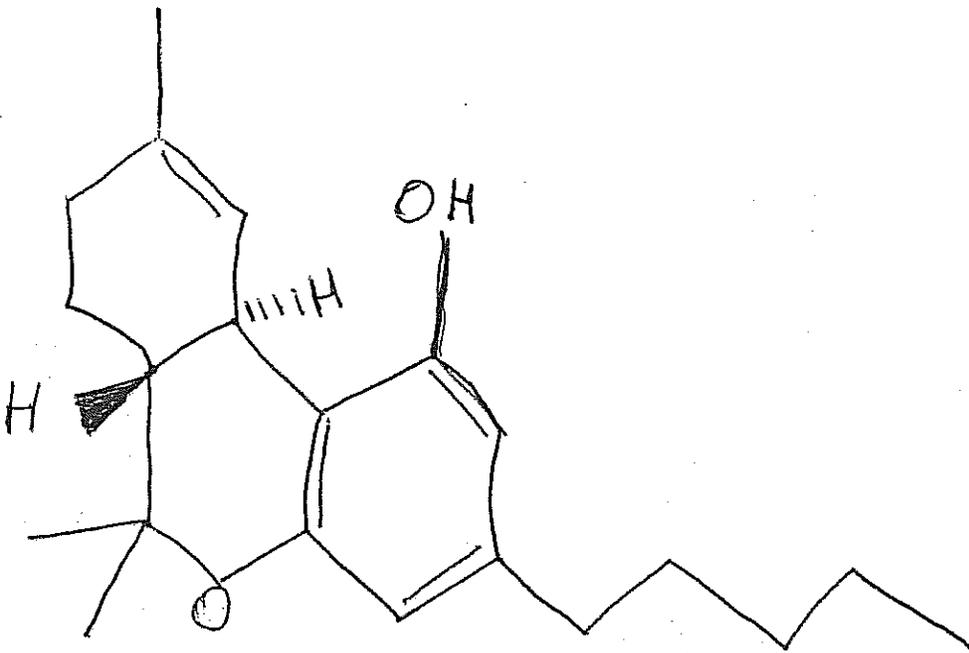
Federal Gov. I.n.d. Program

In 1978 the FDA created the "Investigational NEW Drug" Compassionate Access program.

This allowed people with medical necessity to use Medical Marijuana.

In 1992 the program was shut down. When Aids patients began to flood program they closed it to everyone but who was on the program already.

Still today 7 people receive a silver tin of a few hundred rolled joints every month, and will continue to do so till the day they die.



Medical Marijuana Academy

Marijuana 101 Glossary of Terms

Introduction to Cannabis

Medical Marijuana - Marijuana which has been cultivated without the use of harmful chemicals such as pesticides and is free of pests, mold, and disease.

Hemp – Sativa Strain of Marijuana with very little trace amounts of THC.

Industrial Hemp – Hemp used to produce textiles.

Sativa – The family of marijuana plants found naturally in warm, equatorial climates, characterized by long, thin leaf-blades and longer maturation periods.

Indica – The family of marijuana plants found naturally in northern or southern climates, characterized by short, wide leaf-blades and short maturation periods.

Rhuderalis – Auto-flowering cannabis strain. Photoperiod does not induce flowering. Very little THC.

THC - (Tetrahydrocannabinol) – The psychoactive ingredient in marijuana. Physiologically active ingredient which is the primary intoxicant in marijuana.

CBD (Cannabidiol) – Ingredient that usually prolongs the “high”.

Building a Grow Room

AMPS - a unit measuring the amount of electricity a device will consume.
(AMPS = WATTS/120)

Lumens – Measurement of light output: One lumen is equal to the amount of light emitted by one candle that falls on one square foot of surface located one foot away from one candle.

Lumens per Watt Ratio – Lumens divided by Wattage. Lumens/Wattage

Watt - The unit measures the rate of energy conversion. One watt is equal to 1 joule (J) of energy per second.

Wattage - The electric power required by an appliance or device.

Ballast – a transformer required to alter the electrical current for use by an HID lamp.

High Intensity Discharge (HID) – the most effective type of lamp for growing marijuana, especially metal halide and high pressure sodium types.

Metal Halide (MH) - an HID commonly used for plants in the vegetative stage.

High Pressure Sodium (HPS) - the most efficient HID, commonly used for plants in the flowering stage.

Hygrometer – An instrument that measure atmospheric humidity.

Thermometer - An instrument that measuring temperature.

Humidity - The amount of water vapor in the atmosphere.

pH – a scaling system used to measure the acidity or alkalinity of a substance, 1 being extremely acidic, 14 being extremely alkaline, and 7 being neutral.

CO₂ - (Carbon Dioxide) – a gas in the air necessary for plant life (some growers use supplemental CO₂).

Nutrients - A substance that provides nourishment for growth or metabolism.

Nutrient Lock – a condition of the grow medium whereby nutrients cannot be absorbed by roots due to improper pH balance.

Beginning to Grow – Different Techniques

Hydroponics - the science of growing plants without soil.

Aeroponics - the science of growing plants without any medium. Roots are sprayed with a fine mist.

Soiless Mix – a common grow medium usually made of peat moss, perlite and vermiculite.

Germination – the first stage of plant growth during which a seed is propagated into a seedling.

Foliage - the leaves of a plant.

How to Grow Cannabis

Flowering/Budding – the last phase of growth lasting six to ten weeks during which plants mature and develop buds.

Vegetation/Vegetative – a phase of rapid development during which shoots and foliage flourish, and overall size is achieved. Can last several weeks or several months. (also referred to as “vedge”, or “vedging”).

Hermaphrodite – a plant having both male and female flowers. (Typically an unstable strain that should be avoided).

Sexing - Determining if the plant is a male or female.

Pollen – a dust-like substance containing genetic information emitted from the male flower which causes the female flower to develop seeds.

Sinsemilla – female marijuana flowers that have no seeds due to the absence of male plants to pollinate them.

Clone - A genetic duplicate AKA cutting, taken from a mother plant. This way you never have to use seeds again!

Cloning – a common practice in which small clippings are taken from a parent plant and then rooted, eliminating the need for a constant supply of seeds.

Flowering Stage

Photoperiod - The amount of time the light is on ever day.

Trimming - the process of removing the fan leaves as well as the smaller leaves from the plant.

*Remember all of these leafs can be used to make hash or tinctures.

Curing - a process by which harvested, drying marijuana is lightly packed and sealed so that remaining moisture at the center of each bud is forced to distribute evenly throughout the bud.

Cooking with Cannabis

Hash - Concentrated THC

Hash Oil - Concentrated THC in an "oil" form either made through ISO extraction or Butane.

Canna-Butter - Cannabis concentrated butter used for cooking or various other applications

Canna-Oil - Cannabis concentrated oil used for cooking or various other applications

Canna-Flour Cannabis concentrated flour, once again used for cooking applications

Marijuana Milk - Also called "bhang", this is cannabis infused milk.

Tincture - Another cannabis concentrate made by "dissolving" the THC into food grade alcohol, and then left to sit for several days and or weeks.

Ointment – A cannabis concentrated ointment, also referred to as a topical application, lots of patients look for this.

NOTICE
City of Manistee
Planning Commission Worksession
Cancelled

The City of Manistee Planning Commission Worksession for Thursday, February 17, 2011 has been cancelled.

This notice was posted by Denise J. Blakeslee to comply with Sections 4 & 5 of the Michigan Open Meetings Act (P.A. 267 of 1976) at 12:00 noon, Tuesday, February 8, 2011 on the on the bulletin board at the south entrance to City Hall.

Signed: 
Denise J. Blakeslee

**Charter Township of Filer
Minutes of the Planning Commission Regular Meeting
Held on Tuesday, January 18, 2011**

Present: Terry Lindeman, Shirley Ball, Jennifer Williams, Roger Dittmer, Richard Mark, and Sharron Lemmer.

Absent: Christa Johnson.

Also present: Lynn Kooyers, Zoning Administrator and Kathryn Glancy, Township Attorney

Meeting called to order at 7:00 p.m. by Chairperson Williams.

Motion by Mark seconded by Lindeman to postpone the election of officers until the February meeting as a courtesy to include all members of the Planning Commission. All in favor. M/C

Motion by Lemmer, seconded by Mark to approve the December 21, 2010 Public Hearing Minutes as presented. All in favor. M/C

Motion by Mark, seconded by Lindeman to approve the December 21, 2010 Regular Meeting Minutes as presented. All in favor. M/C.

Continued discussion and review of the proposed Wild/Exotic Animal Ordinance.
The changes/corrections discussed at the December 21st Planning Commission meeting were made by Township Attorney Glancy and the revised ordinance was presented.

Chairperson Williams asked if any response had been received from Attorney Glancy's letter to the Manistee County Sheriff's Dept. regarding Filer's proposed Wild/Exotic Animal Ordinance. Zoning Administrator Kooyers and Attorney Glancy both stated that no reply had been received. Attorney Glancy commented that since the Sheriff's Dept. has an enforcement agreement with Filer Township, and has been made aware of the proposed ordinance, and given a chance to comment, the Planning Commission should now feel free to take action.

The minimum property line setback requirement of 100 ft. for any cage or pen stated in the Ordinance was also discussed.

Motion by Lindeman, seconded by Mark to forward the Wild/Exotic Animal Ordinance to the Township Board of Trustees for their consideration. All in favor. M/C.

Reports

Zoning Administrator's Report and Township Board Minutes were received. The Zoning Administrator stated that one sign permit was issued during December to the Jailhouse Bar. A new pole sign has been erected, replacing an old outdated sign of the same size. The new sign is quite an improvement.

DRAFT

Public Comment

- The shoulders on Wildwood Rd. should be improved some time in the future.

Mark questioned how the public would be made aware of the Wild/Exotic Animal Ordinance. It was commented that the Ordinance will be published twice in the newspaper before it goes into effect. Once the Ordinance is approved, it could also be posted on the township website.

Motion by Lindeman, seconded by Mark to adjourn the meeting. All in favor. M/C

Meeting adjourned at 7:20 p.m.

DRAFT

Respectfully submitted,

Roger Dittmer
Planning Commission Secretary