



MICHIGAN MUNICIPAL LEAGUE
CONVENTION

Marijuana Ballot Proposals

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#mmlconv

September 22 – 24 | Grand Rapids, MI

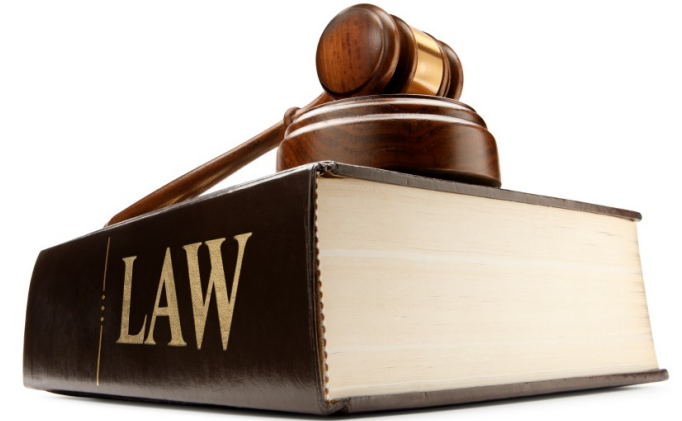
Michigan Marijuana Ballot Proposals

- Overview of Michigan Marijuana Law
 - MMMA
 - MMMFLA
 - MRTMA
- Types of Ballot Proposals
 - MRTMA Petitions
 - Charter Amendments
 - Ordinances
- Legal Challenges

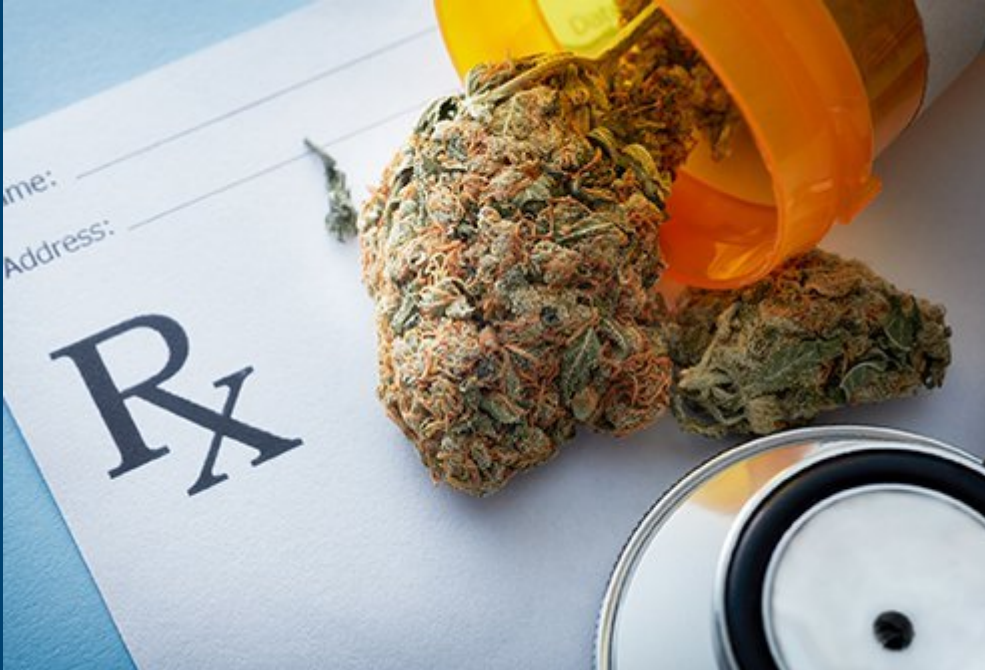


Michigan Marihuana Law Overview

- State Statutes
 - **Michigan Medical Marihuana Act**
 - (Initiated Law 1 of 2008), MCL 333.26421 *et seq.*
 - **Michigan Medical Marihuana Facilities Licensing Act**
 - (Public Law 281 of 2016), MCL 333.27101 *et seq.*
 - **Michigan Regulation and Taxation of Marihuana Act**
 - (Initiated Law 1 of 2018), MCL 333.27951 *et seq.*



Michigan Medical Marijuana Act



- Overview:
 - Approved by voters in 2008.
 - Permits the use and cultivation of medical marijuana by caregivers for patients.
- Standards:
 - A “qualifying patient” with a state registry identification card can possess up to 2.5 ounces of marijuana plus up to 12 plants if the patient does not have a caregiver.
 - A “registered caregiver” can possess up to 12 plants for each patient and may have 6 patients total.

Michigan Medical Marihuana Facilities Licensing Act

- **Purpose:** To fill perceived “gaps” in the MMMA and to allow for the commercial sale of medical marihuana.
- **Regulation:** Imposes a licensure mandate for certain medical marihuana facilities:
 - Growers
 - Dispensaries
 - Transporters
 - Safety Compliance Facilities
 - Processors



Michigan Medical Marijuana Facilities Licensing Act

- **Opt-in Approach:**

- The facilities must be licensed by the State of Michigan, and the facilities can only operate in municipalities that have adopted an ordinance authorizing that type of facility.



Michigan Regulation and Taxation of Marihuana Act

- Overview:
 - Approved by voters in 2018.
 - Permits the use and cultivation of recreational marihuana by individuals 21 years or older.
 - Creates a licensing and regulatory framework for marihuana establishments (i.e., commercial facilities).



Michigan Regulation and Taxation of Marijuana Act

- A person 21 years of age or older may:
 - Possess, purchase, transport, or process 2.5 ounces or less of marijuana;
 - Possess, store, or process in his or her residence not more than 10 ounces of marijuana *and* any marijuana produced by marijuana plants cultivated on the property (limit: 12 plants at one time on the property); and
 - Give away up to 2.5 ounces of marijuana to anyone 21 years or older (but cannot promote/advertise such a giveaway).



Michigan Regulation and Taxation of Marihuana Act

- A “marihuana establishment” means:
 - marihuana grower,
 - marihuana safety compliance facility,
 - marihuana processor,
 - marihuana microbusiness,
 - marihuana retailer,
 - marihuana secure transporter, or
 - any other type of marihuana-related business licensed by the Michigan Department of Licensing and Regulatory Affairs.



Michigan Regulation and Taxation of Marihuana Act

- **Opt-Out Approach:** Michigan municipalities may completely prohibit marihuana establishments within their boundaries, limit the number of permitted establishments, and regulate any permitted establishments.



Regulation

- A municipality may regulate marijuana establishments through a regulatory ordinance alone or through a regulatory ordinance and a zoning ordinance amendment.
 - Regulatory Ordinance → Regulate Activity on Land.
 - Zoning Ordinance → Regulate Use of Land.

Forest Hill Energy-Fowler Farms v Twp of Bengal, unpublished opinion of the Court of Appeals, No 319134, at *11.

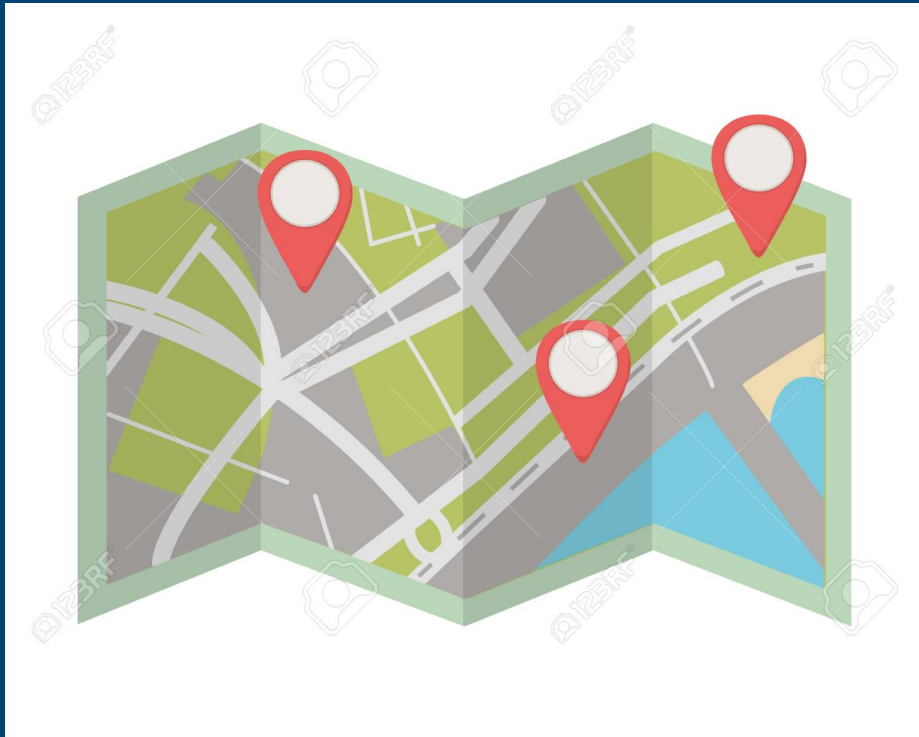


Regulatory Ordinance

- A regulatory ordinance can regulate the number of establishments permitted, the type of establishments permitted, and process for allocating limited numbers of licenses.
- Allocation of licenses:
 - Medical Marihuana Facilities: statute does not define process. Can be first-come first-served, lottery, or scoring system.
 - Adult-Use Marihuana Establishments: municipality **MUST** use a competitive process (i.e. a scoring system) if the ordinance provides a numerical limitation on licenses.



Zoning Ordinance



A zoning ordinance amendment can regulate *where* those establishments are permitted and *how* they are operated.

- Examples:
 - Limit marijuana establishments to certain zoning districts;
 - Dictate minimum lot sizes;
 - Prohibit marijuana establishments within certain distances from other uses (like schools, churches, libraries, or residences);
 - Provide building and security requirements for marijuana establishments.

What to Consider?

- What types of establishments will be allowed?
- How many of each type of establishment will be allowed?
- Where will the establishments be allowed?
- Will there be minimum acreage or lot size requirements?
- How far should the establishments be from certain other uses?
 - Under state law – cannot be within exclusively residential district or within 1,000 feet of a pre-existing k-12 school UNLESS a municipality adopts an ordinance which reduces this requirement. MCL 333.27959(3)(c).
- If allowing growers, will the City allow "stacked" grower licenses?
- Will a special land use permit be required?



Litigation Involving Selective Scoring Systems

- Disappointed applicants often allege that:
 - The municipality unfairly applied its own selection rules; or
 - The rules are defective/unconstitutional because they favor some applicants over others.
- Ways to avoid this type of litigation exposure include implementing other types of regulatory schemes:
 - Medical marijuana → lotteries or first-come first-serve or zoning only regulations
 - Recreation → zoning only regulations



Ballot Initiatives

How does the issue reach voters?

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Ballot Initiative Options

1. Initiated Ordinances under Charter Provisions: Many city and village charters authorize and establish procedures for initiated ordinances.
2. MRTMA (Adult-Use): Authorizes initiated ordinances in cities, villages and townships.
3. Charter Amendment: Home rule cities and villages have charters that can be amended through initiative petitions.

Key Point: Each of these 3 options is governed by a different legal framework, all of which have different substantive and procedural requirements.



Use of Initiatives To Date

- Most initiatives are filed by proponents of marijuana businesses seeking to “opt-in” to either medical or adult-use marijuana
- Some initiatives seeking to overturn opt-in ordinances
- In both the 2020 and 2021 November election cycles, nearly identical petitions were filed in small communities across the state:
 - The 2020 petitions largely involved initiated ordinances under the MRTMA
 - The 2021 petitions largely involved charter amendments under the Home Rule City Act
 - Both waves of petitions involved proposals that established selective scoring systems



Ordinances Initiated Under Charter Procedures

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Overview

- Michigan law does not establish a universal right to initiate ordinances by petition.
- Rather, the right has historically been limited to municipalities that provide for it in their charters.
- The Home Rule City Act states that a city may provide in its charter for: “the initiative and referendum on all matters within the scope of the powers of that city.” MCL 117.4i(g).
- The Home Rule Village Act is not as express on this point, but some village charters also provide a right of initiative.
- As a general matter, there is no right to initiate an ordinance in a township of general law village.
- Charters do not typically restrict the subject matter of an initiated ordinance. So long as the proposal is legislative (rather than administrative in nature) it can be adopted by initiative.*



Typical Charter-Established Process

While there is significant variation from community to community, local charters often provide the following with respect to initiated ordinances:

- A minimum signature requirement for initiative petitions.
- A deadline for filing the petition in order to make the ballot for a particular election.
- A designation of the local clerk as the official charged with reviewing the sufficiency of the petition.
- A procedure for establishing a ballot question.
- A procedure under which the proposal is presented to the legislative body (possibly with the option to adopt the proposal without an election).
- A procedure for amending or repealing the ordinance after it's adopted by voters.
 - Some charters state that ordinances adopted by initiative can't be amended for a number of years, or that amendment requires a supermajority vote.



Typical Length of Charter Provision Regarding Initiated Ordinances

ordinances but not as a requirement for the effectiveness thereof. The publication of an ordinance in full as a part of the published proceedings of the Council shall constitute publication as required herein.

(b) All codes and other ordinance subject matter, which are or may be permitted by law to be adopted by reference, shall be adopted and published in the manner permitted and required by law.

(c) Upon completion of the codification of the ordinances, the deposit of a number of copies as provided by law in the office of the Clerk, available for public inspection and sale at cost, shall constitute publication thereof.

Editor's note—The charter requirement of publication prior to operation is superseded by state statute. A city may publish a summary instead, provided that the summary includes the designation of a location in the city where a true copy of the ordinance can be inspected or obtained. See MCL 117.3(k).

Section 4.11. Penalties.

The Council shall provide in each ordinance for the punishment of violation thereof, but unless permitted by law, no such punishment, excluding the costs charged, shall exceed a fine of five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or both, in the discretion of the Court. Imprisonment for violations of ordinances may be in the City or County jail.

Editor's note—Higher penalties are permitted for violations that substantially correspond to violations of state law that are 93 day misdemeanors pursuant to MCL 117.4i(k). Municipal civil infractions are permitted under MCL 117.4l.

Section 4.12. Initiative and Referendum.

An ordinance may be initiated by petition, or a referendum on an ordinance may be had by petition as hereinafter provided.

State law reference—Permissible that charter provide for initiative and referendum, MCL 117.4i(g).

Section 4.13. Initiatory and Referendary Petitions.

An initiatory or a referendary petition shall be signed by not less than fifteen percent of the registered electors of the city as of the date of

filing the petition, and all signatures on said petition shall be obtained within 30 days before the date of filing the petition with the Clerk. Any such petition shall be addressed to the Council. No such petition need be on one paper, but may be the aggregate of two or more petition papers identical as to contents. An initiatory petition shall set forth in full the ordinance it proposes to initiate, and the petition shall propose to initiate no more than one ordinance. A referendary petition shall identify the ordinance it proposes to have repealed.

Each signer of a petition shall sign his name and shall place thereon after his name the date and his place of residence by street and number or by other customary designation. To each petition paper there shall be attached a sworn affidavit by the circulator thereof stating the number of signers thereof and that each signature thereon is the genuine signature of the person whose name it purports to be and that it was made in the presence of the affiant. Such petition shall be filed with the Clerk, who shall, within fifteen days, canvass the signatures thereon. If a petition does not contain a sufficient number of signatures of registered electors of the city, the Clerk shall notify forthwith the person filing such petition and fifteen days from such notification shall be allowed for the filing of supplemental petition papers. When a petition with sufficient signatures is filed within the time allowed by this section, the Clerk shall present the petition to the Council at its next regular meeting.

Section 4.14. Council Procedure on Initiatory and Referendary Petitions.

Upon receiving an initiatory or referendary petition from the Clerk, the Council shall, within thirty days, unless otherwise provided by law, either:

- Enact the ordinance as submitted by an initiatory petition;
- Repeal the ordinance referred to by a referendary petition; or
- Determine to submit the proposal provided for in the petition to the electors.

Section 4.15. Submission of Initiatory and Referendary Petitions to Electors.

Should the Council decide to submit the proposal to the electors, it shall be submitted at the next primary, general or special election held in the city for any other purpose, or, in the discretion of the Council, at a special election called for that specific purpose. In the case of an initiatory petition, if no election is to be held in the city for any other purpose within ninety days from the time the petition is presented to the Council and the Council does not enact the ordinance, then the Council shall call a special election within sixty days from such time for the submission of the initiatory proposal. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by the general laws of the State of Michigan.

Section 4.16. Ordinance Suspended; Miscellaneous Provisions on Initiatory and Referendary Ordinances.

The presentation to the Council by the Clerk of a valid referendary petition shall automatically suspend the operation of the ordinance in question pending repeal by the Council or final determination by the electors.

No ordinance which has been adopted by vote of the electors shall be repealed or amended within two years except by vote of the electors; and an ordinance repealed by the electorate may not be reenacted by the Council for a period of two years after the date of the election at which it was repealed.

If the provisions of two or more ordinances or propositions adopted at the same election be [are] inconsistent, the provisions in the measure receiving the highest affirmative vote shall prevail.

The Council may itself submit propositions for the repeal or amendment of any ordinance at any city election.

§ 2 - Jobs v Fidler - Response to Show Cause.pdf

The Council shall have authority for the purpose of hearing or investigating charges against

any officer, or making any other investigation of any character relative to the affairs of the municipality to require the Mayor to compel the attendance of witnesses and the production of books and papers or any records before the Council. In case charges are made against any officer, he shall be entitled to have the attendance of witnesses and an attorney in his behalf in addition to any books and papers or records necessary in his defense.

Failure on the part of any officer to obey such summons or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute misconduct in office, and may be deemed cause for his removal. A majority vote of the members of the Council in office at the time, exclusive of any member whose removal may be being considered, shall be required for any such removal.

Section 4.18. Vacating of Public Places.

Council action to vacate, discontinue or abolish any highway, street, lane, alley or other public place or part thereof shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall have a public hearing to hear objections thereto, and notice of time, purpose and place of such public hearing shall be published either separately or as part of the proceedings of the Council.

Section 4.19. Providing for Public [Peace,] Health and Safety.

The Council shall provide for the public peace and health and for the safety of persons and property. The Council shall have and exercise for the City all the authority and powers conferred upon Boards of Health by the general laws of the State or by ordinance, and the Council may enact all ordinances deemed necessary for the preservation and protection of the health of the inhabitants of the City.

The Council may at its discretion designate the County or District Department of Health as the official agency of the City to carry out and admin-



Election Law

The Election Law may also provide pertinent regulations for initiated ordinance petitions.

As a general matter, petitions for local ballot proposals (including proposed initiated ordinances) must:

- Be printed on a specified size paper (and perhaps be folded in a specific manner).
- Use a specified font-size.
- Include specific representations from the petition circulators.
- State whether the petition was paid for with regulated funds under the Michigan Campaign Finance Act.



Bi-fold (17 x 14 sheet)



Tri-fold or Z-fold
(25.5 x 14 sheet)



Multi-fold or Accordion-fold
(34 x 14 sheet)



Procedure Upon Receipt

- Upon receiving a petition for an initiated ordinance, clerks should promptly review the petition signatures and forward the petition to legal counsel for review.
- The Michigan Secretary of State has resources available to assist in determining the validity of signatures.
- Legal counsel can assist in determining the validity of the form of the petition.
- If the petition has enough signatures and is in a proper form, the clerk should follow the proper procedures (as directed by the charter and Election Law) for submitting ballot language to the county clerk.



What if the Petition is Deficient?

- The general view is that a local clerk can (and should) reject a petition that does not have enough valid signatures or is deficient as to form.
 - This power might come from the word “canvass,” as used in a local charter.*
 - Or it might be implied by the structure of the charter and words like “valid” and “sufficient.”
- Upon making such a determination, clerks typically notify the petition sponsor in writing and explain their reasoning.
- This may prompt the petition sponsor to file a mandamus lawsuit against the clerk, asking the court to compel the clerk to certify a ballot question to the county.
- Importantly, clerks can only reject petitions due to **threshold procedural deficiencies**. Substantive challenges to the legality of the ordinance must wait until after the election.**
 - Unfortunately, even blatantly unconstitutional proposals must be submitted to voters if the petition is in the proper form.

* *Herp v Lansing City Clerk*, 164 Mich App 150 (1987)

** *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362 (2012).



What if the Charter Process Conflicts With the Election Law?

- As a general matter, state statutes (like the Election Law) supersede conflicting local laws (like city or village charters).
- This is one reason why it's important to consult with legal counsel when processing an initiative petition.
- There has been recent litigation over whether petition-processing deadlines in a city charter conflict with ballot-language certification deadlines in the Election Law.
- In an unpublished decision in *Jonseck*,* the Court of Appeals held that the Election Law required a city clerk to process a petition in as little as 14 days, as opposed to the 45+ days allowed by the city charter.
 - This decision is arguably inconsistent with the way the Court has treated very similar issues in other contexts. Nevertheless, municipalities should take the decision into account when deciding how to proceed.



MRTMA Petitions

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Overview

- As previously noted, the MRTMA was adopted through a statewide ballot initiative in 2019.
- It contains a rather unique provision that authorizes local ballot initiatives, which reads in its entirety as follows:

“Individuals may petition to initiate an ordinance to provide for the number of marijuana establishments allowed within a municipality or to completely prohibit marijuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election. A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.”



Notable Features of the MRTMA Provision

There are 4 notable features of the MRTMA provision:

1. It applies to all “municipalities,” not just cities and villages that provide for initiated ordinances in their charters
2. Its signature threshold (5% of votes cast for governor) is lower than that found in most charters
3. It is extremely short as compared to the provisions pertaining to initiative petitions in most city and village charters. There is very little detail as to how a municipality is supposed to process the petition
4. It is limited to 2 specific types of proposals, namely those that:
 - “Provide for the number of marihuana establishments within a municipality”; or
 - “Completely prohibit marihuana establishments within a municipality”



Procedural Questions Abound

Whereas charters typically provide a comprehensive process for processing petitions, the MRTMA language leaves many questions unanswered:

- Who is responsible for determining the sufficiency of the petition?
- Who drafts and approves the ballot language?
- Is the petition formally submitted to the legislative body?
- If the legislative body wants to adopt the ordinance without holding an election, can it do that?
- If the ordinance is ultimately adopted by the electors or the legislative body, are there restrictions on the ability to repeal or amend it?
- How does a municipality even know that a petition is being submitted under the MRTMA rather than a city charter?

Presenter Speculation: The drafters of the MRTMA may have incorrectly assumed that there was an underlying body of state law that governed these issues.



How Does a Municipality Answer These Questions?

- Without much guidance from the statute, municipalities that receive MRTMA petitions must devise a reasonable framework for processing petitions.
- There appear to be at least two plausible approaches, which could be described as follows:
 - *Pass-through approach* – Underlying charter procedures still apply unless they directly conflict with the MRTMA.
 - *Minimal gap-filling approach* – MRTMA petitions are treated as completely distinct from petitions under a city or village charter. To the extent the MRTMA does not describe how a necessary step is to occur, the municipality has discretion to chose a reasonable means of filling the gap.



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- There appear to be at least two plausible approaches, which could be described as follows:
 - *Pass-through approach* – Underlying charter procedures still apply unless they directly conflict with the MRTMA
 - *Gap-filling approach* – MRTMA petitions are treated as completely distinct from petitions under a city or village charter. To the extent the MRTMA does not describe how a necessary step is to occur, the municipality has discretion to chose a reasonable means of filling the gap.



Pass-Through Approach

- In municipalities where the charter establishes a procedure for initiating ordinances, it may be plausible to argue that the charter *passes through* and continues to apply to the extent it doesn't conflict with the MRTMA.
- MRTMA would likely conflict in several ways:
 - The signature threshold will be lower
 - Ballot proposals can only be considered at the “next regular election”
 - Ballot proposals are limited to the subject matter specified by the MRTMA
- An advantage of this approach is that the procedure is clear.
- A disadvantage is that it might limit the legislative body's ability to amend the proposed ordinance after adoption.
- Another consideration is that this approach is not available when there is no underlying charter scheme.



Gap-Filling Approach

- Alternatively, it may be reasonable to argue that charter initiative provisions don't apply to MRTMA petitions at all.
- Under this approach, a municipality would follow only the directions in the MRTMA and the Election Law.
- To the extent those two statutes leave any “gaps,” the municipality would have implied discretion to determine a reasonable approach. For example:
 - A municipality could reasonably determine that the clerk should be the official who reviews the petition, since that is typically the clerk's role under other statutes.
 - A municipality could reasonably determine that either the clerk or the legislative body should prepare the ballot language, since both have a duty to ensure fair elections.
- An advantage of this approach is that the legislative body could arguably repeal or amend the initiated ordinance after adoption (the MRTMA doesn't say otherwise)
- A disadvantage of this approach is that it is arguably *ad hoc*.



Permissible Scope of MRTMA Initiated Ordinances

- Since the MRTMA was enacted, there has been a significant amount of litigation about what types of ordinances can be adopted through ballot initiatives.
- Marijuana advocates have argued that the MRTMA allows initiated ordinances that establish complete regulatory schemes for adult-use marijuana.
- Numerous municipalities have taken the position that the statute is much narrower, allowing only ordinances that simply set the maximum number of establishments.
 - In other words, "provide for the number" simply means "set the number."
 - Under this interpretation, the initiative would be for a short and simple ordinance that "opts in" to a certain number of establishments, but allows the municipality to adopt subsequent ordinances to provide a regulatory scheme.



Can a Clerk Reject a Petition Because it Exceeds the Scope of the MRTMA?

- Numerous local clerks have taken the position that they have an obligation to reject petitions that are beyond the scope of the MRTMA's initiative provision.
- Under this position, the scope of the proposed ordinance is a threshold procedural issue that determines whether the proposal can be placed on the ballot.
- Marijuana advocates have argued, to the contrary, that rejecting a petition on this ground is an improper pre-election challenge to the substance of the ordinance.
- Unfortunately, although these issues have been litigated a number of times, they have not been definitively resolved by the courts.
- For an excellent summary of the various circuit court and appellate rulings on these issues, see Emily Palacios, *New Challenges Face MRTMA Opt-Out Communities in Michigan*, Briefly (June 2021), available online.



Charter Amendments

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Home Rule City Act

- HRCA sets forth a process for initiatory petitions to amend city charters.
- Petition Requirements:
 - Addressed to and filed with the city clerk
 - What body, organization, or person is primarily interested in and responsible for the circulation of the petition
 - Each sheet of the petition shall be verified by the affidavit of the person who obtained the signatures to the petition
 - Signed by at least 5% of the qualified and registered electors of the municipality
 - Each signer of the petition shall also write, immediately after his or her signature, the date of signing and his or her street address
 - Also subject to sections of the Michigan Election Law.



Home Rule City Act

- Ballot Question Requirements:
 - Not more than 100 words, exclusive of caption (the legislative body may add an explanatory caption).
 - Shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question.
 - Shall be posted in a conspicuous place in each polling place.
 - Must be confined to 1 subject.
 - If the subject of a charter amendment includes more than 1 related proposition, each proposition shall be separately stated.
- Text must be submitted to the Attorney General for review (more on that later)...



Home Rule City Act

- Initiatory Petition Process:
 - City clerk shall canvass the petition to ascertain if it is signed by the requisite number of registered electors.
 - Within 45 days from the date of the filing of the petition, the city clerk shall certify the sufficiency or insufficiency of the petition.
 - If the petition contains the requisite number of signatures of registered electors, the clerk shall submit the proposed amendment to the electors of the city at the next regular municipal or general state election held in the city which shall occur not less than 90 days following the filing of the petition.
 - If the petition does not contain the requisite number of signatures of registered electors, it is defective.



Home Rule City Act

- Initiatory Petition Process:
 - If the petition contains the signatures of 20% or more of the persons residing in and registered to vote in the city as of the date when they signed it, AND the petition requests submission of the proposal at a special election, the city clerk, within 90 days after the date of the filing of the petition, shall call a special election to be held on the next regular election date that is not less than 120 days after the petition was filed.
 - If 5%-19% → *may* be held at a special election.
 - Before submission to the electors, the amendment must be transmitted to the Governor.
 - Governor may approve or object to the amendment.
 - Submitted to the electors notwithstanding any Governor objections.



Home Rule Village Act

- Also has a charter amendment process by initiatory petition.
- Requires signatures of at least 20% of the qualified electors of the total vote cast for president at the last preceding election.
- Put on the ballot “at the next municipal election or at a special election.”
- Also requires the Governor’s review.
 - Notably no requirement to put on the ballot if the Governor objects (unless 2/3 of the members, upon reconsideration, agree to pass it and send to the voters).



Key Provisions in the Proposed Charter Amendments

- Medical marijuana only
- Set specified number of facilities
- Provide detailed subjective selection criteria/scoring system for the municipality to apply
- Create a new department in the municipality responsible for scoring applicants



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INITIATIVE PETITION AMENDMENT TO THE CHARTER

To the Clerk of the City of Portland: We, the undersigned qualified and registered electors, residents in the 3rd congressional district in the state of Michigan, respectfully petition for initiation of a charter amendment to end the City's prohibition of medical marihuana facilities, to assist medical marihuana patients with critical medical conditions, and to create a City Department of Medical Marihuana with local regulatory authority. We respectfully request that this proposed amendment be submitted to a vote of the electors of the City of Portland for the November 2, 2021 General Election.

The amendment, if adopted, would add CHAPTER 16 to the Charter and would alter or abrogate CHAPTER 2 SECTION 2.1, CHAPTER 6 SECTION 6.3, CHAPTER 6 SECTION 6.8, and CHAPTER 14 SECTION 14.2 as follows (new language capitalized and bolded, deleted language struck out with a line):

CHAPTER 2. MUNICIPAL POWERS

Section 2.1. General Powers. The City and its officers shall have the power to manage and control its finances, rights, interests, buildings, and property, to enter into contracts, to do any act to advance the interest, good government, and prosperity of the City and its inhabitants, to protect the public peace, health, safety, and general welfare, and to prevent and restrain crime and vice. In the exercise of such powers, the City may enact ordinances, rules, and regulations and take such other action as may be required, not inconsistent with law **AND WITH THE PROVISIONS OF THIS CHARTER**. The power of the City shall include but shall not be limited to the following, **EXCEPT AS LIMITED OR ALTERED BY CHAPTER 16 OF THIS CHARTER**: (a) To declare as a hazard or nuisance any act or condition upon public or private property, or both, including, but not limited to, the accumulation of rubbish and the growing of noxious weeds, which is, or may be dangerous to the health, safety, or welfare of the inhabitants of the City, to provide for the abatement thereof, and to provide that cost of such abatement shall be charged as a special assessment against the real property on which the hazard or nuisance is located. (b) To provide for the public welfare by: (1) **EXCEPT AS LIMITED OR ALTERED BY CHAPTER 16 OF THIS CHARTER**, RRegulating trades, occupations, and amusements within the City, and prohibiting trades, occupations, and amusements, which are detrimental to the safety, health, or welfare of its inhabitants; (2) **EXCEPT AS LIMITED OR ALTERED BY CHAPTER 16 OF THIS CHARTER**, RRegulating the preparation, storage, transportation, and sale of foods, drugs, and beverages for human consumption; (3) Collecting and disposing of garbage and rubbish and liquid waste disposal; (4) Licensing and regulating the number of vehicles, which carry persons or property for hire, fixing the rates of fare and charges, and determining the locations of stands for such vehicles; (5) Licensing and regulating billboards and advertising signs and locations thereof; (6) Regulating the construction, erection, alteration, equipment, repair, moving, removal, demolition of buildings and structures and their appearances and service equipment; (7) Regulating the location, height and type of fences abutting public or between private properties; (8) Establishing zones within the City and regulating therein the use and occupancy of lands or structures; the height, area, size and location of; (9) Regulating, limiting, and prohibiting the construction and use of buildings and lands in order to promote the public safety and to prevent fires; (10) Regulating and controlling the use of streams, waters, and water courses within the City in any manner consistent with the provisions of law. (c) Power to establish and reasonably control streets, alleys, bridges, and public places, and the space above and beneath them, and the use thereof by: (1) Creating and vacating the same and acquiring and disposing of land, or any interest in land, required therefor, including any surplus land which may be incidental to or necessary for the purchase of land required; (2) Providing a plan of streets and alleys within and for a distance beyond the limits of the City as permitted by law; (3) Requiring the owners of real property to build and maintain public sidewalks according to plan in the area of streets immediately adjacent to such property, and, upon failure of any owner to do so, construct and maintain such sidewalks and assess the cost thereof against such property as a special assessment; (4) Compelling all persons to keep sidewalks which are in the area of streets immediately adjacent to the premises owned, controlled, or occupied by them free from snow, ice, dirt, wood, shrubbery, or any other object which obstructs such sidewalks, or which makes the same hazardous or offensive to the public health or safety, and upon failure of such persons to do so, to cut and remove such weeds or to remove such objects, and to assess the cost thereof against such property as a special assessment; (5) Compelling all persons to care for the untraveled portions of the streets lying between the traveled portion and the property line which abut upon premises owned, controlled or occupied by them, and to keep the same free from weeds and from objects which are offensive or hazardous to public health and safety, and, upon failure to do so, cutting and removing such weeds and removing such objects and assessing the cost thereof against such adjoining property as a special assessment; (6) Providing for the grade of streets and requiring public utility users of streets and other public places to conform thereto with respect to their tracks, lines or facilities located on, above, or under the streets or alleys, requiring railroads to keep their tracks and the street surface between the tracks, and for legally required distance on each side of them in reasonable repair at all times, but in any case, at least one and one-half feet on each side of the tracks; (7) Regulating the speed of vehicles, trains, and locomotives upon or across the streets within the provisions and limitations of law, and the stopping and parking of the same upon the streets and at street crossings; (8) Providing for and regulating the lighting of streets and alleys, whether such lights be located on public or private property; (9) Preventing and abating the encumbering of streets and alleys or any part thereof; (10) Regulating the location of buildings and structures and of trees, shrubbery, or signs at or near street corners and street intersections with alleys and driveways, so as to provide for the public safety and welfare in the use of streets and alleys; (11) Providing for and regulating the numbering of buildings upon property abutting the streets and alleys and compelling the owners and occupants thereof to affix numbers thereto; (12) Providing for the use by other than the owner, of property located on, above, or under the streets, alleys, and public places, in the operation of a utility, upon the payment of reasonable compensation therefor to the owner thereof; (13) Providing

for the planting and general care and protection of trees and shrubbery within the streets and public places of the City and preventing the cutting of limbs and branches for the placing and maintenance of utility wires without the consent of the designated officer or agency of the City; (14) Providing for the control over all trees, shrubs and plants in the public streets, highways, parks, or other public places in the City, all dead and diseased trees on private property and the trees on private property overhanging the street, sidewalk, or public places, including the removal thereof and assessing the cost thereof against the abutting property as a special assessment; (15) Regulating the use, occupancy, sanitation and parking of house trailers or mobile homes within the City, and the right of the City to so regulate them shall not be abrogated thereof because of any detachment from wheels or because of placing them on, or attaching them to the ground by means of any temporary or permanent foundation or in any manner whatsoever. (d) To undertake any public work or make any public improvement or any repair or replacement thereof, either directly or by contract with public bodies or private persons; and to participate in any public work or public improvement under any lawful plan by which the whole or partial support of such work or improvement is provided by another Governmental unit or agency. (e) To construct, provide, maintain, extend, operate, and improve: (1) Within the City, a City Hall, City office buildings, police and fire stations, civic auditoriums, public libraries, and polling places; and, (2) Either within or without the corporate limits of the City or of the County; Public Parks, recreation grounds, zoological gardens, museums, airports and landing fields and facilities for the landing of helicopters and air vehicles having like characteristics, cemeteries, levees, embankments, and structures for flood control and other purposes related to the public health, safety, welfare, electric light and power plants and systems, public heating systems and plants, gas plants and systems, water works and water treatment plants and systems, storm sewers, garbage and rubbish collection and disposal facilities, market buildings and market places, facilities for the storage and parking of vehicles, hospitals, and any other structure or facility which is devoted to or intended for public purposes within the scope of the powers of the City. (f) To acquire by purchase, gift, condemnation, lease or otherwise, real and personal property, and interests in property, either within or without the corporate limits of the City or of the County, for any public purpose or use within the scope of its powers, including, but not by way of limitations, the uses and purposes set forth in this section. (g) To join any municipal corporation or with any other unit or agency of government, whether local, state or federal, or with CHAPTER § 2.1 CH7: any number or combination thereof, by contract or otherwise as may be permitted by law, in the ownership, operation, or performance, jointly or by one or more on behalf of all, of any property, facility or service which each would have the power to own, operate or perform separately.

CHAPTER 6. THE ADMINISTRATIVE SERVICE

Section 6.3. City Clerk. (a) The Clerk shall be the clerk and clerical officer of the Council and shall keep its journal. He shall keep a record of all actions of the Council at its regular and special meetings. He shall certify all ordinances and resolutions adopted by the Council. (b) The Clerk shall have the power to administer all oaths required by law and by the ordinances of the City. He shall be the custodian of the City seal, and shall affix the same to documents required to be sealed. He shall be the custodian of all papers, documents, and records pertaining to the City, the custody of which is not otherwise provided by this Charter. He shall give the proper officials ample notice of the expiration or termination of any official bonds, franchises, contracts or agreements to which the City is a part and he shall notify the Council of the failure of any officer or employee required to take an oath of office or furnish any bond required of him. (c) The Clerk shall perform such other duties in connection with his office as may be required of him by law, the ordinances or resolutions of the Council, or by the City Manager **EXCEPT AS LIMITED OR ALTERED BY CHAPTER 16 OF THIS CHARTER**.

CHAPTER 6. THE ADMINISTRATIVE SERVICE

Section 6.8. Additional Administrative Powers and Duties. The Council shall, **EXCEPT AS ALTERED OR ABROGATED BY CHAPTER 16 OF THIS CHARTER**, by ordinance establish departments of City government and determine and prescribe the functions and duties of each department. Upon recommendation of the City Manager, the Council may by ordinance prescribe additional powers and duties and diminish any powers and duties in a manner not inconsistent with this Charter to be exercised and administered by appropriate officials and departments of the City.

CHAPTER 14. DEFINITIONS AND GENERAL PROVISIONS

Section 14.2. Records to be Public. All records of the City, **EXCEPT AS LIMITED OR EXEMPTED BY CHAPTER 16 OF THIS CHARTER**, shall be public, unless otherwise-provided by law, shall be kept in City offices, except when required for official reasons or for purposes of safekeeping to be elsewhere, and shall be available for inspection at all reasonable times. All papers, books, or other records of any matter required to be kept by any of the several departments of the City, either by law or by the provisions of any ordinance, shall be deemed public records of such department, and they, or copies duly certified by the custodian thereof, shall be prima facie evidence of their contents in all suits at law or in equity, or in other proceedings.

CHAPTER 16. MEDICAL MARIHUANA

SECTION 1. PURPOSE

THE PURPOSE OF THIS ARTICLE IS TO END THE CITY'S PROHIBITION OF MARIHUANA FACILITIES, AND AUTHORIZE AND REGULATE SUCH FACILITIES WITHIN THE CITY CONSISTENT WITH THE MEDICAL MARIHUANA FACILITIES LICENSING ACT, 2016 PA 281, MCL 333.27101 ET SEQ, AND TO PROVIDE QUALIFYING PATIENTS LOCAL ACCESS TO MEDICAL MARIHUANA FOR CONDITIONS SUCH AS EPILEPSY, MULTIPLE SCLEROSIS, COLITIS, ARTHRITIS, CROHN'S DISEASE, CEREBRAL PALSY, CHRONIC PAIN, PARKINSON'S DISEASE, POST TRAUMATIC STRESS DISORDER, AND OTHER MEDICAL CONDITIONS FOR WHICH MARIHUANA HAS BEEN DEEMED AN APPROVED MEDICAL USE BY THE STATE OF MICHIGAN. THE ADMINISTRATION AND REGULATION OF MARIHUANA FACILITIES WITHIN THE CITY SHALL BE CARRIED OUT BY THE CITY DEPARTMENT OF MEDICAL MARIHUANA, WHOSE POWERS AND

Cases to Date

(All unpublished/non-binding)

- Writs of mandamus to compel clerks to approve petition signatures
- Issues with petitions involve mostly procedural defects:
 - Timing of submission
 - “Regular municipal election”
 - Sheet size
 - Misleading ballot language
 - Petitions cover more than 1 subject



Village of Clarkston

- Court of Appeals went through the requirements for mandamus:
 - (1) the plaintiff has a clear, legal right to performance of the specific duty sought,
 - (2) the defendant has a clear legal duty to perform,
 - (3) the act is ministerial, and
 - (4) no other adequate legal or equitable remedy exists that might achieve the same result.
- Court held that the act of approving petition signatures was not a “ministerial act” which could be compelled by mandamus.



City of Portland

- Various issues with the petition
- Circuit Court held that the HRCA timeframe trumps Michigan Election Law timeframe
- The Court noted strict compliance with election requirements:
 - Petition folding/printing
 - Contents
 - Impartial statement of question



Keego Harbor

- Timing of Submission issue.
- 1st case that has had a decision out of the Court of Appeals.
- Court of Appeals affirmed the lower court's decision in favor of the City.
- Again, HRCA timeframe trumps Michigan Election Law timeframe.



Whitewater Township

- Not a charter amendment, but instructive on what is a “Regular Election”
- “Regular election”
 - One where there are candidates for offices on the ballot.
- No candidates were on the office for the Township at the August 2021 election, so the Court determined that the election was a “special election.”
- Judge ruled the election should be cancelled.



State Review of Initiatory Petitions & Charter Amendments

- By custom and tradition, the Governor continues to request the Attorney General's review of each proposed amendment that is submitted to the Governor for approval.
- At the same time as the AG's office is reviewing the substance of a proposed amendment at the request of the Governor, it also reviews the ballot language for that charter amendment.
- NOTE: AG guidance has suggested that city councils should re-write the ballot question when the one the petitioners submit is deceptive or otherwise improper.



State Review of Initiatory Petitions & Charter Amendments

- AG input thus far:
 - City of Perry proposed charter amendment:
 - AG concluded that the proposed amendment is not consistent with the HRCA, because it involves a fundamental restructuring of city government which may not be accomplished by a charter amendment, but only by a charter revision drafted by a charter commission operating under Sections 18–24 of the HRCA.
 - Determined the proposed ballot language was not consistent with Section 21(2) of the HRCA:
 - Failing to inform the voters that the charter amendment is contrary to Michigan law.
 - Does not put voters on notice of the burdens being imposed by the proposal.



Long-Term Issues Presented

- Administrative burdens
- Risks of future litigation
- Altering the structure of government

Note: It will be important to consult with your municipal attorney on legal options if your community has a proposal like these eventually approved by the voters.



Questions??

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