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Township Law *E-Letter*

The Rules Every Township Should Know About Recreational Marihuana Establishments

In 2018, Michigan voters approved the Michigan Regulation and Taxation of Marihuana Act (“MRTMA”), which became effective December 6, 2018. Since the enactment of the MRTMA, the Marihuana Regulatory Agency (“MRA”) has been directed to establish rules for the upcoming deadline when applicants can first apply for licensure to operate adult use (“recreational use”) marihuana establishments. In July 2019, the MRA released the Adult-Use Marihuana Establishment Emergency Rules (the “Rules”) containing 72 new rules that regulate recreational use establishments. These Rules are important in understanding how recreational use establishments will be regulated within Michigan. This E-Letter highlights the top rules that many townships should consider regarding the regulation of commercial medical marihuana and recreational marihuana uses.

THE MARIHUANA REGULATORY AGENCY AND RULES

The MRA was preceded by the Medical Marihuana Licensing Board (“MMLB”). With the election of Governor Gretchen Whitmer, the MMLB was abolished through executive order. See Executive Order 2019-07. The MRA assumed the responsibilities of the MMLB, including the state licensing of commercial medical marihuana facilities and recreational use marihuana establishments.

With respect to recreational use, the MRA was required by statute to accept applications for new establishments as of December 6, 2019. In anticipation of this date, the MRA adopted the Rules on July 3, 2019, in order to process applications under the MRTMA by the statutory deadline. The Rules are set to expire in 6 months (although they may be extended as occurred after option of emergency rules addressing the application process for Medical Marihuana Facilities Licensing Act (“MMFLA”) uses). In the interim, the MRA will work towards adoption of final rules through the notice and comment process.

The Rules comprise 72 specific rules: see MRA Website ([Click Here](#)). All of the Rules issued by the MRA are helpful for a township to review whether or not the township has currently adopted a recreational establishment ordinance for multiple reasons. Reading the Rules will assist any township understand (1) the roles that the State and the MRA will play in licensing and enforcing compliance with state law; (2) how the MRA perceives the recreational marihuana establishment industry will operate within the State; and (3) the role that townships—in authorizing and approving establishments—will play in the industry. The following section will shed light on some of these regulatory nuances.

15 RECREATIONAL MARIHUANA RULES EVERY TOWNSHIP SHOULD READ

Rule 9: State License; Issuance; Qualifications; Ineligibility.

An applicant is ineligible to receive a state license if any of the following apply:

- the applicant had a prior conviction involving the distribution of marihuana to a minor; the applicant holds an elective office of the state or federal government; or
- the applicant does not hold a state operating license pursuant to the MMFLA and is applying for a marihuana retailer, marihuana processor, class B marihuana grower, class C marihuana grower, or a marihuana secure transporter license under the act and these Rules (does not apply after December 6, 2021).

Rule 9 also explains that an applicant is ineligible for a state license if the MRA determines the township in which the applicant’s proposed marihuana establishment will operate has adopted an ordinance that prohibits marihuana establishments or that the proposed establishment is noncompliant with an ordinance adopted by the township under Section 6 of the MRTMA. See MCL 333.27956. Similar to process an application under the MMFLA, it is likely that the MRA will complete an attestation form for the township to certify that the establishment complies with the local ordinance.

Rule 10: Application fees.

Application fees and renewal fees charged by the State are significantly higher than those fees that are lawfully charged by a township. The table below depicts the state licensing fees for each license:

State License Type	Initial Licensure Fee	Renewal Fee
Class A Marihuana Grower	\$4,000	Bottom 33% - \$3,000 Middle 33% - \$4,000 Top 33% - \$5,000
Class B Marihuana Grower	\$8,000	Bottom 33% - \$6,000 Middle 33% - \$8,000 Top 33% - \$10,000
Class C Marihuana Grower	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Excess Marihuana Grower	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Marihuana Microbusiness	\$8,000	Bottom 33% - \$6,000 Middle 33% - \$8,000 Top 33% - \$10,000
Marihuana Processor	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Marihuana Transporter	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000

Marihuana Safety Compliance Facility	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000
Marihuana Secure Transporter	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000
Marihuana Event Organizer	\$1,000	\$1,000
Temporary Marihuana Event	See Rule 63	N/A
Designated Consumption Establishment	\$1,000	\$1,000

Although the State may charge the amounts listed above, a township may only charge a fee of not more than \$5000 to cover application, administrative, and enforcement costs. See MCL 333.27956. The state license fees do demonstrate that certain regulatory fees will certainly require organized and well-financed entities to complete the licensing process.

Rule 18: Inspection; Investigation.

This rule provides that the MRA shall oversee and conduct inspections of proposed marihuana establishments. Such an inspection may include inspecting proposed establishments, investigating individuals employed by marihuana establishments, and auditing records of the licensee. The rule allows the MRA to access the marihuana establishment without a warrant and without notice to the licensee during the marihuana establishment’s hours of operation. Under this rule, the MRA may take any reasonable or appropriate action to enforce the Act and the Rules. While this rule specifically provides the MRA with the authority to inspect and investigate marihuana establishments, it does not limit the application of any other remedies or sanctions available through local, state and federal laws.

Rule 21: Stacked License.

Similar to the rules promulgated under the MMFLA, a marihuana grower may “stack” class C marihuana grower licenses at a marihuana establishment specified in the state license application. In other words, a marihuana grower may cultivate more plants at a single location if the grower stacks class C licenses. The grower would be required to pay license fees for each license issued, which would likewise apply to local licenses issued by the township.

Rule 30: State Licenses; Licensees; Operations; General.

The rule requires marihuana establishments to be in a fixed location. To that respect, the rule expressly **prohibits mobile marihuana establishments and drive through operations**. Moreover, under this rule, marihuana establishments **must be partitioned** from any other marihuana establishment, activity, business, or dwelling. Finally, this rule prohibits the sale, consumption, or serving of food or alcohol onsite **unless** the establishment has the appropriate authorizations from other federal, state, or local agencies as applicable.

Rule 32: Equivalent Licenses; Operation at Same Location.

This rule provides that a person that holds equivalent licenses with common ownership under the MRTMA and MMFLA may operate those equivalent licenses at the same location. The Rules list a set of five

equivalent licenses. Equivalent licenses are explained in the rules as similar license types that exist under both the MMFLA and the MRTMA. For instance, a MMFLA grower is an equivalent license to a MRTMA grower and a MMFLA provisioning center is an equivalent license to MRTMA marijuana retailer.

Equivalent licenses create some issues at the point of sale due to the different applicable excise tax for medical marijuana and recreational marijuana. Marijuana provisioning centers are not subject to the 10% excise tax imposed under the MRTMA even though they are considered equivalent to a marijuana retailer under the Rules. The MRTMA excise tax is imposed on “**each marijuana retailer** and on **each marijuana microbusiness** at the rate of 10%.” MCL 333.27963, Section 13(1).

This rule clarifies how to handle the sale of both products at the same location:

[a] licensee with common ownership of a marijuana retailer and a provisioning center and operating the equivalent licenses at the same location shall not bundle a product subject to the excise tax in section 13 of the act, MCL 333.27963, in a single transaction with a product or service that is not subject to the tax imposed by that section. Rule 32(4).

This rule expressly prohibits the holder of equivalent licenses from bundling products that are subject to taxation with products that are not subject to taxation in a single transaction. The exclusion of marijuana provisioning centers from the MRTMA provision on the excise tax indicates that such licenses were not intended to be subject to the tax. Thus, the sale of medical marijuana at a provisioning center would remain exempt from the excise tax under the MRTMA because the provisioning center was not expressly subject to the tax.

Rule 34. Building and fire safety.

This rule provides that marijuana establishments are subject to inspection by a state building code official, state fire official, or code enforcement official to confirm that no health or safety concerns are present.

Rule 46: Maximum THC concentration for marijuana-infused products.

This rule provides that Marijuana-infused products processed, sold, or transferred through marijuana retailers must not exceed the maximum THC concentration as established by the agency. For the purposes of maximum THC concentration for marijuana-infused products, the agency must publish a list of maximum THC concentration and serving size limits. Though the agency has not yet published the maximum THC concentrations for adult use marijuana infused products, it can be inferred that the maximum concentrations will be similar to those published by the agency for medicinal use.

Rule 57: Marijuana Retailer Delivery Employees; Delivery for Individuals 21 Years of Age or Older; Limited Circumstances.

This rule provides that a marijuana may employ an individual to deliver product for sale or transfer. It also provides several requirements for delivery employees. Under this rule, a delivery employee must carry a copy of all the following:

- a) The employee identification number;
- b) The marijuana retailer licensee license number;
- c) The address of the marijuana retailer licensee;
- d) Contact information of the marijuana retailer licensee; and
- e) A copy of the marijuana retailer delivery log.

In addition, the rule requires a delivery employee to have a cell-phone and GPS in the vehicle.

Rule 58: Special Licenses; Eligibility.

This rule provides that a person may apply to the MRA for a special license in the following categories:

- a) Designated consumption establishment license. A designated consumption establishment license is valid for 1 year.
- b) Excess marihuana grower license. An excess marihuana grower license is valid for 1 year.
- c) Marihuana event organizer license. A marihuana event organizer license is valid for 1 year.
- d) Temporary marihuana event license. A temporary marihuana event license is valid for a minimum of 1 day and ends on the date specified on the state license.

Rule 59: Designated Consumption Establishment.

This license allows the consumption of marihuana in a designated area. Such an area must have a smoke-free area for employees to monitor consumption and a ventilation system that directs air outside the building through a filtration system sufficient to remove smoke. Townships may regulate consumption areas under Section 6 of the MRTMA, MCL 333.27956. Section 6 states that a township may “authorize the sale of marihuana for consumption in designated areas.”

Rule 61: Marihuana Event Organizer.

This license authorizes an organizer to organize marihuana events; however, it does not authorize an organizer to engage in the operations of a marihuana establishment without first obtaining the appropriate licenses. A person may apply for this license on a form created by the MRA.

Rule 62: Temporary Marihuana Event License.

This license will only be issued to the holder of a marihuana event organizer license. It is only issued for 1-7 days. An application for a temporary marihuana event license must be made under oath on a form provided by the MRA and must contain a “written attestation on a form provided by the MRA from the [township] authorizing the applicant to engage in onsite marihuana sales to, and onsite consumption by, persons 21 years of age or older at the temporary marihuana event at the proposed location.” Moreover, an event may only be held at a venue expressly **approved by a township** for holding a temporary event. Ultimately, the township has the authority under this rule to approve of or disprove of a marihuana event. Even if the township approved of an event, the MRA may require the marihuana event organizer and all participants to cease operations without delay if in the opinion of the MRA or law enforcement, it is necessary to protect the immediate public health and safety of the people of the state.

Rule 63: Temporary Marihuana Event Fee.

This rule provides a \$500.00 fee for a temporary marihuana event that does not include the sale of marihuana products for each day of the scheduled event. It also provides a \$500.00 fee for each licensee authorized to sell marihuana product to cover the MRA enforcement and compliance costs in addition to a \$500 fee for each day of the event that includes the sale of marihuana products.

Rule 64: Temporary Marihuana Event Sales.

This rule requires that all sales of marihuana products at a temporary marihuana event occur in a retail area as designated in a premises diagram. Once again, mobile sales are prohibited. Sales at a temporary marihuana event may only be made by a licensed marihuana retailer or a marihuana microbusiness.

CONCLUSION

The adult-use marihuana industry continues in constant flux as the MRA works towards complying with the MRTMA and preparing for the receipt of adult-use marihuana applications. Under the MRTMA, townships should adopt an ordinance either prohibiting such uses or regulating such uses to ameliorate local concerns. With the advent of a new industry for Michigan, the MRA's promulgation of these rules provides greater clarity (although much remains unanswered as well as new issues have been created from the rules) as to how state and local licensed adult-use establishments will be allowed to operate, including the comingling of operations with current medical marihuana facilities, transfer of product between such entities, the colocation and stacking of adult-use establishments at currently licensed medical marihuana facilities, and the areas of adult-use marihuana regulation that remain vested in the discretion of townships.

-- Chris Patterson

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