



Bath Charter Township Planning Commission Marihuana Report

2019

Background

The state of Michigan has created a patchwork of laws over the last ten years to regulate marihuana. The laws have been created both by legislature action and voter initiative, and collectively, they give municipalities several decisions to make. This report is intended to describe the issue of marihuana, the laws that are in place, how those laws affect Bath Township, and to give alternative courses of action.

MMMA In 2008, Michigan voters approved the Michigan Medical Marihuana Act (MMMA). The MMMA established state law immunity from prosecution for those who use marihuana for medical purposes and established the Qualifying Patient and Primary Caregiver definitions. This law was unaffected by either of the later laws. As a result, the regulations regarding the MMMA in the Bath Zoning Ordinance are unaffected.

Primary Caregivers are allowed as a Home Occupation in the Rural, Low-Density Residential (LDR), and Medium-Density Residential (MDR) zones and allowed as a Use by Right in the HDR zone. Medical Marihuana Primary Caregiver Facilities are allowed by right in the Development (D) and High-Density Development (HDD) zones.

MMFLA Public Acts 281, 282, and 283 were approved by the Michigan legislature in 2016 and collectively established medical marihuana in the state. PA 281 was the Medical Marihuana Facilities Licensing Act (MMFLA), which authorized five types of facilities; growers, processors, safety compliance facilities, provisions centers, and secure transporters. A municipality must opt into the MMFLA to allow any of those five facilities.

In 2017, at the request of the Board, the Planning Commission studied whether or not Bath Township's residents support the MMFLA. Staff has presented a PowerPoint presentation to groups and posted the presentation as a video on the Township's YouTube site, where it was viewed over 90 times. The PowerPoint was designed to be shown prior to the survey, which was available online and on a hard copy. The survey asked respondents about their overall support, as well as support for each of the five facilities.

A total of 256 respondents took the survey and the results are summarized here:

- In general, the respondents tended to be older; 58% were over the age of 45.
- 93% of the respondents are residents of the Township. 36% of the respondents have lived in the Township over 20 years.
- Question #4 asked, "Do you oppose Bath Township opting in to the new medical marihuana law for all five types of facilities allowed by MMFLA?" Respondents that answered yes were automatically skipped to the final question. 41% of the respondents oppose opting in to the MMFLA. The remaining 59% of the respondents proceeded with the survey.

- There are five types of facilities allowed by the MMFLA. Respondents that did not oppose the MMFLA were asked their support for each facility. The level of support for each facility is as follows:
 - Grower facilities = 54%
 - Processing facilities = 52%
 - Safety compliance facilities = 46%
 - Provisioning centers = 45%
 - Secure transporter facilities = 39%

There are three types of medical marijuana grower facilities, classed by the maximum number of plants that they are allowed to grow (Class A allows 500, Class B allows 1,000, and Class C allows 1,500). The MMFLA also limits their presence to agricultural or industrial zoned parcels. Other than that, municipalities are enabled to allow MMFLA facilities in any mix or number that they see fit.

Recreational Marijuana In November of 2018, Michigan voters voted to approved Proposal 18-1, which legalized recreational marijuana use. As of December 6, 2018, Michigan residents who are 21 and older can legally use and grow recreational, or adult use, marijuana. According to Clinton County Clerk data, 5,536 Bath Township residents voted on Proposal 18-1, with 59.9% voting in favor of it.

Buying and selling recreational marijuana remains illegal without a medical marijuana card, and will be for at least a year while the state’s Department of Licensing and Regulatory Affairs (LARA) develops regulations for recreational marijuana businesses. LARA is supposed to have these regulations in place by December 6, 2019.

There are several types of licenses that will be available after LARA finishes their work. There is some overlap with medical marijuana facilities, at least in terminology. They are:

- Marijuana retailer
- Marijuana safety compliance facility
- Marijuana secure transporter
- Marijuana processor
- Marijuana microbusiness
- Grower

There are three types of recreational marijuana grower facilities.

Proposal 18-1

A proposed initiated law to authorize and legalize possession, use and cultivation of marijuana products by individuals who are at least 21 years of age and older, and commercial sales of marijuana through state-licensed retailers

This proposal would:

Allow individuals 21 and older to purchase, possess and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption.

Impose a 10-ounce limit for marijuana kept at residences and require amounts over 2.5 ounces be secured in locked containers.

Create a state licensing system for marijuana businesses and allow municipalities to ban or restrict them.

Permit retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located.

Change several current violations for crimes to civil infractions.

Should this proposal be adopted?

Yes

No

They are classed by the number of plants that they are allowed to grow (Class A allows 100, Class B allows 500, and Class C allows 2,000). Note that “Class A,” “Class B,” and “Class C” terminology is used for both medical and recreational marihuana, even though the number of plants differ drastically between medical and recreational growers. Also note that, like medical marihuana, licenses will be offered for safety compliance facilities, secure transporters, and processors.

On the other hand, there are two license types that are unique to recreational marihuana, the marihuana retailer and the marihuana microbusiness. It appears that a marihuana retailer will be similar to a provisioning center. The marihuana microbusiness is a new model that is based on micro-breweries; they will be allowed to grow 150 plants on site, process the plants, and sell the resultant product on site.

Land Use Issues

The state treats medical marihuana and recreational marihuana differently in regards to land use and zoning. Medical marihuana facilities are not allowed unless a municipality chooses to allow them, referred to as opting in. Bath Township may choose to allow any and/or all of the medical facilities and in the process, limit the number of any particular type of facility. For example, the attached picture is taken from Windsor Township in Eaton County and is from their medical marihuana ordinance. Note that Windsor Township did not list provision centers, which means that those facilities are not allowed in Windsor Township.

- a. Grower Permits, Class A: **10**
- b. Grower Permits, Class B: **10**
- c. Grower Permits, Class C: **10**
- d. Processor Permits: **5**
- e. Safety Compliance Facility Permits: **2**
- f. Secure Transporter Permits: **2**

Windsor Township MMFLA Allowances

In regards to recreational marihuana establishments, a municipality may prohibit any or all types by adopting an ordinance; this is referred to as opting out. This means that Bath Township is assumed to allow recreational marihuana establishments without Board action specifically stating that Bath Township prohibits those land uses. As with medical facilities, Bath Township can choose to allow any number of recreational establishments.

Even if Bath Township opts out of medical marihuana completely, the right of residents to possess, raise, and smoke recreationally will continue. A person cannot consume marihuana in a public place or smoke where prohibited by a person who owns, occupies, or manages a property. Employers retain the right to disallow marihuana use. Landlords have the right to not allow tenants to smoke, although they may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.

As a result, Bath Township needs to decide whether to opt in to any medical marihuana while addressing recreational marihuana. This can be accomplished through one zoning ordinance amendment. There are two land use issues that would need to be addressed, what zoning

districts facilities and establishments could be allowed, and whether or not there should be any further restrictions, such as mandatory distances.

Land Use It is highly likely that facilities and establishments would be steered toward commercial zoning districts. As already noted, MMFLA Grower facilities are only allowed in agricultural or industrial zoned parcels, which in Bath Township's case limits those to the Rural or Development zones. Other facilities and establishments are commercial in nature and could be allowed in the Development or High-Density Development zones.

Since facilities and establishments are non-residential uses, their construction would require site plan approval. The Township could take the extra step of requiring special use permits, which would require public hearings, notifications, and Board approval for facilities and establishments.

Pros and Cons

There are several perceived pros and cons of allowing facilities and/or establishments in Bath Township. It is worth looking at some of those pros and cons before considering possible alternatives.

- Pros

Revenue When the MMFLA was passed, tax sharing mechanisms were enabled for communities with facilities. Proposal 18-1 has required the creation of the same sort of mechanism for communities with establishments and it will be in place by the end of 2019. As a result, the more facilities and/or establishments that a municipality allows, the more tax sharing revenue will be received. Estimates of this revenue vary widely but are assumed to be in the thousands of dollars.

In addition, the MMFLA allows municipalities to establish an annual licensing fee up to \$5,000. Most communities that have opted into the MMFLA have established annual licensing fees in the \$2-3,000 range.

Rural Community Support Because Grower facilities are specifically allowed in the Rural district, there is a perception that marijuana growing could be an economic opportunity for Bath Township's rural residents.

Safe Patient Access It is well known that Bath Township has several patients and caregivers. Patients with medical marijuana cards are allowed to buy from provisioning centers. Allowing provisioning centers would allow Bath Township cardholders a safe and convenient alternative to traveling to Lansing to purchase marijuana.

Employment Opportunity Allowing marijuana facilities and/or establishments would both open opportunities up for potential entrepreneurs and provide employment opportunities for Bath Township residents.

- Cons

Safety Concerns It is expected and feared that crime could increase in Bath Township if marihuana facilities and/or establishments were allowed. The main reason for this expected rise in crime is theft, which has already been experienced by legal medical marihuana caregivers in the Township.

Staff was asked to research crime rates in other states that have allowed recreational marihuana in the past. According to the Colorado Department of Public Safety¹, Colorado has experienced the following between 2012 and 2017:

- The total of marihuana arrest decreased by 52%, from 12,709 to 6,153
- 59% of marihuana crime was burglary
- Marihuana-related court filings declined 55%, from 11,753 to 5,288
- Organized crime filings increased from 31 to 119
- The total number of DUIs issued by the Colorado State Patrol decreased from 5,705 to 4,849. However, the prevalence of marihuana identified as the impairing substance increased from 12% of all DUIs to 15%.
- Traffic fatalities involving marihuana declined from 52 (13% of all fatalities) to 35 (8% of all fatalities)
- Probationers use of marihuana increased from 32% to 41% in 18 to 25 year old probationers and from 14% to 21% in probationers 36 years old and older
- Hospitalization rates for marihuana-related issues increased from 803 per 100,000 to 2,696 per 100,000; emergency visits increased from 739 per 100,000 to 913 per 100,000.

The Bath Township Police Chief was asked his opinion on marihuana. His opinion is that allowing marihuana businesses into the Township will increase crime, mostly in the form of burglaries. Although the amount of increase is indeterminable at this time, the increase will increase the workload of the Police. He recommends that if the Township allows marihuana businesses they be limited in number.

Increased Traffic Any new business, regardless of the type, would increase traffic, and marihuana businesses are no exception. This increase would come from employees driving to and from work, trucks, and customers if retail businesses were allowed.

Commercialization of Bath Township When Planning Staff started researching medical marihuana, many residents assumed that Grower Facilities would allow new business opportunities for local residents, which has been discussed as a potential pro. While this may be true for a few individuals, it has become clear that the marihuana industry has become

¹ Impact of Marijuana Legalization in Colorado, October 2018 (http://cdpsdocs.state.co.us/ors/docs/reports/2018-SB-13-283_report.pdf)

commercialized by large companies. This commercialization has been stated by some residents as a potential con.

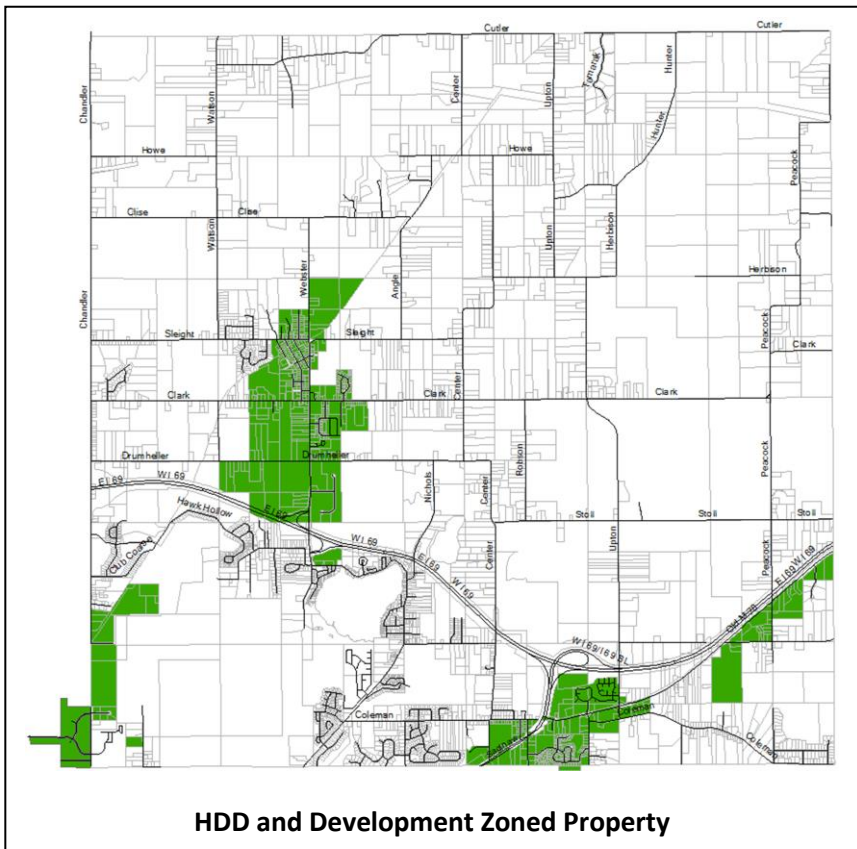
Increased Township Work If the fear about increased crime turns out to be true, then Township Police will have to make more runs. If Township staff receives complaints about facilities or establishments, staff will have to investigate to see if a nuisance is taking place and take enforcement action if necessary. These are two of the ways that marijuana businesses may increase the workload of Township staff over and above normal development. This anticipated increase in work is part of the justification for the annual licensing fee that has been discussed earlier.

Alternatives

Because of the flexibility of land uses enabled by the state’s collective of marijuana laws, there are several alternatives open to Bath Township. A spreadsheet from the Bureau of Medical Marijuana Regulation staff’s website showed that, as of November 30, 2018, 108 Michigan municipalities in 43 counties have opted into MMFLA facilities and their approaches are vastly different. This spreadsheet has been attached to this report.²

The first alternative is the “No Build” approach where it is assumed that Bath Township does not allow any facilities or establishments at all. This is the position taken by all other Clinton County municipalities regarding MMFLA facilities, as well as most of the municipalities in the state. In addition, at the time of this writing, 8 of the 11 general law townships in Clinton Township have opted out of recreational marijuana, with 2 more expected to opt out by mid-2019.

The opposite alternative might be thought of as the “All In” approach where all facilities and/or establishments are



² The spreadsheet (https://www.michigan.gov/documents/lara/Municipality_Opt-In_Spreadsheet_2-16-18_614253_7.pdf) has East Lansing highlighted for some reason and is not meant to point out East Lansing by Staff.

allowed, with the correct zoning, without any caps on the numbers. This is the position that the city of East Lansing has taken, as well as several other municipalities around the state.

The survey data and Bath Township's voting results, which have been discussed earlier in this report, indicate that there is moderate support for some involvement in the marijuana industry. Moreover, the same data indicates that Bath Township residents are not interested in the "All In" option.

Based on the data, the following approach seems to make sense. First of all, marijuana businesses should be limited to growing and processing facilities and/or establishments. Survey data, as well as Board comments, indicates that Bath Township does not support provisioning centers, which would indicate that Bath Township also would not support marijuana retailers or microbusinesses.

Growing and processing businesses should be listed as special land uses in the HDD and Development zoning districts, which are shown here in green. This would effectively limit such businesses to the Chandler Road area, the interchange/downtown area, the Marsh Road area, and the Old M-78 area. In addition, growing operations may be compatible with the Rural zoning district, again as a special land use.

It has been suggested by the Planning Commission that marijuana businesses should comply with minimum distances from both each other and other land uses. The 2017 survey data indicates that only 20.2% and 17.2% of marijuana-supporting respondents supported separation of grower facilities and processing facilities, respectively, from other land uses.

If the Township wishes to create a separation ordinance for marijuana businesses, Sec. 15.24 – Adult entertainment establishments in the Zoning Ordinance has been suggested as a guide. If that section was followed, then the following regulations would apply:

1. No marijuana business would be allowed within 1,000 feet of an existing marijuana business, as measured from the lot line.
2. No marijuana business would be allowed within 1,000 feet of any residentially used or zoned parcel, as measured from the lot line.
3. No marijuana business would be allowed within 1,000 feet of any school, library, park, playground, licensed group day care center, church, convent, monastery, synagogue or similar place of worship or other place of public congregation. Again, this is measured from the lot line.

The second condition is problematic because every zoning district except Public allows single-family residential as a use by right, making these residentially zoned properties. This is exclusionary and should be at least amended to include only residentially used properties.

Conclusion and Recommendation

Bath Charter Township has data that suggests residents might support the marihuana industry while not supplying retail options for patient cardholders and/or future shoppers. This conclusion is based on the 2017 survey data which indicated that 59% of the respondents supported medical marihuana, which over half of those respondents supporting grower and processing facilities. This conclusion is also based on the data from the 2018 Proposal 18-1 vote which showed that almost 60% of Bath Township voters approved recreational use of recreational marihuana.

Based on these facts, the Bath Township Planning Commission recommends the following:

1. Bath Township should consider partially opting into the MMFLA to allow medical marihuana Growing, Processing, and Safety Compliance facilities in the HDD and Development zoning districts as special land uses.
2. A new Sec. 19.21 should be developed to regulate Growing, Processing, and Safety Compliance facilities during special land use reviews. Sec. 19.21 should regulate, but not be limited to, the following:
 - a. All of the general special land use review standards within Sec. 19.04
 - b. Hours of operation
 - c. Security measures
 - d. Screening
 - e. Minimum setbacks
3. Recognizing that the 2017 survey only addresses medical marihuana, the Planning Commission recommends that the Township investigate residents' willingness for recreational marihuana establishments during the 2019 Comprehensive Plan update process.