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REAL SOLUTIONS

Regulating Caregivers

What Your Township Can Do

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JUNE 23, 2021

Marihuana Statutes

MMMA, MMFLA, MRTMA



Michigan Medical Marihuana Act

- MMMA
- 2008
- Patients
 - diagnosed with a debilitating medical condition
- Caregivers
 - at least 21 years old, assists with a patient's medical use of marihuana
- Caregiver can be a patient themselves



Michigan Medical Marihuana Act

- Allowed growing and possession of medical marihuana
- Patients can grow up to 12 marihuana plants
- Patients can possess 2.5 ounces of useable medical marihuana
- Caregivers can grow for five patients (plus themselves)
 - $6 \times 12 = 72$ caregiver plant maximum
- Plants must be grown in an “enclosed-locked facility”



Michigan Medical Marihuana Act

- "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and **fully enclosed area equipped with secured locks** or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient.
- Marihuana plants **grown outdoors** are considered to be in an enclosed, locked facility if they are **not visible to the unaided eye from an adjacent property** when viewed by an individual at ground level or **from a permanent structure and are grown within a stationary structure that is enclosed on all sides**, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground.



Michigan Medical Marihuana Act

- No large-scale commercialization or growing
- No retail or distribution
- Patient-Caregiver relationship only
- A caregiver may receive compensation for costs associated with assisting a patient with medical marihuana
- A municipality cannot completely prohibit patients and caregivers



MMFLA and MRTMA

- Medical Marihuana Facilities Licensing Act (“MMFLA”)
 - 2016
- Michigan Regulation and Taxation of Marihuana Act (“MRTMA”)
 - 2018
 - Recreational or Adult Use
- Do not extinguish marihuana activities by caregivers and patients



Supreme Court Affirms Local Control

DERUITER V BYRON TWP (APRIL 2020)



Michigan Supreme Court

- *DeRuiter v Byron Twp*, 505 Mich 130 (2020)
- Byron Township Ordinance
 - Full Time Residence
 - Within the dwelling or garage
 - Application
 - Obtain a Permit



Michigan Supreme Court

- Christine DeRuiter was a patient and caregiver
- Cultivated marihuana in the commercial district
- Was an “enclosed, locked facility”
- Did not obtain required permit
- Was not a home occupation as required



Michigan Supreme Court

- No direct conflict between the ordinance and the MMMA
- Location and zoning requirements
- MMMA = Type of Structure
- Ordinance = Where it may be grown
- *Still cannot prohibit caregiver operations entirely*



Michigan Supreme Court

- A municipality may “add to the conditions” in the state statute
- Enlarge existing provisions without direct conflict
- Authority under MZEA is not extinguished
- Other sources of municipal authority



Ordinances Upheld



Court of Appeals

- *Charter Township of Ypsilanti v Pontius* (unpublished) (2020)
- Light Industrial District zoning requirement
- Special Use Permit
- Valid locational restriction



Court of Appeals

- *Charter Twp of York v Miller* (published) (2021)
- Required that marihuana be grown indoors
- Outdoor growing prohibited in all districts
- Valid restriction that does not conflict with the MMMA
- Neither case appealed



Responding to Caregiver Operations

ADDRESSING UNINTENDED CONSEQUENCES



What Your Township Can Do

- Place the Use in Zoning Districts
- Utilize Special Use Permits
 - Can be limited duration
- District Regulations Apply
 - Lot Size
 - Setbacks



What Your Township Can Do

- Require a specific caregiver permit
 - Awareness
 - Don't need to require a fee
 - Application requirements

- Control Odor
 - Carbon filters
 - Other available odor control technologies
 - Nuisance odor is a general violation



What Your Township Can Do

- Control Lighting
 - Grow lights
 - External lights
- Building, Electrical, Plumbing, and Mechanical Permits
- Consider number of caregivers per premises
- Consider indoor grow requirements



Questions



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