



# CITY OF GRAND RAPIDS AGENDA ACTION REQUEST

**DATE:** July 23, 2018

**TO:** Mayor Bliss and City Commission

**FROM:** Suzanne Schulz, Managing Director  
Design, Development, and Community Engagement

**SUBJECT:** **Questions related to marihuana regulations**

The City Commission has been considering opting-in to allow for medical marihuana facilities within the City of Grand Rapids in accordance with the Michigan Medical Marihuana Facilities Act (MMFLA). This Act allows for five facility types: growers, processors, provisioning centers, secure transporters, and safety compliance facilities. In addition, voters in the State of Michigan will be considering the legalization of recreational marihuana this November. The proposed Michigan Regulation and Taxation of Marihuana Act (MRTMA) allows a sixth type: marihuana microbusiness. In discussions about the topic of marihuana facilities and regulatory approaches, members of the City Commission have asked staff a number of questions. The responses contained herein should not be considered as legal opinions, nor do they cover all nuances of State law or the local administration of regulations.

## **1. If we pass a proposal for medical marihuana, can we opt out of recreational?**

The language of the MRTMA, in Section 6, part 1 states: “A municipality may completely prohibit or limit the number of marihuana establishments within its boundaries.” Part 5 of that same section reads: “A municipality may not adopt an ordinance that...prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act...”

- This does not mean that new locations must be offered for recreational marihuana facilities. However, if a community decides to opt-in for medical marihuana, then recreational is permitted where medical marihuana facilities are located.
- Individuals are allowed under this same section to initiate an ordinance “to provide for the number of marihuana establishments”. Therefore, the City would be vulnerable to a petition to dictate number of facilities. In the current petition an “unlimited number” is named.
- A common zoning tenet is that similar land uses must be treated the same. For example, it would not be possible to differentiate between a medical grow facility versus a recreational grow facility from a land use perspective.

**2. Can marihuana microbusinesses be allowed but not other types of marihuana facilities?**

Not for medical marihuana; the current law (MMFLA) does not provide for medical marihuana microbusiness nor do LARA rules. The City Commission would need to elect to not “opt in” for medical marihuana facilities and wait until the MRTMA is passed. However, given the Smart & Safe GR petition, which would “opt in” the City to MMFLA activities, it is possible that petition passes, the city will be “opted in” with no local rules in place regarding the placement or separation of marihuana facilities (absent City Commission action).

**3. If surrounding cities don't allow marihuana businesses by opting out, could they have an organized group put a marihuana proposal on the ballot in their community?**

Yes, advocates for either medical or recreational marihuana could petition to initiate an ordinance to “opt in” and provide for marihuana establishments in other West Michigan communities.

**4. What kind of wait regarding recreational marihuana will occur due to LARA rules and what does that mean for the City?**

The MRTMA requires LARA to “begin accepting applications for marihuana establishments within 12 months after the effective date of this act.” This means that it may be one year before licenses could be granted for recreational businesses. So long as local land use approval does not conflict with LARA rules, it is anticipated that Special Land Use approvals could be heard during the LARA rulemaking process so that microbusinesses are able to fully develop their business plans.

**5. Can approval of a request for a marihuana business be tied to the approval from a CID/BID (similar to alcohol)?**

City Commission policy provides for the consultation of a Corridor Improvement District (CID) Board where a Redevelopment Liquor License is requested. The CID may *recommend* to the City Commission approval of an alcohol license but does not have the authority to grant or deny. The proposed marihuana ordinance as drafted requires the creation of a Good Neighbor Plan, which could involve a CID review (although it is not expressly stated). Given that there are many potential marihuana locations within the city that are not unique to a CID in the same way a Redevelopment Liquor License is, it would not be a recommended practice to give greater weight to a CID’s input than other neighborhood or business areas which do not have a Tax Increment Finance Authority.

**6. Is it possible to include special accommodations for persons of color (to overcome systemic racialized practices around marihuana)?**

It is not possible to include race as a determinant of whether or not to approve a request — such a policy would violate the Michigan Constitutional ban on affirmative action (“Proposal 2”) and likely the Equal Protection Clause of the U.S. Constitution.<sup>1</sup>

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<sup>1</sup> Commissioners Lenear and Jones were in attendance at a meeting where a speaker mentioned that the City of Pontiac was initiating race criteria. On Friday, July 20<sup>th</sup> a phone interview was conducted with

**7. Can local hiring requirements be applied?**

Yes. Local hiring requirements can be agreed upon through the use of the Voluntary Equitable Development Agreement (VEDA) process. In the City of Pontiac, there is currently proposed language to require that 30% of employees will be city residents. A penalty is described if this number is not met. A minimum \$16/hour wage<sup>2</sup> is also described, with failure to perform being non-renewal of the facility's license. The City cannot, however, make this a requirement of approval; the offer must be voluntarily made by the applicant and accepted by the City Commission. A recommended "next step" for the Commission is to discuss expectations for the contents of a marijuana business VEDA on August 28<sup>th</sup>, with adoption of a revised policy on September 11<sup>th</sup>.

**8. What opportunities or avenues could be used to improve equity/insure equitable outcomes?**

This is a topic that many communities throughout the country have grappled with. Approaches range from identifying the physical boundaries of a community where those who have been disproportionately impacted are located for the purposes of directing training and technical assistance resources, to the allocation of marijuana tax revenue specifically for grants that facilitate record clearing, workforce development, industry support, and technical assistance (see *Compendium* for additional details).

This is an area of great opportunity for the City Commission to set policy. Ideally, this would be done in cooperation with Kent County since the County will be receiving tax revenue payments from the State that have been collected from marijuana facilities located within the City of Grand Rapids. A recommended "next step" would be for a subset of the City Commission to convene a working group with Kent County and, if desired, other stakeholders to develop funding priorities and an allocation formula based on anticipated marijuana tax receipts.<sup>3</sup>

**9. What chance will local businesses have unless they are already in the pool of applicants approved by the state?**

The State of Michigan has a two-stage application process. The first stage is pre-qualification. This is the background check to make sure that the applicant meets all fitness criteria. The second stage is for the business itself and includes information regarding location, security, procedures, etc. Grand Rapids' proposed ordinance requires pre-qualification prior to an applicant submitting for land use approval. This is for two main reasons. First, if the applicant cannot pass the first stage then staff

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Deputy Mayor Jane Bais-DiSessa. Ms. Bais-DiSessa stated that the two proposals being considered by voters in November for their community do not include consideration for race, but local hiring is encouraged.

<sup>2</sup> Pontiac's living wage provision is illegal per MCL 123.1381. Such requirements can be put in place for contractors used by the City, or when grants, tax abatements, or credits are applied. For the agreement to be lawful, there would have to be a tax grant associated with an approval.

<sup>3</sup> It is important to note that the current funding formula does change if the MRTMA is approved by voters.

effort would be wasted on a speculative application. Second, the prequalification requirement assists in managing work flow. It is unknown how many local businesses might be approved by LARA. It can be said, however, that the requirement in the MRTMA gives preference for only Michigan residents in the first two years of licensure.

**10. What areas within 1000' of the city limits could be potentially viable for a marihuana business?**

A map has been attached to the end of this document that shows those areas near to the city limits without the 1,000-foot buffer and if the buffer was reduced to 500-feet. The number of potential facility locations will be dependent upon the location of some sensitive uses in adjoining jurisdictions. For example, the MRTMA requires a 1,000-foot separation from schools.

**11. How do the separation distances comparing the Planning Department, Planning Commission, Hybrid, and MLCC requirements compare?**

An illustrative example, of separation distances in a business district located in each Ward, has been included at the end of this document. The Planning Department recommendation was 600' between facilities; Planning Commission recommendation was 1,000' between provisioning centers and 600' between other facilities; the Hybrid is 1,000' between marihuana microbusinesses and 600' between other facilities. The MLCC requires 500' separation distance from schools and churches and, up until recently, ½ mile (~2,600') between liquor stores/SDD licenses.

**12. Given the backlog of applications at the state level, what is our capacity for licensing and will it interfere with the election work if we don't hire additional staff?**

The proposed approach treats marihuana facilities similar to other land use and development requests. The City Clerk's office will not be accepting licensing applications; rather, the Office will grant final authorization for the facility upon receipt of the signed Planning Commission resolution.

It is anticipated that the most significant burden will be placed on Planning Department resources. Varying approaches are being explored to mitigate the additional work. The cities of Ann Arbor, Kalamazoo, and Battle Creek have been interviewed for "lessons learned" and the Department is investigating the use of consultants. Development Center staff is developing a work flow in Accella. Planning Commission agenda-setting rules are being evaluated to ensure that other development requests will have reserved space. In addition, Section 5.9.19.M. or the proposed ordinance provides a timeline for the receipt of applications to allow for progressive implementation. Given the amount of intense interest, it is very likely that a minimum of one FTE will be required to resource this work for the foreseeable future.

It is important to note that if the proposed Smart & Safe GR petition is approved by voters in November, then the City Clerk's office will be required to issue licenses for marijuana facilities. The Planning Director will be required to make a use interpretation and determine the process for review if the Zoning Ordinance is not amended beforehand to regulate the time, place and manner of such facilities.

**13. Would minority/women owned parties benefit from having more time to pool resources to get in the business if there was a delay in accepting applications immediately?**

This is unknown. However, acknowledging that microbusinesses would be allowed in the city before the MRTMA takes effect, and LARA rulemaking is finalized, does provide the opportunity to aggregate resources and identify locations where such a use would be permissible that would not otherwise be possible with a standard approach of granting approval under the MMFLA.

**14. A Wayne County Circuit Court judge made a ruling on February 16, 2018 that overturned a voter-approved medical marijuana initiative. How does this apply to Grand Rapids?**

Two voter-initiated ordinances were proposed for placement on Detroit's ballot. Ordinance A amended the City of Detroit's licensing ordinance, while Ordinance B amended the Zoning Ordinance. Both measures were approved by voters. Using the foundation of a 1972 court decision (*Korash v City of Livonia*), which prohibits zoning by initiative, the Circuit Court found that the initiated Ordinance B was invalid and those portions of Ordinance A that addressed zoning were also void. Amending the Zoning Ordinance to address marijuana facilities rather than through licensing allows elected officials the ability to manage new land uses in the public's interest.

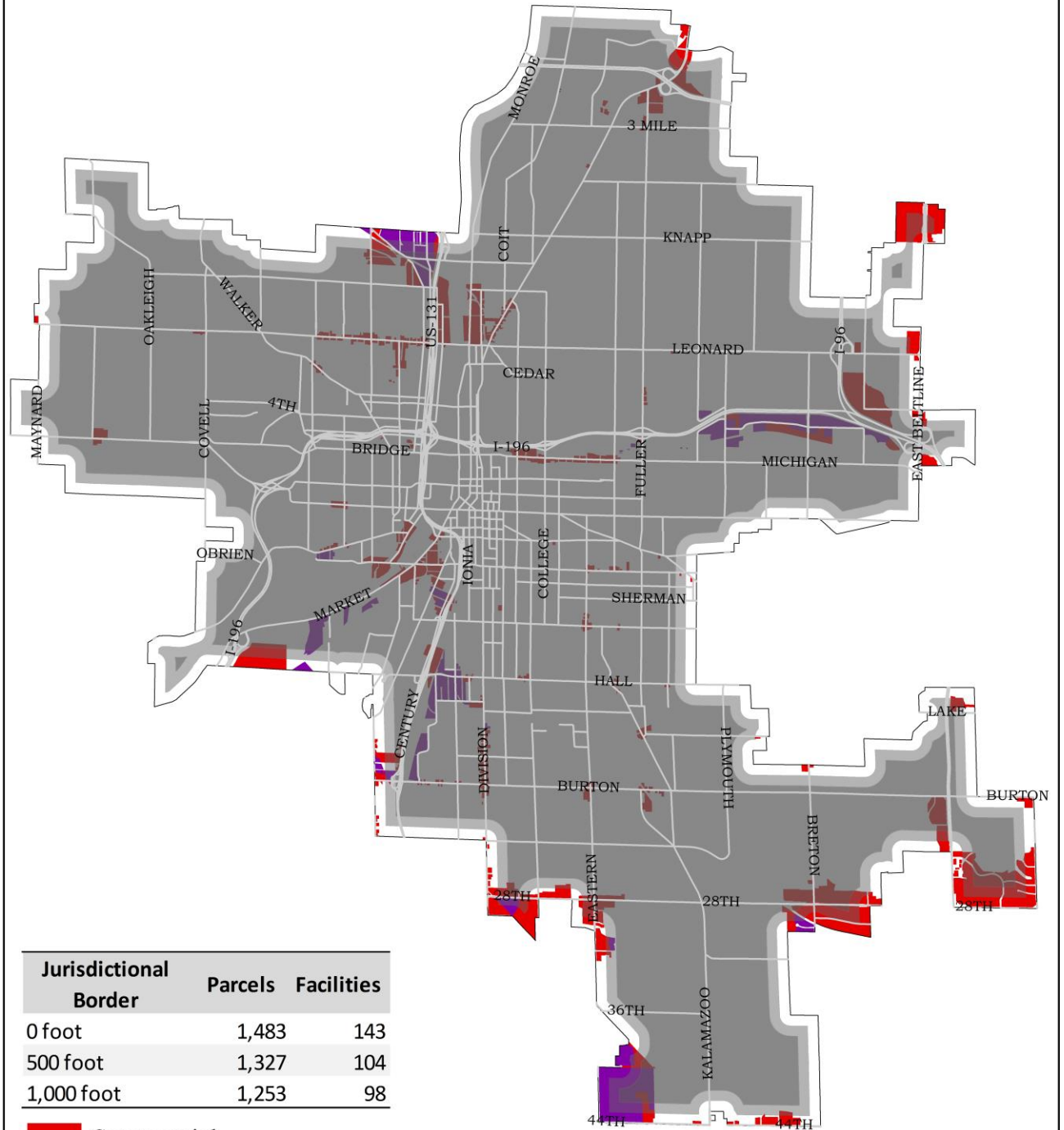
**15. In the Hybrid recommendation it looks like registered care givers will no longer be able to operate as a Home Occupation. Why?**

Just last week the State of Michigan Court of Appeals ruled in *Deruiter v Byron Township* that Byron's zoning code limiting medical marijuana caregivers to home occupations (similar to Grand Rapids) was more restrictive than what state law allows, and therefore not permitted. The Court said that local governments are not allowed to limit caregiver locations. Due to this ruling, city staff went back into the proposed ordinance and repealed all references to MMMA caregivers being a home occupation. This is a good example of how quickly the landscape is changing around marijuana and why we can expect to continuously amend our ordinances.

**16. Did we get feedback from DGRI regarding facilities in the CC zone district?**

Yes, a conversation with Mark Miller has occurred. The sentiment was that Downtown should be similarly to neighborhood business districts if marijuana microbusinesses are to be allowed.

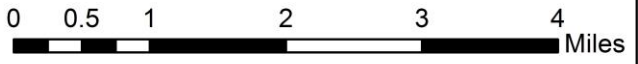
# 500 & 1,000 Foot Jurisdictional Border



Jurisdictional Border	Parcels	Facilities
0 foot	1,483	143
500 foot	1,327	104
1,000 foot	1,253	98

- Commercial
- Industrial

Date: 7/23/2018



# Scale By Business District for Marihuana Facilities Buffers

All measurements in feet

