

CLIENT ALERT

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MUNICIPAL LAW

WHAT VOTER APPROVAL OF RECREATIONAL MARIHUANA MEANS FOR MUNICIPALITIES

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On November 6, Michigan voters approved Proposal 1, legalizing the use of marihuana by individuals 21 years of age and older. The legislation initiated by Proposal 1 will become effective 10 days after certification of the vote. At that time, individual use will be legal state-wide and may not be prohibited locally. Municipalities may, however, place certain restrictions on use, and may regulate or completely prohibit commercial recreational marihuana establishments (including retail businesses, growers, processors, safety testing facilities and secure transporters) from operating within the municipality.

Below is a summary of the provisions of the legislation affecting local governments:

1. Municipalities must affirmatively “opt out” to prohibit recreational marihuana establishments. In contrast to medical marihuana facilities, which can only operate in municipalities that have “opted in” to such facilities, recreational marihuana establishments may (subject to licensing requirements) operate in any municipality that has not adopted an ordinance affirmatively “opting out” of such establishments under the Michigan Regulation and Taxation of Marihuana Act, 2018 Initiated Law 1 (the “MRTMA”).
2. Municipalities may completely opt out of recreational marihuana establishments or may limit the number and regulate. Municipalities that do not wish to completely prohibit recreational marihuana establishments may limit the number within the municipality and implement time, place and manner regulations with respect to such establishments. Municipal regulations, whether to completely prohibit or otherwise restrict recreational marihuana establishments, will generally be accomplished through licensing ordinances and zoning ordinances.
3. Licensing of recreational marihuana establishments is expected within a year. A state-wide licensing process is expected to be in place within a year. Municipalities may also impose local licensing requirements that do not conflict with State laws and requirements. While a recreational marihuana establishment may not operate under the MRTMA without a license, municipalities that wish to opt out or limit the number of establishments will want to act soon after the legislation becomes effective to ensure that all relevant ordinances are in place by the time licensing begins.
4. Municipalities may prohibit marihuana use in public places. While the legislation legalizes individual marihuana use, it does not authorize use in public places. Municipalities may adopt ordinances prohibiting the use of marihuana in public places and establishing penalties for such use, as long as such ordinances are not otherwise inconsistent with State law. Municipalities will

want to review existing ordinances establishing penalties for drug possession and use that may now conflict with the MRTMA.

5. Municipalities may not prohibit individual use on private property. Municipalities cannot prohibit use by a person 21 years of age and older within that person’s property, and cannot prohibit use of marihuana on private property where the owner, occupier or manager has not prohibited its use – and that is not accessible to people under 21 years of age.
6. Municipalities should review employment and labor policies. The MRTMA does not prohibit employers from maintaining and establishing drug-free workplace policies that include marihuana. Municipalities will nonetheless want to review employment and labor policies in light of the new law.

The recreational marihuana legislation creates separate rights and limitations for individuals and for commercial businesses, and municipalities will want to address each. Dickinson Wright attorneys can provide assistance.

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