City of Petoskey

Agenda

CITY COUNCIL

February 18, 2019

1. Call to Order - 7:00 P.M. - City Hall Council Chambers

2. Recitation - Pledge of Allegiance to the Flag of the United States of America

3. Roll Call

4. Presentation – Hear presentation by engineering consultant firm C2AE, Gaylord, concerning the Stormwater, Asset Management and Wastewater (SAW) Program

5. Consent Agenda – Adoption of a proposed resolution that would confirm approval of the following:

   (a) January 28, 2019 special joint session and February 4, 2019 regular session City Council meeting minutes

   (b) Acknowledge receipt of a report concerning certain administrative transactions since February 4, 2019

6. Miscellaneous Public Comments

7. City Manager Updates

8. Appointments – Consideration of appointment to the Planning Commission

9. New Business

   (a) Discussion concerning medical and recreational marijuana

   (b) Authorize contracting with Land Information Access Association (LIAA) for Master Plan consulting services

   (c) Adoption of a proposed resolution that would authorize the City Manager to execute a new Lieutenants Fraternal Order of Police Labor Council (FOPLC) agreement

   (d) Adoption of a proposed resolution that would authorize execution of two agreements enacting changes to the MERS retirement plan employee contributions for 2019 and 2020 for unionized Public Safety Lieutenants

   (e) Hear update by the City Attorney concerning the Odawa litigation

10. City Council Comments

11. Adjournment

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 13, 2019

AGENDA SUBJECT: Stormwater, Asset Management and Wastewater Presentation

RECOMMENDATION: That the City Council hear the presentation

Larry Fox, an engineering consultant with C2AE, Gaylord, was the project manager for the MDEQ Stormwater, Asset Management and Wastewater (SAW) grant program. Mr. Fox will provide a brief presentation to City Council on the SAW program and the development of a Stormwater Management Plan that was accomplished over the past three years.

sb

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Consent Agenda Resolution

RECOMMENDATION: That the City Council approve this proposed resolution

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The City Council will be asked to adopt a resolution that would approve the following consent agenda items:

(1) Draft minutes of the January 28, 2019 special joint session and February 4, 2019 regular session City Council meetings; and

(2) Acknowledge receipt of a report from the City Manager concerning all checks that have been issued since February 4, 2019 for contract and vendor claims at $1,481,112.13, intergovernmental claims at $0, and the February 7 payroll at $199,123.89 for a total of $1,680,236.02.

sb
Enclosures

City of Petoskey

Minutes

P L A N N I N G C O M M I S S I O N
AND CITY COUNCIL

January 28, 2019

A special joint Planning Commission and City Council meeting was held in the City Hall Council Chambers, Petoskey, Michigan, on Thursday, January 28, 2019. Roll was called at 5:30 P.M. and the following were:

Present:	John Murphy, Mayor Kate Marshall Suzanne Shumway Grant Dittmar Lindsey Walker Emily Meyerson, Chairperson Dana Andrews Cynthia Linn Robson Rick Neumann Ted Pall Eric Yetter
Absent:	Betony Braddock Dean Burns
Others:	Jonathan Scheel, 506 N Division Michael Shumway, 907 Lindell Ave
Staff:	Rob Straebel, City Manager Amy Tweeten, City Planner

Planning Commission Chairperson Meyerson provided background on why the Commission had requested the meeting, the role of the Planning Commission according to the Planning Enabling Act and Zoning Enabling Act, specifically in regard to holding public hearings on zoning ordinance amendments. She explained that the ways ordinance changes are initiated will vary from the City Council requesting a change, to the public bringing issues forward, to addressing community issues proactively.

Fence regulations

Chairperson Meyerson explained that the discussion stemmed from issues brought forward by residents regarding garden fences, but also the number of variance requests for front yard fences. The issue had been extensively discussed before and the Commission had reviewed the past minutes and background information provided, but given the issue of gardens and the ZBA direction to the variance applicant to approach the Planning Commission, the Commission took the issue up again, drafted language and held a public hearing. The Commission wanted to discuss the language with Council and hear concerns to make a better ordinance before making a recommendation.

Council members asked how many variance requests there had been, how the 50% open was calculated and its significance, how many people attended the public hearing, how fence maintenance would be enforced.

Staff responded that there had been at least two corner-front yard fence variance denied, but at least three approved. Fences pre-existing the ordinance as well as fences granted through variances add to the confusion. The 50% is calculated by amount of solid versus open area – if a picket fence had pickets the same width as the opening. There had been two people who spoke at the public hearing, both of whom had installed fencing for garden purposes.

Council members further commented that there is a concern with front yard fence aesthetics creating a disunity in the landscape, that if front yard fences are to be allowed they should be 6 feet all around and solid, that enforcement is an issue as there is no enforcement officer, that government should not be regulating aesthetics, that there is a concern with corner yards, that deer can jump a five foot fence and repellent is effective for gardens, that there is a community garden that can be used rather than fencing a front yard, and that the social media campaign regarding the garden fencing had been effective and the process of bringing issues forward had worked.

Commissioners commented a 42" fence is more welcoming that a six foot solid fence, that many ordinances had been looked at to come up with proposed language, that there are a lot of existing fences on Lockwood Avenue and they are maintained and attractive, that enforcement is an issue every time an ordinance is adopted because enforcement is complaint driven, that with all the research done there was not another community found that didn't allow front yard fences, that allowing corner front yard fences allows more use of property on a corner lot, that regulating fencing is important as it contributes to a community sense of place and openness.

Staff noted that while it is being addressed as a fencing issue, the Commission discussed the front yard gardens in the context of urban agriculture and whether it is something we want to encourage for community sustainability purposes.

At this time the meeting was opened to public comment. Jonathan Scheel, 506 N. Division Road, commented that he had a concern about front yard garden fences and did not support the use of chicken wire as an allowed material. Michael Shumway, 907 Lindell raised a concern about dogs enclosed in front yards and that there should be a greater setback for this reason.

Accessory Dwelling Units

Staff explained that this was a topic initiated by the Commission as one of many ways to allow the creating of housing, and that there was not consensus by the Commission which is why input of Council is wanted before continuing discussion.

Commissioners noted the concerns of ADUs becoming vacation rentals, particularly if state legislation passes that prohibits regulation of short-term rentals; that enforcement again becomes an issue and that there are incentives for people to not comply; that they allow an increase in density where people want to live and provide options; that while there is a need for housing, there is too much of a concern about them becoming vacation rentals; that given cost of construction there won't be a sudden increase in requests but that it is a tool that a lot of communities are using.

Council members asked about the current vacation rental regulations and whether a business can be put in an accessory building; stated that there is a cost to neighbors if another unit is put in a backyard; that young people are in favor of ADUs but there would be enforcement issues; that this is just a tool to address housing needs and not a complete solution and that the role of government in the housing crisis is to eliminate barriers which allowing ADUs would accomplish; that it is an important issue and if the owner were on the premise it would be less likely to bring the neighborhood down; that a pilot program is an interesting idea; and that addressing the neighborhood character and enforcement is needed.

Commissioners commented that they had not discussed minimum lot size but that there may be a way to develop ordinance language that is sensitive to neighborhood character.

The public was invited to comment. Johnathan Scheel stated he was in support of ADUs and that Charlevoix has an enforcement officer to address the ordinance issues that were raised.

The consensus was that the Commission should continue its discussion of ADUs.

The meeting adjourned at 7:30 p.m.

Minutes reviewed by Dana Andrews, Vice Chair/Secretary

City of Petoskey Minutes

CITY COUNCIL

February 4, 2019

A regular meeting of the City of Petoskey City Council was held in the City Hall Council Chambers, Petoskey, Michigan, on Monday, February 4, 2019. This meeting was called to order at 7:00 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, a roll call then determined that the following were

Present: Kate Marshall, City Councilmember
Suzanne Shumway, City Councilmember
Grant Dittmar, City Councilmember
Lindsey Walker, City Councilmember

Absent: John Murphy, Mayor

Also in attendance were City Manager Robert Straebel, Clerk-Treasurer Alan Terry, Public Works Director Michael Robbins, Parks and Recreation Director Kendall Klingelsmith and Downtown Director Becky Goodman.

Hear MDOT US-31 Realignment Project Presentation

Jay Galitis and Ben Gau, MDOT representatives and project engineer, gave a brief presentation on the US-31 realignment project. The representatives reviewed that the $11M project will be from the Mitchell Street Bridge to Fairview Avenue; that the surface will be replaced and the highway moved away from the bluff; reviewed that the bed rock is eroding; that the retaining wall will be reconstructed; that a new traffic signal will be installed; drainage and utility improvements; that the average traffic flow is 20,000 daily; reviewed the detour route for north bound traffic which will be in place late March through July 1; and that the sidewalk will be widened on the north side of road.

City Councilmembers inquired on self-driving cars on new road; if there will be painted crosswalk and signage at Sunset Park for pedestrians; inquired if the chosen contractors are looking at recycling product; and if the north bound lane would be allowed to turn left into Sunset Park. The City Manager reported that a detour is planned for Lake Street during March and April.

Mayor Protem Dittmar asked for public comments and heard inquiries on when work would be performed; if narrow stop signs by boulevard and paving near Bay View will remain in place; heard an inquiry if there will be signage for the Mitchell and Division turns as part of the downtown detour; and if MDOT would be informing the public on project status. Mr. Galitis responded that work would primarily be completed during the day, with possible night time work; that MDOT will have biweekly meetings and provide information to local businesses and the public; and that there will be milling and filling with detoured sections of Division, Mitchell and Arlington, except for sections of Arlington that was replaced last time.

Consent Agenda - Resolution No. 19263

Following introduction of the consent agenda for this meeting of February 4, 2019, City Councilmember Marshall moved that, seconded by City Councilmember Shumway adoption of the following resolution:

> BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the January 21, 2019 regular session City Council meeting be and are hereby approved; and

BE IT RESOLVED that receipt by the City Council of a report concerning all checks that had been issued since January 21, for contract and vendor claims at $310,369.74 intergovernmental claims at $0, and the January 24 payroll at $207,009.21, for a total of $517,378.95 be and is hereby acknowledged.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker (4)
NAYS: None (0)

Hear Public Comment
Mayor Protem Dittmar asked for public comments and there were no comments.

Hear City Manager Updates
The City Manager reviewed that there are new firework regulations for consumer fireworks and that the number of days and times to shoot them off has been reduced from 30 to 12 days and that the City Attorney is reviewing the new law and regulatory options for the City; that City Hall and DPW building will have an energy audit this week by SEEDS in Traverse City which is being funded by a Mott Foundation grant; that staff began discussions with MPPA about increasing renewable energy sources in the near future and that MPPA representatives will make a presentation to Council in March or April; that staff is finalizing scope of work with Land Information Access Association (LIAA) for the 2019 revision to the Community Master Plan with an agreement to be considered at the next Council meeting; that there has not been much progress on the downtown bathrooms due to the cold weather the last few weeks; that a discussion on medical and recreational marijuana will occur at the February 18 meeting as requested by City Council; that he will be at the 2019 Winter MME Conference in Battle Creek the rest of this week; and that the Little Traverse Wheelway from Boyne Country Sports to the Bayfront Tunnel is closed due to retaining wall work as part of the highway realignment project.

Councilmember Marshall reported that she will not be in attendance at the April 15 meeting and if the MPPA discussion could occur when she was present. There was also a Council comment concerning the budget and selection process on the downtown bathroom project.

Approve Grant Support Concerning Lake Street Dam – Resolution No. 19264
The City Manager reviewed that in 2018 the City initiated an inspection report on the Lake Street Dam and that the overall condition was fair; that there doesn't appear to be any apparent visual structural deficiencies leading to immediate failure of the dam; and that the report summarized recommendations that included investing in infrastructure repair or replacement. The City Manager further reviewed that the Tip of the Mitt Watershed Council can apply for grant funding through the Great Lakes Fishery Trust Habitat Protection and Restoration Program, on behalf of the City, to assist with the cost of an engineering alternatives study; that the study will consider stream impacts a result of the following scenarios: full removal, partial removal, modification of the structure and maintaining the structure as is; that there is a national movement to remove dams; and that the overall project cost is $66,000, with the City committing approximately 25% or $16,500.

City Councilmember Marshall moved that, seconded by City Councilmember Shumway adoption of the following resolution:

WHEREAS, the City of Petoskey supports the Tip of the Mitt Watershed Council in submitting a grant through the Great Lakes Fishery Trust Habitat Protection and Restoration Program that would fund an engineering study of the Lake Street Dam and surrounding watershed; and

WHEREAS, the City of Petoskey has support from the Department of Natural Resources (DNR), Department of Environmental Quality (DEQ), Little Traverse Band of Odawa Indians and Tip of the Mitt Watershed Council to investigate options that could include full removal, partial removal, modification, and maintaining the structure as is; and

WHEREAS, the City of Petoskey will commit up to 25% or $16,500, whichever is less, as supporting funds if awarded the grant:

NOW, THERFORE, BE IT RESOLVED that the City of Petoskey City Council hereby endorses the submission by the Tip of the Mitt Watershed Council and requests the Great Lakes Fishery Trust Habitat Protection and Restoration Program provide funding for this project.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker (4)
NAYS: None (0)

Approve Poverty Exemption Policy & Guidelines – Resolution No. 19265

The Director of Finance reviewed that the MCL 211.7u of the General Property Tax Act allows a property tax exemption for the principal residence of persons who, in the judgement of the Board of Review, by reason of poverty, are unable to contribute to the public charges; that the Act requires a local governing body to adopt guidelines including income and asset tests for possible poverty exemption of local property tax assessments; and that the guidelines will be used by the Board of Review in reviewing poverty exemption applications. The Director of Finance further reviewed that City Council adopted a resolution on February 19, 2018 re-establishing provisions for a poverty exemption, however the State is requiring the policy be approved annually. The proposed policy and guidelines is essentially the same as the policy approved in 2018, with updated poverty income levels established annually by the Federal Poverty Income Guidelines. The City received 10 applications from three owners over the last eight years of which 8 were granted.

City Councilmember Shumway moved that, seconded by City Councilmember Marshall adoption of the following resolution:

WHEREAS, the adoption of guidelines for poverty exemptions is required of the City Council; and

WHEREAS, the principal residence of persons, who the Assessor and Board of Review determines by reason of poverty to be unable to contribute to the public charge, is eligible for exemption in whole or in part from taxation under Public Act 390 of 1994 (MCL 211.7u); and

WHEREAS, pursuant to PA 390 of 1994, the City of Petoskey, Emmet County adopts the following guidelines for the Board of Review to implement. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and all persons residing in the household, including any property tax credit returns, filed in the current or immediately preceding year;

To be eligible, a person shall do all the following on an annual basis:

1. Be an owner of and occupy as a principal residence for a period of at least three years the property for which an exemption is requested.

2. File a claim with the Assessor or Board of Review, accompanied by federal and state income tax returns for all persons residing in the principal residence, including any property tax credit returns filed in the immediately preceding year or in the current year or a signed State Tax Commission Form 4988, Poverty Exemption Affidavit.

3. File a claim reporting that the combined assets of all persons do not exceed the current guidelines. Assets include but are not limited to, real estate other than the principal residence, personal property, motor vehicles, recreational vehicles and equipment, certificates of deposit, savings accounts, checking accounts, stocks, bonds, life insurance, retirement funds, etc.

4. Produce a valid driver's license or other form of identification if requested.

5. Produce, if requested, a deed, land contract, or other evidence of ownership of the property for which an exemption is requested.

6. Meet the federal poverty income guidelines as defined and determined annually by the United States Department of Health and Human Services or alternative guidelines adopted by the City of Petoskey providing the alternative guidelines do not provide eligibility requirements less than the federal guidelines.

7. The application for an exemption shall be filed after January 1, but one day prior to the last day of the December Board of Review. The filing of this claim constitutes an appearance before the Board of Review for the purpose of preserving the right of appeal to the Michigan Tax Tribunal.

The following are the federal poverty income guidelines which are updated annually by the United States Department of Health and Human Services. The annual allowable income includes income for all persons residing in the principal residence.

Federal Poverty Guidelines for 2019 Assessments

Number of Persons Residing in the Principal Residence	Poverty Guidelines Annual Allowable Income
1 person	$12,490
2 persons	$16,910
3 persons	$21.330
4 persons	$25,750
5 persons	$30,170
6 persons	$34,590
7 persons	$39,010
8 persons	$43,430
Each additional person, add	$ 4,420

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Assessor and Board of Review shall follow the above and attached stated policy and federal guidelines in granting or denying an exemption, unless the Assessor and Board of Review determines there are substantial and compelling reasons why there should be a deviation from the policy and federal guidelines and these reasons are communicated in writing to the claimant.

Said resolution was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker (4)
NAYS: None (0)

Approve Motor Pool Vehicle Purchase – Resolution No. 19266

The Director of Public Works reviewed that the City's 2019 budget and CIP included $210,000 for the purchase of a heavy-duty utility truck with aerial device, primarily for use by the Public Works Department in conjunction with electric distribution operations. This proposed unit will replace an aging 1995 similar type utility aerial truck which will be retired and sold at auction. City staff reviewed detailed specifications as provided through the Mi-Deal State of Michigan Purchase Contract and determined that the unit from Altec Industries, Inc., Waterford, Michigan, was suitable for the specified application as required by the City.

City Councilmember Marshall moved that, seconded by City Councilmember Shumway approval of the purchase from Altec Industries, Inc., Waterford, through the Mi-Deal State of Michigan Purchase Contract, a latest production heavy-duty utility truck with aerial device, at a cost not to exceed $203,386.

Said motion was adopted by the following vote:

AYES: Marshall, Shumway, Dittmar, Walker (4)
NAYS: None (0)

Council Comments

Mayor Protem Dittmar asked for Council comments and City Councilmember Shumway commended DPW staff on snowplowing efforts and the quick response to weather conditions and concerns.

There being no further business to come before the City Council, this February 4, 2019, meeting of the City Council adjourned at 7:55 P.M.

Grant Dittmar, Mayor Protem Alan Terry, Clerk-Treasurer

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/06/2019	83474	AARP	271-790-958.100	75.00
02/19	02/06/2019	83475	ACH-CHILD SUPPORT	701-000-230.160	160.23
02/19	02/06/2019	83476	ACH-EFTPS	701-000-230.200	2,818.81
02/19	02/06/2019	83476	ACH-EFTPS	701-000-230.200	2,818.81
02/19	02/06/2019	83476	ACH-EFTPS	701-000-230.200	12,052.86
02/19	02/06/2019	83476	ACH-EFTPS	701-000-230.200	12,052.86
02/19	02/06/2019	83476	ACH-EFTPS	701-000-230.100	19,028.06
02/19	02/06/2019	83477	ACH-ICMA 457	701-000-230.700	5,014.23
02/19	02/06/2019	83477	ACH-ICMA 457	701-000-230.700	1,698.26
02/19	02/06/2019	83478	Alliance Entertainment	271-790-761.000	294.92
02/19	02/06/2019	83478	Alliance Entertainment	271-790-761.100	67.21
02/19	02/06/2019	83479	All-Phase Electric Supply	101-770-775.000	26.03
02/19	02/06/2019	83479	All-Phase Electric Supply	582-586-775.000	58.60
02/19	02/06/2019	83479	All-Phase Electric Supply	101-268-775.000	34.94
02/19	02/06/2019	83479	All-Phase Electric Supply	101-770-775.000	30.97
02/19	02/06/2019	83479	All-Phase Electric Supply	582-586-775.000	11.04
02/19	02/06/2019	83479	All-Phase Electric Supply	582-586-775.000	72.89
02/19	02/06/2019	83479	All-Phase Electric Supply	582-590-775.000	11.04
02/19	02/06/2019	83480	Alro Steel Corporation	661-598-932.000	108.83
02/19	02/06/2019	83481	AT&T	592-560-850.000	127.73
02/19	02/06/2019	83481	AT&T	592-558-920.000	198.49
02/19	02/06/2019	83481	AT&T	592-538-850.000	194.94
02/19	02/06/2019	83481	AT&T	592-538-850.000	196.91
02/19	02/06/2019	83481	AT&T	101-172-850.000	427.20
02/19	02/06/2019	83481	AT&T	101-201-850.000	227.84
02/19	02/06/2019	83481	AT&T	101-208-850.000	142.40
02/19	02/06/2019	83481	AT&T	101-215-850.000	113.92
02/19	02/06/2019	83481	AT&T	101-441-850.000	256.32
02/19	02/06/2019	83481	AT&T	204-481-850.000	85.44
02/19	02/06/2019	83481	AT&T	204-481-850.000	85.44
02/19	02/06/2019	83481	AT&T	582-588-850.000	284.80
02/19	02/06/2019	83481	AT&T	582-593-850.000	113.92
02/19	02/06/2019	83481	AT&T	592-549-850.000	170.88
02/19	02/06/2019	83481	AT&T	592-560-850.000	170.88
02/19	02/06/2019	83481	AT&T	101-756-850.000	170.88
02/19	02/06/2019	83481	AT&T	101-345-850.000	313.29
02/19	02/06/2019	83481	AT&T	101-400-850.000	142.40
02/19	02/06/2019	83481	AT&T	592-560-850.000	194.94
02/19	02/06/2019	83481	AT&T	101-257-850.000	142.40
02/19	02/06/2019	83482	Bayside Family &	592-549-802.000	60.00
02/19	02/06/2019	83482	Bayside Family &	592-560-802.000	60.00
02/19	02/06/2019	83483	BRADFORD MASTER DRY CLEANERS	101-345-775.000	312.05
02/19	02/06/2019	83484	BS&A Software	101-215-802.000	1,125.00
02/19	02/06/2019	83485	Bury, Tina	271-790-958.100	200.00
02/19	02/06/2019	83486	Char-Em United Way	271-790-955.000	32.00
02/19	02/06/2019	83487	Char-Em United Way	701-000-230.800	91.75
02/19	02/06/2019	83488	Chemco Products Inc.	592-551-783.000	7,922.70
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-265-920.000	828.58
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-268-920.000	1,174.81
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-345-920.000	3,131.75
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-345-920.100	404.42
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-754-920.000	24.64

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-770-920.000	2,479.10
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-773-920.000	350.13
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	101-789-920.000	1,727.20
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	202-475-920.000	162.50
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	204-448-920.000	2,600.00
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	271-790-920.000	2,431.49
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	514-587-802.100	62.54
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	514-587-920.000	69.67
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	582-586-920.000	148.05
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	582-593-920.000	1,305.78
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	592-538-920.000	8,050.70
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	592-542-920.000	148.05
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	592-551-920.000	16,610.83
02/19	02/06/2019	83489	CITY TREAS. FOR UTILITY BILLS	592-555-920.000	1,116.84
02/19	02/06/2019	83490	Collias-Glaser, Hellene Kay	271-790-802.000	240.00
02/19	02/06/2019	83491	Complete Paint & Supplies	101-770-931.000	51.60
02/19	02/06/2019	83492	CONWAY TOWING & RECOVERY INC.	661-598-932.000	300.00
02/19	02/06/2019	83493	Decka Digital LLC	582-593-775.000	50.00
02/19	02/06/2019	83494	Demco	271-790-751.000	172.07
02/19	02/06/2019	83495	Dinges Fire Company	101-345-775.000	70.02
02/19	02/06/2019	83496	Dinon Law PLLC	101-266-802.000	1,032.50
02/19	02/06/2019	83497	Empiric Solutions Inc.	101-228-802.000	8,654.00
02/19	02/06/2019	83497	Empiric Solutions Inc.	101-228-775.000	60.00
02/19	02/06/2019	83498	Englebrecht, Robert	101-257-802.100	3,750.00
02/19	02/06/2019	83499	FASTENAL COMPANY	202-475-775.000	58.82
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	9.93
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	23.84
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	5.70
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	101-756-808.030	2.47
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	101-345-775.000	15.55
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	15.33
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	592-554-775.000	74.99
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	143.43
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	51.40
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-759.000	71.87
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	22.72
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	10.00
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	582-586-775.000	4.13
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	21.19
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	6.27
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	18.22
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	12.24
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	10.05
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	82.68
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	7.84
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	12.64
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	22.19
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	9.87
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	7.84
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	15.90
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	8.58
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	2.79

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	127.97
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	32.76
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	2.09
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	9.21
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	26.90
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	9.00
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	135.94
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	34.30
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	89.99
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	27.15
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	69.66
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	514-587-931.000	6.99
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	514-587-931.000	13.39
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	3.77
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	6.45
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	27.15-
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	34.30
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	101-345-775.000	27.68
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-932.000	19.26
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	56.98
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	592-554-775.000	13.86
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-010-111.000	6.05
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-931.000	18.25
02/19	02/06/2019	83500	Fochtman's Auto & Truck Parts	661-598-785.000	5.53
02/19	02/06/2019	83501	Fought, Chris	101-756-808.030	60.00
02/19	02/06/2019	83502	Fraternal Order of Police	701-000-230.400	971.00
02/19	02/06/2019	83503	Gibby's Garage	582-593-930.000	68.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-931.000	510.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-932.000	1,870.00
02/19	02/06/2019	83503	Gibby's Garage	582-593-930.000	68.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-932.000	272.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-931.000	612.00
02/19	02/06/2019	83503	Gibby's Garage	514-587-931.000	170.00
02/19	02/06/2019	83503	Gibby's Garage	582-593-930.000	102.00
02/19	02/06/2019	83503	Gibby's Garage	514-587-931.000	170.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-931.000	476.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-932.000	238.00
02/19	02/06/2019	83503	Gibby's Garage	514-587-931.000	68.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-931.000	578.00
02/19	02/06/2019	83503	Gibby's Garage	661-598-932.000	272.00
02/19	02/06/2019	83504	Gordon Food Service	101-770-771.000	152.77
02/19	02/06/2019	83504	Gordon Food Service	101-345-775.000	26.98
02/19	02/06/2019	83504	Gordon Food Service	101-770-771.000	134.58
02/19	02/06/2019	83505	Greenwell Machine Shop	661-598-931.000	49.60
02/19	02/06/2019	83506	GRP Engineering Inc.	582-588-802.000	1,165.25
02/19	02/06/2019	83506	GRP Engineering Inc.	582-588-802.000	322.81
02/19	02/06/2019	83507	HALEY'S PLUMBING & HEATING	592-554-802.000	227.92
02/19	02/06/2019	83508	Hewitt, Scott	101-756-808.030	180.00
02/19	02/06/2019	83509	Himebauch, Kelly L	271-790-802.000	210.00
02/19	02/06/2019	83510	ICMA-ROTH	701-000-230.900	435.00
02/19	02/06/2019	83511	Integra Realty Resources	101-257-802.000	4,500.00
02/19	02/06/2019	83511	Integra Realty Resources	101-257-802.000	4,500.00

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02/19	02/06/2019	83512	Integrity Business Solutions	514-587-802.100	171.21
02/19	02/06/2019	83513	Jakeway, Patricia	271-790-802.000	300.00
02/19	02/06/2019	83514	Johnstone Supply #234	101-770-775.000	61.54
02/19	02/06/2019	83515	KSS Enterprises	101-268-775.000	353.64
02/19	02/06/2019	83515	KSS Enterprises	101-268-775.000	135.00
02/19	02/06/2019	83516	Malec, Steve	101-756-808.030	40.00
02/19	02/06/2019	83517	MCLAREN NORTHERN MICH HOSPITAL	271-790-880.000	40.00
02/19	02/06/2019	83518	MICHIGAN WATER ENVIRONMENT ASSOC.	592-560-915.000	630.00
02/19	02/06/2019	83519	Mikulski, Matthew	101-345-775.000	600.00
02/19	02/06/2019	83520	Miller, Greg	101-756-808.030	180.00
02/19	02/06/2019	83521	MURRAY, ANNE	101-756-808.090	1,458.00
02/19	02/06/2019	83522	OHM Advisors	204-481-802.000	4,177.50
02/19	02/06/2019	83522	OHM Advisors	202-451-802.000	792.00
02/19	02/06/2019	83522	OHM Advisors	204-481-802.000	1,886.00
02/19	02/06/2019	83522	OHM Advisors	202-451-802.000	681.00
02/19	02/06/2019	83523	Penguin Random House	271-790-761.000	30.00
02/19	02/06/2019	83523	Penguin Random House	271-790-761.000	56.25
02/19	02/06/2019	83524	PERFORMANCE PAINTING	592-554-802.000	3,161.00
02/19	02/06/2019	83525	PETOSKEY PARTS PLUS	661-598-931.000	38.23
02/19	02/06/2019	83526	Preston Feather	582-586-775.000	3.30
02/19	02/06/2019	83526	Preston Feather	582-586-775.000	3.90
02/19	02/06/2019	83526	Preston Feather	101-770-934.000	10.17
02/19	02/06/2019	83526	Preston Feather	101-268-775.000	6.76
02/19	02/06/2019	83526	Preston Feather	592-554-775.000	98.36
02/19	02/06/2019	83526	Preston Feather	101-268-775.000	30.98
02/19	02/06/2019	83526	Preston Feather	592-554-775.000	9.84-
02/19	02/06/2019	83526	Preston Feather	101-268-775.000	.68-
02/19	02/06/2019	83526	Preston Feather	582-586-775.000	.39-
02/19	02/06/2019	83526	Preston Feather	101-268-775.000	3.10-
02/19	02/06/2019	83526	Preston Feather	582-586-775.000	.33-
02/19	02/06/2019	83526	Preston Feather	101-770-934.000	1.02-
02/19	02/06/2019	83527	Printing Systems Inc.	101-262-751.000	115.94
02/19	02/06/2019	83528	PROCLEAN NORTH	592-537-802.000	412.50
02/19	02/06/2019	83528	PROCLEAN NORTH	592-554-802.000	726.00
02/19	02/06/2019	83529	Renkes, Tom	248-739-880.200	150.00
02/19	02/06/2019	83530	Riordan, Joyce Kochans	271-790-802.000	30.00
02/19	02/06/2019	83531	Rowland, Kimberly	271-790-802.000	180.00
02/19	02/06/2019	83532	SAFETY-KLEEN SYSTEMS INC.	661-598-785.000	309.70
02/19	02/06/2019	83532	SAFETY-KLEEN SYSTEMS INC.	661-598-759.000	80.00
02/19	02/06/2019	83533	Smith, Edward J	101-756-808.030	120.00
02/19	02/06/2019	83534	Spectrum Business	582-593-850.000	35.40
02/19	02/06/2019	83535	Standard Electric Company	582-586-775.000	427.87
02/19	02/06/2019	83535	Standard Electric Company	101-268-775.000	104.69
02/19	02/06/2019	83536	Staples Advantage	101-268-775.000	51.66
02/19	02/06/2019	83536	Staples Advantage	204-481-751.000	93.54
02/19	02/06/2019	83536	Staples Advantage	582-588-751.000	12.74
02/19	02/06/2019	83536	Staples Advantage	101-441-751.000	173.77
02/19	02/06/2019	83536	Staples Advantage	101-268-775.000	182.07
02/19	02/06/2019	83536	Staples Advantage	101-201-751.000	63.80
02/19	02/06/2019	83536	Staples Advantage	101-208-751.000	63.80
02/19	02/06/2019	83536	Staples Advantage	101-268-775.000	60.24
02/19	02/06/2019	83536	Staples Advantage	101-345-751.000	9.61

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02/19	02/06/2019	83537	State of Michigan-Department of LARA	582-081-642.300	3,698.25
02/19	02/06/2019	83537	State of Michigan-Department of LARA	582-081-642.400	768.54
02/19	02/06/2019	83537	State of Michigan-Department of LARA	582-081-642.500	8.37
02/19	02/06/2019	83537	State of Michigan-Department of LARA	582-081-642.200	167.40
02/19	02/06/2019	83538	Stuart C Irby Co	582-010-111.000	11,595.00
02/19	02/06/2019	83539	TEAMSTERS LOCAL #214	701-000-230.400	992.00
02/19	02/06/2019	83540	TEMPERATURE CONTROL INC.	592-554-802.000	989.75
02/19	02/06/2019	83540	TEMPERATURE CONTROL INC.	592-554-802.000	456.50
02/19	02/06/2019	83541	Up North Service LLC	514-587-802.000	4,277.96
02/19	02/06/2019	83542	USA BLUE BOOK	592-549-785.000	66.24
02/19	02/06/2019	83543	VAN'S BUSINESS MACHINES	514-587-802.100	211.19
02/19	02/06/2019	83544	Voorheis, Margaret Ann	271-790-802.000	120.00
02/19	02/06/2019	83545	Voss Lighting	582-590-775.000	1,630.00
02/19	02/06/2019	83545	Voss Lighting	582-590-775.000	236.40
02/19	02/06/2019	83546	West Bend Mutual Insurance Company	248-540-882.180	460.00
02/19	02/06/2019	83547	WESTON, CHRIS	101-756-808.030	60.00
02/19	02/06/2019	83548	Zipp, Cynthia B.	271-790-802.000	240.00
02/19	02/06/2019	83549	DUNKEL EXCAVATING SERVICES INC.	203-479-802.000	1,000.00
02/19	02/06/2019	83549	DUNKEL EXCAVATING SERVICES INC.	202-479-802.000	13,783.75
02/19	02/06/2019	83549	DUNKEL EXCAVATING SERVICES INC.	514-587-802.000	13,783.75
02/19	02/13/2019	83557	Airgas USA LLC	661-598-785.000	259.75
02/19	02/13/2019	83557	Airgas USA LLC	661-598-785.000	66.80
02/19	02/13/2019	83557	Airgas USA LLC	661-598-785.000	9.16
02/19	02/13/2019	83557	Airgas USA LLC	661-598-785.000	33.15
02/19	02/13/2019	83557	Airgas USA LLC	661-598-785.000	82.90
02/19	02/13/2019	83558	Alliance Beverage Distributing	248-540-882.180	298.35
02/19	02/13/2019	83559	American Waste	582-593-802.000	150.00
02/19	02/13/2019	83559	American Waste	592-551-806.000	299.00
02/19	02/13/2019	83559	American Waste	101-770-802.000	345.00
02/19	02/13/2019	83559	American Waste	101-770-802.000	150.00
02/19	02/13/2019	83560	AT&T	582-593-850.000	123.47
02/19	02/13/2019	83560	AT&T	592-560-850.000	362.52
02/19	02/13/2019	83560	AT&T	592-558-920.000	177.81
02/19	02/13/2019	83561	Ballard's Plumbing & Heating	101-268-930.000	775.62
02/19	02/13/2019	83561	Ballard's Plumbing & Heating	101-265-802.000	548.67
02/19	02/13/2019	83562	Benchmark Engineering Inc.	101-770-802.000	1,117.25
02/19	02/13/2019	83563	BIOLOGICAL RESEARCH SOLUTIONS	592-553-801.000	325.00
02/19	02/13/2019	83564	CCP Industries Inc.	592-537-775.000	497.13
02/19	02/13/2019	83565	Charlevoix-Emmet ISD	703-040-234.218	415,902.48
02/19	02/13/2019	83566	Cintas Corp #729	582-593-802.000	29.77
02/19	02/13/2019	83566	Cintas Corp #729	204-481-767.000	54.52
02/19	02/13/2019	83566	Cintas Corp #729	582-588-767.000	45.94
02/19	02/13/2019	83566	Cintas Corp #729	592-560-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	592-549-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	101-268-802.000	14.79
02/19	02/13/2019	83566	Cintas Corp #729	592-554-802.000	43.28
02/19	02/13/2019	83566	Cintas Corp #729	204-481-767.000	54.52
02/19	02/13/2019	83566	Cintas Corp #729	582-588-767.000	45.94
02/19	02/13/2019	83566	Cintas Corp #729	592-560-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	592-549-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	582-593-802.000	29.77
02/19	02/13/2019	83566	Cintas Corp #729	204-481-767.000	54.52

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02/19	02/13/2019	83566	Cintas Corp #729	582-588-767.000	45.94
02/19	02/13/2019	83566	Cintas Corp #729	592-560-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	592-549-767.000	28.09
02/19	02/13/2019	83566	Cintas Corp #729	101-268-802.000	14.79
02/19	02/13/2019	83566	Cintas Corp #729	592-554-802.000	43.28
02/19	02/13/2019	83567	Contractors Supply Inc.	101-268-930.000	9.10
02/19	02/13/2019	83568	Cummins Bridgeway LLC	592-554-802.000	189.84
02/19	02/13/2019	83569	CUSTER	582-593-785.000	559.00
02/19	02/13/2019	83570	David L Hoffman Landscaping & Nursery	204-550-802.000	10,285.00
02/19	02/13/2019	83571	Decka Digital LLC	592-549-751.000	54.26
02/19	02/13/2019	83571	Decka Digital LLC	592-560-751.000	193.70
02/19	02/13/2019	83571	Decka Digital LLC	592-560-751.000	48.90
02/19	02/13/2019	83571	Decka Digital LLC	592-549-751.000	64.20
02/19	02/13/2019	83572	Derrer Oil Co.	661-598-759.000	5,506.67
02/19	02/13/2019	83573	Dinges Fire Company	101-345-775.000	121.41
02/19	02/13/2019	83573	Dinges Fire Company	101-345-985.000	426.16
02/19	02/13/2019	83574	DTE Energy	592-555-920.000	20.51
02/19	02/13/2019	83575	Dubois-Cooper Associates Inc.	592-558-775.000	2,535.00
02/19	02/13/2019	83576	Ducastel, Barbara	271-790-802.000	180.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	514-587-802.000	11,560.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	203-479-802.000	3,045.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	514-587-802.000	6,200.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	202-479-802.000	6,200.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	202-479-802.000	190.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	202-479-802.000	260.00
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	101-268-802.000	1,127.10
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	271-790-801.000	165.75
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	582-593-802.000	364.65
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	514-587-802.000	1,657.50
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	203-479-802.000	717.50
02/19	02/13/2019	83577	Dunkel Excavating Services Inc.	101-345-802.100	585.00
02/19	02/13/2019	83578	Dunn's Business Solutions	101-268-775.000	139.29
02/19	02/13/2019	83578	Dunn's Business Solutions	204-481-751.000	28.76
02/19	02/13/2019	83578	Dunn's Business Solutions	582-593-751.000	28.76
02/19	02/13/2019	83578	Dunn's Business Solutions	582-588-751.000	28.77
02/19	02/13/2019	83578	Dunn's Business Solutions	592-549-751.000	28.77
02/19	02/13/2019	83578	Dunn's Business Solutions	592-560-751.000	28.77
02/19	02/13/2019	83578	Dunn's Business Solutions	661-598-751.000	28.77
02/19	02/13/2019	83579	EJ USA Inc.	592-010-111.000	1,755.74
02/19	02/13/2019	83580	Emmet Co. Dept of Public Works	101-529-802.000	351.00
02/19	02/13/2019	83580	Emmet Co. Dept of Public Works	101-529-802.000	6,277.30
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-222.218	2,589.32
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-228.218	3,203.31
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-222.218	50,150.80
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-222.218	27,484.77
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-233.000	91.04
02/19	02/13/2019	83581	Emmet County Treasurer	703-040-233.000	112.63
02/19	02/13/2019	83582	Environmental Resource Assoc.	592-553-802.000	153.35
02/19	02/13/2019	83583	Etna Supply	582-592-775.000	1,151.37
02/19	02/13/2019	83583	Etna Supply	592-010-111.000	5,200.00
02/19	02/13/2019	83583	Etna Supply	592-554-775.000	89.80
02/19	02/13/2019	83583	Etna Supply	592-010-111.000	325.00

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02/19	02/13/2019	83584	FACTOR SYSTEMS INC.	101-208-803.000	768.79
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	248-540-882.200	149.91
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	248-540-882.180	50.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-400-751.000	40.49
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-441-751.000	40.49
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-215-912.000	60.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	592-553-775.000	11.50
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	592-560-915.000	376.34
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-770-771.000	43.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-770-775.000	102.77
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-789-912.000	14.28-
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-756-912.000	22.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-756-880.000	20.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-770-934.000	189.52
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-770-850.000	325.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	204-481-912.000	35.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-880.000	268.08
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-958.100	137.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-958.200	109.58
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-762.000	500.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-751.000	47.70
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-905.000	279.95
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-958.000	27.98
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	271-790-964.000	244.64
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-345-751.000	210.87
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-345-912.000	73.86
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-345-781.000	117.95
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-345-783.000	13.73
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	101-345-915.000	105.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	204-481-802.000	90.00
02/19	02/13/2019	83585	FIRST NATIONAL BANK OMAHA	661-598-801.000	90.00
02/19	02/13/2019	83586	Freshwater Charch	101-265-970.000	84,078.00
02/19	02/13/2019	83587	GALLS LLC	101-345-775.000	76.94
02/19	02/13/2019	83588	Gibson Excavating LLC	592-544-802.000	1,460.00
02/19	02/13/2019	83589	GINOP SALES INC.	661-598-931.000	159.00
02/19	02/13/2019	83589	GINOP SALES INC.	661-598-931.000	121.50
02/19	02/13/2019	83589	GINOP SALES INC.	514-587-970.000	26,081.00
02/19	02/13/2019	83590	Great Lakes Pipe & Supply	592-540-775.000	66.98
02/19	02/13/2019	83590	Great Lakes Pipe & Supply	101-770-775.000	1.96-
02/19	02/13/2019	83591	GREENWOOD CEMETERY BOARD	703-040-238.218	47,312.08
02/19	02/13/2019	83592	HOFFMAN, SHERRI A.	101-529-802.000	92.50
02/19	02/13/2019	83593	Humanity, Inc.	271-790-802.000	714.00
02/19	02/13/2019	83594	HYDE SERVICES LLC	661-598-931.000	345.00
02/19	02/13/2019	83595	Ingram Library Services	271-790-760.000	3,006.08
02/19	02/13/2019	83595	Ingram Library Services	271-790-760.100	4,252.37
02/19	02/13/2019	83595	Ingram Library Services	271-790-760.200	433.12
02/19	02/13/2019	83596	JAKEWAY, JOHN	203-479-802.000	273.00
02/19	02/13/2019	83597	JOHN E. GREEN COMPANY	271-790-930.000	478.33
02/19	02/13/2019	83598	Jones & Jones Garage Door Service Inc.	582-593-930.000	175.00
02/19	02/13/2019	83598	Jones & Jones Garage Door Service Inc.	582-593-930.000	487.00
02/19	02/13/2019	83599	Keel, Stephen	592-560-915.000	286.52
02/19	02/13/2019	83600	Kring Chevrolet Cadillac, Dave	661-598-932.000	298.94

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/13/2019	83600	Kring Chevrolet Cadillac, Dave	661-598-932.000	2.17-
02/19	02/13/2019	83601	LET ME SKI INC.	101-756-808.100	4,680.00
02/19	02/13/2019	83602	LexisNexis Risk Data Management Inc.	514-587-801.000	50.00
02/19	02/13/2019	83603	McCardel Culligan	101-770-934.000	94.53
02/19	02/13/2019	83603	McCardel Culligan	514-587-802.100	26.00
02/19	02/13/2019	83603	McCardel Culligan	101-770-802.000	8.00
02/19	02/13/2019	83604	MCLAREN NORTHERN MICH HOSPITAL	101-345-802.000	45.00
02/19	02/13/2019	83605	McLean & Eakin Booksellers	271-790-760.000	135.76
02/19	02/13/2019	83606	Meyer Ace Hardware	661-598-932.000	4.49
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-802.100	16.14
02/19	02/13/2019	83606	Meyer Ace Hardware	592-554-775.000	73.76
02/19	02/13/2019	83606	Meyer Ace Hardware	101-770-775.000	22.10
02/19	02/13/2019	83606	Meyer Ace Hardware	582-590-775.000	5.38
02/19	02/13/2019	83606	Meyer Ace Hardware	101-268-775.000	16.17
02/19	02/13/2019	83606	Meyer Ace Hardware	101-268-775.000	11.49
02/19	02/13/2019	83606	Meyer Ace Hardware	661-598-932.000	3.23
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-802.100	43.69
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-802.100	4.66
02/19	02/13/2019	83606	Meyer Ace Hardware	101-770-775.000	.35
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-775.000	6.99
02/19	02/13/2019	83606	Meyer Ace Hardware	101-268-775.000	2.99-
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-802.100	13.49
02/19	02/13/2019	83606	Meyer Ace Hardware	101-770-775.000	52.66
02/19	02/13/2019	83606	Meyer Ace Hardware	514-587-802.100	7.16
02/19	02/13/2019	83606	Meyer Ace Hardware	101-770-775.000	3.58
02/19	02/13/2019	83607	MICHIGAN ASSOC. OF FIRE CHIEFS	101-345-915.000	125.00
02/19	02/13/2019	83608	MICHIGAN PUBLIC POWER AGENCY	582-576-920.000	250,562.16
02/19	02/13/2019	83609	New England Sports Sales Inc.	101-770-985.000	560.10
02/19	02/13/2019	83610	Nixon, Delbert	248-540-882.180	225.00
02/19	02/13/2019	83611	NORTH CENTRAL LABORATORIES	592-553-775.000	324.48
02/19	02/13/2019	83612	NORTH CENTRAL MICH. COLLEGE	703-040-235.218	110,654.64
02/19	02/13/2019	83612	NORTH CENTRAL MICH. COLLEGE	703-040-235.218	99,409.71
02/19	02/13/2019	83613	North Country Publishing Corp.	248-739-880.200	225.00
02/19	02/13/2019	83614	Northern Michigan Review Inc.	101-215-802.000	158.50
02/19	02/13/2019	83614	Northern Michigan Review Inc.	101-770-802.000	69.30
02/19	02/13/2019	83615	Northland Self Storage LLC	592-554-802.000	147.00
02/19	02/13/2019	83616	Peninsula Fiber Network LLC	101-228-850.000	500.00
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-236.218	7,478.39
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-237.218	987.66
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-237.218	293.60
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-237.218	692.68
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-233.000	252.65
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-233.000	34.73
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-233.000	10.32
02/19	02/13/2019	83617	PETOSKEY PUBLIC SCHOOLS	703-040-233.000	24.35
02/19	02/13/2019	83618	PETOSKEY REGIONAL CHAMBER	101-101-915.000	330.00
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	170.89
02/19	02/13/2019	83619	Plunkett Cooney	204-481-802.000	170.89
02/19	02/13/2019	83619	Plunkett Cooney	582-588-802.000	170.89
02/19	02/13/2019	83619	Plunkett Cooney	592-549-802.000	170.89
02/19	02/13/2019	83619	Plunkett Cooney	592-560-802.000	170.89
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	1,858.06

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	1,330.00
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	5,225.00
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	225.00
02/19	02/13/2019	83619	Plunkett Cooney	101-257-802.000	1,347.50
02/19	02/13/2019	83619	Plunkett Cooney	101-266-802.000	3,195.00
02/19	02/13/2019	83620	POLICE AND FIREMEN'S INSURANCE	701-000-230.185	307.79
02/19	02/13/2019	83621	Pro-Vision Video Systems	101-345-775.000	16.23
02/19	02/13/2019	83622	Range Telecommunications	101-756-850.000	21.40
02/19	02/13/2019	83622	Range Telecommunications	204-481-850.000	100.00
02/19	02/13/2019	83622	Range Telecommunications	582-593-850.000	100.00
02/19	02/13/2019	83622	Range Telecommunications	592-549-850.000	50.00
02/19	02/13/2019	83622	Range Telecommunications	592-560-850.000	50.00
02/19	02/13/2019	83622	Range Telecommunications	661-598-850.000	22.00
02/19	02/13/2019	83623	Richard Neumann Architect	101-268-970.000	1,000.00
02/19	02/13/2019	83623	Richard Neumann Architect	101-265-970.000	5,000.00
02/19	02/13/2019	83624	Riedell Shoes Inc.	101-770-985.000	1,394.71
02/19	02/13/2019	83625	Spectrum Business	101-345-850.100	153.46
02/19	02/13/2019	83625	Spectrum Business	101-172-850.000	126.55
02/19	02/13/2019	83625	Spectrum Business	101-201-850.000	67.49
02/19	02/13/2019	83625	Spectrum Business	101-208-850.000	42.18
02/19	02/13/2019	83625	Spectrum Business	101-257-850.000	42.18
02/19	02/13/2019	83625	Spectrum Business	101-215-850.000	33.75
02/19	02/13/2019	83625	Spectrum Business	101-345-850.000	92.79
02/19	02/13/2019	83625	Spectrum Business	101-400-850.000	42.18
02/19	02/13/2019	83625	Spectrum Business	101-441-850.000	75.93
02/19	02/13/2019	83625	Spectrum Business	101-756-850.000	50.62
02/19	02/13/2019	83625	Spectrum Business	204-481-850.000	25.31
02/19	02/13/2019	83625	Spectrum Business	204-481-850.000	25.31
02/19	02/13/2019	83625	Spectrum Business	582-588-850.000	84.36
02/19	02/13/2019	83625	Spectrum Business	582-593-850.000	33.75
02/19	02/13/2019	83625	Spectrum Business	592-549-850.000	50.62
02/19	02/13/2019	83625	Spectrum Business	592-560-850.000	50.62
02/19	02/13/2019	83625	Spectrum Business	101-770-850.000	145.84
02/19	02/13/2019	83625	Spectrum Business	101-345-850.000	55.84
02/19	02/13/2019	83625	Spectrum Business	514-587-802.100	105.51
02/19	02/13/2019	83625	Spectrum Business	101-789-850.000	14.11
02/19	02/13/2019	83626	Standard Electric Company	101-268-775.000	81.28
02/19	02/13/2019	83627	STATE OF MICHIGAN DEPT. OF ENVIRON.	204-481-912.000	95.00
02/19	02/13/2019	83628	Summit Companies	101-265-802.000	315.00
02/19	02/13/2019	83628	Summit Companies	101-265-802.000	315.00
02/19	02/13/2019	83628	Summit Companies	101-268-802.000	400.00
02/19	02/13/2019	83629	T2 Systems Canada Inc.	514-587-802.000	165.00
02/19	02/13/2019	83630	Terry, Alan	101-215-751.000	51.00
02/19	02/13/2019	83631	Thru Glass Window Cleaning	514-587-802.100	25.00
02/19	02/13/2019	83631	Thru Glass Window Cleaning	514-587-802.100	25.00
02/19	02/13/2019	83632	T-Mobile	271-790-850.000	196.24
02/19	02/13/2019	83633	Traffic & Safety Control Systems Inc.	514-587-802.000	81.00
02/19	02/13/2019	83634	TRUCK & TRAILER SPECIALTIES	661-598-932.000	56.74
02/19	02/13/2019	83634	TRUCK & TRAILER SPECIALTIES	661-598-932.000	56.74
02/19	02/13/2019	83635	Unique Management Services, Inc.	271-790-802.000	17.90
02/19	02/13/2019	83636	UPS STORE, THE	592-553-801.000	94.55
02/19	02/13/2019	83636	UPS STORE, THE	661-598-932.000	11.14

GL Period	Check Issue Date	Check Number	Payee	Invoice GL Account	Check Amount
02/19	02/13/2019	83636	UPS STORE, THE	661-598-785.000	11.61
02/19	02/13/2019	83636	UPS STORE, THE	592-553-801.000	11.12
02/19	02/13/2019	83637	Van's Business Machines	271-790-751.000	818.10
02/19	02/13/2019	83637	Van's Business Machines	271-790-751.000	88.99
02/19	02/13/2019	83637	Van's Business Machines	271-790-751.000	175.15
02/19	02/13/2019	83637	Van's Business Machines	271-790-751.000	145.50
02/19	02/13/2019	83638	Zaremba Equipment Inc.	661-598-932.000	1,860.20
02/19	02/13/2019	83639	AllMax Software Inc.	592-551-801.000	880.00
Grand Totals:					1,476,187.05

Report Criteria:
Check.Date = 01/31/2019-02/13/2019

Check Number	Date	Name	GL Account	Amount
83459	02/06/2019	Be-Energy Solutions	582588803000	4,000.00
83460	02/06/2019	Caudle, Ciara & Dylan	582040285000	28.04
83461	02/06/2019	Cibrin, Jason	582040285000	32.09
83462	02/06/2019	Client Mortgage Inc.	582040285000	71.51
83463	02/06/2019	Cusenza, James	582588803000	88.00
83464	02/06/2019	Dyer, Larry	582588803000	150.00
83465	02/06/2019	Kaufman, Fred	582588803000	64.00
83466	02/06/2019	Lipchik, Becky	582588803000	12.00
83467	02/06/2019	Olson, Derek	582588803000	100.00
83468	02/06/2019	Rose, John	582040285000	2.56
83469	02/06/2019	Seagren, Glenn	582588803000	10.59
83470	02/06/2019	Turcott, Anna	582588803000	32.00
83471	02/06/2019	Verkerke, Matthew	582588803000	60.00
83472	02/06/2019	Williams, Robert & Ann	582588803000	15.00
83473	02/06/2019	Wodek, Michael	582588803000	96.00
83550	02/13/2019	Christine Jacoby	582040285000	37.57
83551	02/13/2019	Hillside Club Apts	582081642300	4.28
83552	02/13/2019	Loyer, Rebecca	582040285000	11.54
83553	02/13/2019	Marshall, Barbara	582040285000	41.94
83554	02/13/2019	Moore, Tiffany	582040285000	3.37
83555	02/13/2019	Smith, Christian	582040285000	25.74
83556	02/13/2019	Williams, Kameron	582081642300	38.85
Grand Totals:				4,925.08

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Appointment Recommendation

RECOMMENDATION: That the City Council consider this appointment

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The City Council will be asked to consider the following appointment:

- PLANNING COMMISSION – Appointment of Chad McDonald, 1412 Highland Drive, to fill a vacated term ending August 31, 2019.

sb
Enclosure

City of Petoskey

101 East Lake Street, Petoskey, Michigan 49770 • 231 347-2500 • Fax 231 348-0350

Application to Serve on a Board or Commission

Please print. Answer each question accurately and completely. If you require any accommodation to complete the application process, please notify a City staff member.

	Last	First	Initial		
■ Name	MCDONALD	CHAD	B	■ Date	01 / 10 / 19

	Number	Street	City	State	Zip		
Residence ■ Address	1412	HIGHLAND DR	PETOSKEY	MI	49770	■ Home Phone	231 313 9811
■ Email Address	CHAD0519@MSN.COM					■ Work Phone	231 753 5100

Please answer the following questions using the space provided.

1. What Board or Commission interests you and why are you applying? PLANNING COMMISSION. I AM PASSIONATE ABOUT PETOSKEY'S NATURAL, ARCHITECTURAL, AND CULTURAL ATTRIBUTES. THE COMMISSION CAN HELP MAINTAIN ALL THREE TREASURES.

2. How do you believe your appointment would benefit the City? I WILL BRING BOTH A BUSINESSMAN'S (40+ yrs) AND A RESIDENTS (30+ yrs) POINT OF VIEW TO THE TABLE. I UNDERSTAND BOTH OUR NEED FOR GROWTH AND THE NEED TO NOT LOOSE SIGHT OF HISTORY AND CULTURE

3. Describe any involvement in the community on a Board or Commission or in another volunteer capacity. BEFORE MOVING TO PETOSKEY WHILE LIVING IN CHARLEVOIX CITY I SERVED ON THE EVELINE TWP. ZONING BOARD OF APPEALS, HELPED WRITE AN UPDATED ZONING ORDINANCE, AND WAS ELECTED TO THE CHARLEVOIX COUNTY BOARD OF COMMISSION

4. How many continuous years have you lived in Petoskey? 32

5. Any other helpful information relevant to your application. HAVE KNOWN GARY GREENWELL FOR MANY YEARS AND RECENTLY HAVE MET CYNTHIA ROBSON.

While it is not required, a resume is helpful in the recruitment process for City Boards and Commissions.

- [X] YES [ ] NO Are you a registered voter?
- [ ] YES [X] NO Are you currently in default of taxes or fines to the City of Petoskey?
- [ ] YES [X] NO Do you or immediate family members currently serve on a City Board or Commission? If yes, which Board or Commission?
- [ ] YES [X] NO Have you ever been convicted of a felony? If yes, please explain.

The applicant acknowledges that the City may be required from time to time to release records in its possession. The applicant hereby gives permission to the City to release any records or materials received by the City from the applicant as it may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 et seq.

Applicant Signature: Chad McDonald Date: Jan 10 2019

Chad B. McDonald
1412 Highland Dr.
Petoskey MI
231.313.9811
Chad0519@msn.com

Objective: To offer my years of Management & Sales expertise to an outstanding organization that will allow me to offer my enthusiasm, education, career skills, personality traits, and passions to a position that will be rewarding to both me and the community.

Employment History

Lowe's Home Improvement Center
Petoskey, MI
2006 to Present

Installed Sales Product Coordinator : Part time position Monday through Friday days. Work with Contractors that are employed by Lowe's to ensure that they have all materials needed On the day of Installation.

Stafford's Hospitality Inc.
Stafford's Bay View Inn &
Stafford's Perry Hotel
Petoskey, MI
1999 to 2006

Lodging Manager & Operations Manager (B.V.I.): Coordinate Reservation Sales, Reservation Computer System, Building Maintenance Renovation & Repair, Housekeeping, Interior Design, Gift Shop Sales, and the guest needs of the Lodging Departments at the 80 room full service Historic Hotel & the 31 Room Country Inn. I have provided both properties with outstanding leadership, created an excellent team of employees, trained them well, raised occupancy (sales) and guest satisfaction standards, while lowering Departmental employee turnover to a corporate record.

Irish Boat Shop
Harbor Springs, MI
1997 to 1999

Service Writer: Interim Position: Acted as liaison between the Service Department Technicians and the Customers. Sold all the technical services that the Marina offered. Scheduled launches, haul outs, and all service work. Maintained meticulous follow-up communications with customers, and invoiced all Service Department work orders. Required considerable skill in handling Customers, Technicians, Mechanical Knowledge and Experience, Marine familiarity, and Computer skills coupled with billing practices and procedures. Developed customer loyalty by setting higher standards of service expectations, honesty, and customer satisfaction.

Sysco Food Services Inc.
Petoskey, MI
For over 18 Years

Operations Manager: Began as a Salesman with this eminent food Marketing and Distribution Company and eventually took over the Operations Dept. directing the delivery of products within 28 counties thru the actions of 50 Drivers & 5 Customer Service Representatives. Specific areas of accountability included Building & Grounds, Warehousing, Delivery of Merchandise, Customer Service, Safety Programs, and Maintenance and Repair of Trucks and Trailers. Hiring, motivating, scheduling, and discipline of the staff were the central responsibilities.

During my tenure with Sysco I helped lead the Operations Dept. through 400% growth by utilizing my excellence in problem solving, recruiting, training, and teambuilding. My strong leadership, organizational, and communication skills were evidenced by receiving the, President's Ring, the E.E. Hoekzema Award, and the Corporate "Haul of Fame" Award.

Professional Experiences

Charlevoix County Board of Commissioners, Professional Golfers Association of America, Northern Michigan Turf Managers Association, Eveline Township Zoning Appeals Board, International Lions Clubs (Boyne City & Petoskey Chapters)

Education

B.S. Business Administration
Central Michigan University, Mt. Pleasant, MI
Major: Management Minor: Economics & Accounting

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Medical and Recreational Marijuana Discussion

RECOMMENDATION: That the City Council discuss with direction to staff

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Background City Council has requested an agenda item to discuss both medical and recreational marijuana in light of the November 6, 2018 voter approved Michigan Regulation and Taxation Marijuana Act (MRTMA). In essence, the MRTMA legalizes at the state level (not federal) the recreational use and possession of marijuana. In addition, the MRTMA sets out a regulatory process to permit and license certain types of "marijuana establishments" (i.e. growers, safety compliance facilities, processors, microbusinesses, retailers and secure transporters). The MRTMA does not however replace those laws and regulations already in place in Michigan involving the medical use of marijuana under the Michigan Medical Marijuana (MMMA) of 2008 or the Medical Marijuana Facilities Licensing Act (MMFLA) of 2016.

Under the MMFLA, in order to allow medical marijuana facilities to be established within a community, the community needs to affirmatively adopt an ordinance to this effect (i.e. the community must "opt-in"). The MRTMA, however, is fundamentally different and requires that if a community wishes to prohibit the formation and operation of recreation marijuana establishments within the community, the community must adopt an ordinance to this effect (i.e. the community must "opt out"). In other words, if a community does not "opt out" then recreation marijuana establishments can be located and licensed by the State within that community. Unfortunately, it is unclear from the text of the MRTMA when precisely the State will begin accepting applications for licenses but it must do so before December 6, 2019. In recent Department of Licensing and Regulatory Affairs (LARA) presentation, a representative stated that their department is on track to meet this deadline and may be accepting applications well before the December 6, 2019 deadline date.

Part of the MRTMA may be unclear and ambiguous. The MRTMA raises many legal questions that will need to be determined in the future by courts, legislation and State regulators.

With respect to zoning, LARA will approve an application if "the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement." MCL § 333.27959(3)(c). By negative implication, we believe that a municipality cannot make it more restrictive. There is nothing in the MRTMA that specifically preempts local governments from enacting zoning requirements that are not inconsistent with the MRTMA. Pursuant to the statute, "A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act . . ." MCL § 333.27956(2). We believe that the municipality's full regulatory scope remains in place.

The Act also states that for the first 24 months after (LARA) begins accepting applications for marijuana establishment licenses, only those persons holding a MMFLA may apply for a retail, processor, class B or class C grower, or secure transport license issued under the MRTMA.

Most cities, townships and villages are choosing to "opt out" for recreational marijuana establishments at this time to determine what communities may be buying into and determine the full policy implications of choosing whether to participate in the commercialization, licensing and taxation of recreation marijuana establishments. Nothing under the Act prohibits a city from "opting in" at a later date, even if the community initially decided to "opt out".

There is also voter petition initiative language in the MRTMA that allows for a process whereby voters could allow or bar marijuana establishments in a community. It is therefore prudent for elected officials to properly gauge public support or opposition to allowing recreational establishments within the community.

Enclosed are the following documents:

- Legal opinion from City Attorney Jim Murray
- MRTMA law in its entirety
- MML Recreational Marijuana Proposition white paper
- MML Recreational Marijuana Q & A
- MML Fact Sheet

For more info, there are several resources on the State website at www.michigan.gov/BMR.

Next Steps The aforementioned information is a brief summary of medical and recreational marijuana issues. Staff would be happy to research other issues at Council's direction. Please note this is important policy decision by City Council that should be carefully deliberated with ample public comment opportunities. Staff does not feel that there is any sense of urgency in making a decision at this point. Nevertheless, if City Council wishes to pursue allowing medical or recreational marijuana establishments, the process of zoning and permitting will take time for both the Planning Commission and City Council to fully vet.

As addressed above, a municipality needs to take no action to opt out for medical marijuana establishments. At this point, Petoskey has opted out of allowing medical marijuana establishments by simply taking no action. Conversely, because the City has taken no action on recreational marijuana, the City has technically opted in at this point.

The following are some options for City Council to pursue:

MRTMA

1. Opt out of allowing recreation marijuana establishments. There are many ambiguities and potential legal battles surrounding the MRTMA. Furthermore, LARA has not fully promulgated licensing criteria for recreation marijuana establishments. Because of this, most municipalities have opted out at this time regarding allowing recreation marijuana establishments. This "wait and see approach" may be the most prudent approach to take at this time. Keep in mind that nothing under the Act prohibits a city from "opting in" at a later date, even if the community initially decided to "opt out".
2. Opt in to allow recreation marijuana establishments – Not recommended by Staff at this point as there are too many uncertainties about licensing and regulations as well as potential legal issues in the future. Once LARA has fully adopted licensing regulations, City Council could revisit whether to support recreation marijuana establishments.

MMFLA

1. Continue the status quo of opting out of allowing medical marijuana establishments within the community.
2. Begin the zoning and permitting process to allow medical marijuana establishments. This process may take several months with much involvement by the Planning Commission and City Council. Keep in mind for the first 24 months, LARA will only issue recreational retailer, class B or C grower or secure transporter licenses to persons with a MMFLA license, unless after the first 12 months of accepting applications LARA determines that additional recreational establishment licenses are needed. The important point being that medical marijuana establishments most likely will be allowed to also include a recreational marijuana component in the near future.

sb
Enclosures

PLUNKETT COONEY

TO: Jim Murray

FROM: Saulius Mikalonis

DATE: February 13, 2019

RE: Cannabis in Michigan
City of Petoskey

Jim:

The following is an outline of issues relevant to the City of Petoskey's consideration related to the questions that should be considered by the City Council when deciding to accept medical and/or recreational cannabis activities. It addresses all the relevant cannabis statutes in Michigan and how they relate to municipal governance and authority.

You may invite the Council as well as Staff, Zoning Board and members of the public to attend our webinar, titled "Growing Pains: Is Recreational Cannabis Right for Your Community" scheduled for February 28 from noon to 1 p.m. (EST). The Webinar will provide an overview about recreational cannabis in Michigan, review local government considerations and options and discuss lessons learned from the medical cannabis process. Details can be found at this link: http://smartlink.qleapahead.com/SmartLinkDisplay.aspx?id=D644AA62-9028-E911-8F7D-001B2161D7E5

- FEDERAL ISSUES RELATED TO MEDICAL/RECREATIONAL CANNABIS
    - Cannabis, whether recreational or medicinal, remains a Schedule 1 drug under the federal Controlled Substances Act. While there remain some protections at the federal level for use of cannabis for medicinal purposes, there are none for recreational purposes. A recent statement by the US Attorney's Office in Michigan indicated that that office will continue to prosecute activities illegal under federal law (but not low-level offenders), especially as it relates to "adverse effects of interstate trafficking of marijuana; the involvement of other illegal drugs or illegal activity; persons with criminal records; the presence of firearms or violence; criminal enterprises, gangs, and cartels; the bypassing of local laws and regulations; the potential for environmental contamination; and the risks to minors." That office's future efforts remain a question, although presently there has not been much in the way of federal prosecution in other states that have decriminalized recreational cannabis.

- Congress has restricted the use of funding for the Department of Justice to use moneys in its budget to prosecute federal offenses for medical cannabis in states that have decriminalized it. This does not apply to recreational sales, however. As noted in the section above, the US Attorney's Office will not be prosecuting low-level offenders.

- There are numerous efforts underway in Congress towards full legalization or delisting cannabis as a Schedule I substance. In the past, passage of similar statutes was seen as unlikely. Presently ten states have legalized recreational use, and 33 allow medical use. It appears to be only a matter of time until Congress acts in favor of loosening restrictions.

- MEDICAL CANNABIS IN MICHIGAN

  - Medical cannabis in Michigan is governed by two statutes: the Michigan Medical Marihuana Act (MMMA), MCL § 333.26421 *et seq.*, or the Michigan Medical Marihuana Facilities Licensing Act (MMFLA), MCL § 333.27101, *et seq*.

  - By a 2008 ballot measure, Michigan voters approved the use of cannabis for medical use. It was named the MMMA. In this model, licensed caregivers provide medical cannabis to up to five registered medical patients with medical cannabis cards. Each patient (or a caregiver in behalf of a patient) is allowed up to 2.5 ounces of usable cannabis or 12 cannabis plants, which must be kept locked and secured. Municipalities cannot restrict a caregiver or a patient from owning or growing cannabis in a manner consistent with the MMMA, as the Michigan Supreme Court has ruled that the MMMA preempts local ordinances. *Ter Beek v City of* Wyoming, 495 Mich. 1 (2014). More recently, *Deruiter v Township of Byron* involves a local ordinance that sought to limit through a zoning ordinance the growing of medical cannabis under the MMMA to specifically zoned areas. The Michigan Court of Appeals, citing *Ter Beek*, ruled that the MMMA preempted the zoning ordinance and Byron Township is appealing the court of appeals decision to the Supreme Court. This ruling does not apply to facilities licensed under the MMFLA. Finally, the Court of Appeals also ruled that a municipality may not restrict a caregiver from growing medical cannabis in an outdoor facility in *York Charter Township v Miller*, which is also being appealed to the Michigan Supreme Court.

- In 2016, the Michigan legislature passed the MMFLA to establish some parameters for the growth, distribution and use of cannabis for medicinal purposes. The MMFLA establishes a Medical Marijuana Licensing Board (Board) within the Michigan Department of Licensing and Regulatory Affairs (LARA). The Board may grant five types of state operating licenses in the following categories: (1) Class A, B, or C grower; with Class A having a limit of 500 plants, Class B a limit of 1,000; (2) processor; (3) provisioning Center; (4) secure transporter; and (5) safety compliance facility. The MMFLA provides definitions for each license and specifies conditions for approval and prohibits certain conflicts of interest. Some examples include the following: to be eligible for a grower license, the grower and each investor in the operation cannot have an interest in a secure transporter or a safety compliance facility; and to be eligible for a secure transporter license, the transporter and each investor cannot have an interest in any other license authorized under the act and may not be a registered qualifying patient or a registered primary caregiver. Below is a description of each type of five available licenses:

    - Grower License

        - Grower cannot operate in an area unless zoned for industrial or agricultural uses or is unzoned and meets all local requirements.

        - Class A is up to 500 plants, Class B is up to 1,000 plants, and Class 3 is up to 1,500 plants.

        - Grower must have up to 2 years' experience as registered primary caregiver, or must have an employee with that experience.

    - Processor License

        - Must purchase the cannabis only from a licensed grower and will allow the sale of cannabis or cannabis-infused products to a provisioning center.

        - Must track inventory into statewide monitoring system.

    - Secure Transporter License

        - Store and transport cannabis and money associated with purchase or sale of cannabis between licensed facilities. No direct transport to patients.

- Vehicles required to have two-person crew and a route plan and manifest must be filed into statewide system before transport.
- Vehicles subject to inspection without warrant by law enforcement for compliance purposes.

▪ Provisioning Center License

- Locations where qualifying patients or registered primary caregivers can purchase cannabis.
- Can only sell cannabis after it has been tested and bears label required for retail sale.
- Must enter all transactions into statewide monitoring system.

▪ Safety Compliance Facility License

- Performs tests to certify cannabis is free of chemical residues, and determines THC levels.
- Enters all transactions into statewide monitoring system.
- Has secure laboratory with one staff member who has advanced degree in medical or laboratory science.

o LARA's rules under the MMFLA govern the growth, purchase and sale of medical cannabis, including the following parameters:

▪ Set appropriate standards for cannabis facilities and associated equipment.

▪ Provide for the levy and collection of fines for a violation of the MMFLA or rules promulgated pursuant to it.

▪ Prescribe use of the statewide monitoring system to track all cannabis transfers, and provide a funding mechanism to support the system.

▪ Operating regulations for each category of licensee.

▪ Qualifications and restrictions for people participating in or involved with operating cannabis facilities.

- Testing standards, procedures, and requirements for cannabis sold through provisioning centers.
- Quality control standards, procedures, and requirements for cannabis facilities.
- Chain of custody standards, procedures, and requirements for facilities.
- Daily purchasing limits at provisioning centers for registered qualifying patients and registered primary caregivers to ensure compliance with the MMMA.
- Marketing and advertising restrictions for cannabis products and facilities.
- Maximum THC levels for cannabis and cannabis-infused products sold or transferred through provisioning centers.
- Restrictions on edible cannabis-infused products to prohibit shapes that would appeal to minors.
- Minimum levels of insurance that licensees must maintain.
- Health standards to ensure the safe preparation of products containing cannabis that are intended for human consumption in a manner other than smoke inhalation.
- Establish standards, procedures, and requirements for the cannabis waste product disposal and storage by facilities; chemical storage; the secure and safe transportation of cannabis between facilities; and storage of cannabis.

o In order for a facility to be licensed under the MMFLA, it must demonstrate that it has received approval to do so in a community that has opted into the MMFLA via valid ordinance. Unlike the MMMA, there is no right to operate any type of medical cannabis facility within a municipal jurisdiction's boundaries unless that municipality has opted in. Further, the municipality can decide which licenses it wants to make available and in what numbers. It can choose one or more of the five types of activities and decide how many approvals it wants to issue for each. Each municipality is free to decide the process by which approvals are obtained and where it wants the facility to operate within its jurisdiction, consistent with LARA's regulatory restrictions.

- RECREATIONAL CANNABIS IN MICHIGAN

    - The Michigan Regulation and Taxation of Marihuana Act (Initiated Law 1 of 2018) (MRTMA), MCL § 333.27951, *et seq.*, does not change either the MMMA or the MMFLA. Both statutes remain, unaltered.

    - The MRTMA provides significant power to regulate recreational cannabis to municipalities. Under the MMFLA, municipalities had to affirmatively opt in to allow state-licensed medical cannabis businesses within their borders. However, under the MRTMA, a municipality must affirmatively opt out if it does not want state-licensed recreational businesses operating in its jurisdiction. Like the MMFLA, the municipality may select the types of operations to exclude or include if it decides not to opt out. Some Michigan municipalities have already affirmatively opted out. Municipalities that have opted in for medical cannabis are not required to elect to participate in the recreational program. In addition to enacting ordinances not inconsistent with the MRTMA (more on that below), municipalities may adopt ordinances in the following manner:

        - To establish reasonable restrictions on public signs.

        - To regulate the time, place and manner of operation and the sale of accessories related to cannabis use.

        - To authorize the sale for consumption at establishments accessible only to persons over 21 years old or for special events and for a limited time.

        - To establish fines of not more than $500 for civil infractions for violations of a municipality's ordinances.

        - To require a facility to obtain a municipal license, as long as the requirements for such license are not in conflict with state laws and regulations.

        - To charge an annual $5,000 fee to defray the municipality's costs for applications, administration or enforcement.

- The MRTMA gives the state regulating entity, the Department of Licensing and Regulatory Affairs (LARA) 12 months to promulgate regulations for licensing of recreational cannabis business in the following categories: microprocessor (grower with fewer than 150 plants), grower, processor, retailer, secure transporter, and safety compliance. So, this provides time for the municipality to make a measured decision to opt out or determine which and how many cannabis operations it would allow.

- If LARA does not promulgate regulations within 12 months, then applicants can submit their applications directly to a municipality that has opted in or not opted out. The municipality shall issue a decision within 90 days and notify LARA that it has issued a municipal license. It would have the same effect as a state license.

- In the event a municipal government decides to opt out, it does not necessarily bar state-licensed operations in that jurisdiction. The MRTMA allows citizen petitions to initiate an ordinance to allow cannabis operations, but also allows petitions to completely bar them, too. In determining whether or not to opt out, a municipality may want to consider the political temperature of its electorate, because whatever decision it makes may be altered through an initiative.

- Once 12 months has passed, interested market participants can apply for licenses for which LARA must make a licensing decision within 90 days. LARA must also provide a copy of the application to the relevant municipality. After that, there will be a procedure in place for the state to consider licenses per the regulations that LARA will promulgate. Even assuming that applications are submitted the day after the regulations are promulgated (unlikely, given that there will be significant documents for an applicant to collect before submitting an application), the earliest licenses would be issued 90 days after that. We conclude that because the current wait period for applications under medicinal cannabis is several months and we don't expect that it will necessarily be any faster for recreational applications.

- As to retail cannabis operations, for 24 months after accepting applications LARA can only accept applications for retail establishments "from persons holding a state operating license pursuant to the medical marihuana facilities licensing act . . . " MCL § 333.27959(6). That medical cannabis provisioning center must still obtain a separate license for recreational distribution in a manner consistent with the state and local requirements.

- One year after LARA begins accepting applications, it may accept applications from anyone, if LARA concludes that it is necessary to do so to stop black market activities, meet the demand for cannabis or to provide reasonable access to rural areas. *Id.* So, while it is true that the first licenses will be issued to existing medical cannabis facilities, in December 2021, license application will likely open to any non-medical cannabis operators in municipalities that have not opted out. Also note that there is no such requirement for class A growers, microbusinesses or safety compliance facilities. Medical cannabis retail activities will continue in conjunction with recreational sales. In other words, it will not be the case that the medical retailing would stop in lieu of recreational retailing. At least initially, the operator would need to hold a medical cannabis retail license in order to obtain the recreational retailing license. MCL § 333.27959(6).

- We understand that there is a question about a so-called "grandfather clause" as it relates to existing medical cannabis facilities and future recreational facilities. The MRTMA provides: "A municipality may not adopt an ordinance that . . . prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from . . . operating at a location shared with a marihuana facility operating pursuant to the [MMFLA] . . . " MCL § 333.27956(5). The provision by its plain terms provides that a municipality cannot restrict a medical facility from sharing a location with a recreational facility, but does not require approval of a recreational facility just because it would be sharing space with a medical facility. There may be other reasons that a recreational facility that has applied for a license may not be operating with a medical facility. For example, the municipality may have determined to issue a limited number of licenses in its community and all available licenses are already distributed, which prevents a medical facility from sharing its space. Or, the recreational applicant may not meet other municipal requirements not related to location of the operation. The onus is on the municipality to determine the number and types of licenses it wants to allow operating within its borders. This provision does not require that a municipality issue an approval just because a recreational facility wants to operate with a medical facility. Further, in drafting its requirements for medical facilities, it may wish to consider restrictions on the medical facility approvals with an eye to future recreational operations or delay opting in until the time passes for initial preferential consideration for MMFLA licensed facilities (two years).

- Even if a municipality opts out, it will not be able to prevent its citizens from owning and using cannabis recreationally within its jurisdiction. This also includes anyone over the age of 21 to possess up to 2.5 ounces of cannabis on their person, up to ten ounces of cannabis in their residence (under lock) or up to 12 plants. Also, as long as it is not advertised, a person may transfer up to 2.5 ounces of cannabis to another person over the age of 21.

- A municipality that has decided not to opt out may adopt other ordinances that set reasonable restrictions on public signs related to licensed cannabis businesses, regulate the time, place and manner of operations, authorize the sale for consumption of cannabis is designated areas for legal consumers and establish an ordinance for civil infractions for violations of its ordinance, fines not to exceed $500. It cannot restrict medical cannabis facilities and recreational facilities (if both are authorized by state and local laws) from sharing the same space. It also cannot restrict transportation of cannabis legally owned through its jurisdiction. If the municipality does not inform LARA that an applicant is not in compliance with its ordinance, the state will license the applicant. (Recall that the municipality will receive notice that an application for a license within its jurisdiction has been filed.)

- With respect to zoning, LARA will approve an application if "the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, **unless a municipality adopts an ordinance that reduces this distance requirement**." MCL § 333.27959(3)(c). By negative implication, we believe that a municipality cannot make it more restrictive. There is nothing in the MRTMA that specifically preempts local governments from enacting zoning requirements that are not inconsistent with the MRTMA. Pursuant to the statute, "A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act . . . "MCL § 333.27956(2). We believe that the municipality's full regulatory scope remains in place to the extent it is not inconsistent with specific provisions of the statute.

- With respect to revenues, a municipality may not charge more than $5,000 per operation to defray the costs of processing an application or license or for enforcement. The state will collect moneys and deposit them in a "Marijuana Regulation Fund." Some of the money is earmarked for specific purposes, but unallocated funds are to be distributed, including 15 percent to municipalities that have cannabis retail stores or microbusinesses (but not other licensed activities), allocated in proportion to the number of those operations within their jurisdictions.

MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT
Initiated Law 1 of 2018

An initiation of legislation to allow under state law the personal possession and use of marihuana by persons 21 years of age or older; to provide for the lawful cultivation and sale of marihuana and industrial hemp by persons 21 years of age or older; to permit the taxation of revenue derived from commercial marihuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

The People of the State of Michigan enact:

333.27951 Short title.

Sec. 1. This act shall be known and may be cited as the Michigan Regulation and Taxation of Marihuana Act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27952 Purpose and intent.

Sec. 2. The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27953 Definitions.

Sec. 3. As used in this act:

(a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Industrial hemp" means a plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.

(d) "Licensee" means a person holding a state license.

(e) "Marihuana" means all parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. For purposes of this act, marihuana does not include:

(1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of

germination;

(2) industrial hemp; or

(3) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(f) "Marihuana accessories" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

(g) "Marihuana concentrate" means the resin extracted from any part of the plant of the genus cannabis.

(h) "Marihuana establishment" means a 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 department.

(i) "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

(j) "Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

(k) "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

(l) "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

(m) "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

(n) "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

(o) "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

(p) "Municipal license" means a license issued by a municipality pursuant to section 16 of this act that allows a person to operate a marihuana establishment in that municipality.

(q) "Municipality" means a city, village, or township.

(r) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(s) "Process" or "Processing" means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

(t) "State license" means a license issued by the department that allows a person to operate a marihuana establishment.

(u) "Unreasonably impracticable" means that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27954 Scope of act; unauthorized activities with marihuana and marihuana accessories; limitations; application of privileges, rights, immunities, and defenses under other marihuana laws; employer rights; property owner rights.

Sec. 4. 1. This act does not authorize:

(a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;

(b) transfer of marihuana or marihuana accessories to a person under the age of 21;

(c) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana;

(d) separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure;

(e) consuming marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age;

(f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;

(g) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way;

(h) possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or

(i) Possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

2. This act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.

3. This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana.

4. This act allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.

5. All other laws inconsistent with this act do not apply to conduct that is permitted by this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27955 Lawful activities by person 21 years of age or older; terms, conditions, limitations, and restrictions; denial of custody or visitation prohibited.

Sec. 5. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

(a) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;

(b) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once;

(c) assisting another person who is 21 years of age or older in any of the acts described in this section; and

(d) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of

age or older, as long as the transfer is not advertised or promoted to the public.

2. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege.

3. A person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27956 Adoption or enforcement of ordinances by municipality; marihuana establishment local license; annual fee; restrictions on transportation or other facilities prohibited.

Sec. 6. 1. Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana 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.

2. A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any rule promulgated pursuant to this act and that:

(a) establish reasonable restrictions on public signs related to marihuana establishments;

(b) regulate the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;

(c) authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time; and

(d) designate a violation of the ordinance and provide for a penalty for that violation by a marihuana establishment, provided that such violation is a civil infraction and such penalty is a civil fine of not more than $500.

3. A municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license, but may not impose qualifications for licensure that conflict with this act or rules promulgated by the department.

4. A municipality may charge an annual fee of not more than $5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality.

5. A municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27957 Implementation, administration, and enforcement by department; powers; duties; public meetings; annual report.

Sec. 7. 1. The department is responsible for implementing this act and has the powers and duties necessary to control the commercial production and distribution of marihuana. The department shall employ personnel and may contract with advisors and consultants as necessary to adequately perform its duties. No person who is pecuniarily interested, directly or indirectly, in any marihuana establishment may be an employee, advisor, or consultant involved in the implementation, administration, or enforcement of this act. An employee, advisor, or consultant of the department may not be personally liable for any action at law for damages sustained by a person because of an action performed or done in the performance of their duties in the

implementation, administration, or enforcement of this act. The department of state police shall cooperate and assist the department in conducting background investigations of applicants. Responsibilities of the department include:

(a) promulgating rules pursuant to section 8 of this act that are necessary to implement, administer, and enforce this act;

(b) granting or denying each application for licensure and investigating each applicant to determine eligibility for licensure, including conducting a background investigation on each person holding an ownership interest in the applicant;

(c) ensuring compliance with this act and the rules promulgated thereunder by marihuana establishments by performing investigations of compliance and regular inspections of marihuana establishments and by taking appropriate disciplinary action against a licensee, including prescribing civil fines for violations of this act or rules and suspending, restricting, or revoking a state license;

(d) holding at least 4 public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of this act;

(e) collecting fees for licensure and fines for violations of this act or rules promulgated thereunder, depositing all fees collected in the marihuana regulation fund established by section 14 of this act, and remitting all fines collected to be deposited in the general fund; and

(f) submitting an annual report to the governor covering the previous year, which report shall include the number of state licenses of each class issued, demographic information on licensees, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27958 Rules; limitations.

Sec. 8. 1. The department shall promulgate rules to implement and administer this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328, including:

(a) procedures for issuing a state license pursuant to section 9 of this act and for renewing, suspending, and revoking a state license;

(b) a schedule of fees in amounts not more than necessary to pay for implementation, administration, and enforcement costs of this act and that relate to the size of each licensee or the volume of business conducted by the licensee;

(c) qualifications for licensure that are directly and demonstrably related to the operation of a marihuana establishment, provided that a prior conviction solely for a marihuana-related offense does not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor;

(d) requirements and standards for safe cultivation, processing, and distribution of marihuana by marihuana establishments, including health standards to ensure the safe preparation of marihuana-infused products and prohibitions on pesticides that are not safe for use on marihuana;

(e) testing, packaging, and labeling standards, procedures, and requirements for marihuana, including a maximum tetrahydrocannabinol level for marihuana-infused products, a requirement that a representative sample of marihuana be tested by a marihuana safety compliance facility, and a requirement that the amount of marihuana or marihuana concentrate contained within a marihuana-infused product be specified on the product label;

(f) security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marihuana between marihuana establishments, provided that such requirements do not prohibit cultivation of marihuana outdoors or in greenhouses;

(g) record keeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana by licensees;

(h) requirements for the operation of marihuana secure transporters to ensure that all marihuana establishments are properly serviced;

(i) reasonable restrictions on advertising, marketing, and display of marihuana and marihuana establishments;

(j) a plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition and enforcement and to positively

impact those communities; and

(k) penalties for failure to comply with any rule promulgated pursuant to this section or for any violation of this act by a licensee, including civil fines and suspension, revocation, or restriction of a state license.

2. In furtherance of the intent of this act, the department may promulgate rules to:

(a) provide for the issuance of additional types or classes of state licenses to operate marihuana-related businesses, including licenses that authorize only limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marihuana, licenses that authorize the consumption of marihuana within designated areas, licenses that authorize the consumption of marihuana at special events in limited areas and for a limited time, licenses that authorize cultivation for purposes of propagation, and licenses intended to facilitate scientific research or education; or

(b) regulate the cultivation, processing, distribution, and sale of industrial hemp.

3. The department may not promulgate a rule that:

(a) establishes a limit on the number of any type of state licenses that may be granted;

(b) requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer's age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;

(c) prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility; or

(d) is unreasonably impracticable.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27959 License to operate a marihuana establishment; application; qualifications; issuance; disclosure.

Sec. 9. 1. Each application for a state license must be submitted to the department. Upon receipt of a complete application and application fee, the department shall forward a copy of the application to the municipality in which the marihuana establishment is to be located, determine whether the applicant and the premises qualify for the state license and comply with this act, and issue the appropriate state license or send the applicant a notice of rejection setting forth specific reasons why the department did not approve the state license application within 90 days.

2. The department shall issue the following state license types: marihuana retailer; marihuana safety compliance facility; marihuana secure transporter; marihuana processor; marihuana microbusiness; class A marihuana grower authorizing cultivation of not more than 100 marihuana plants; class B marihuana grower authorizing cultivation of not more than 500 marihuana plants; and class C marihuana grower authorizing cultivation of not more than 2,000 marihuana plants.

3. Except as otherwise provided in this section, the department shall approve a state license application and issue a state license if:

(a) the applicant has submitted an application in compliance with the rules promulgated by the department, is in compliance with this act and the rules, and has paid the required fee;

(b) the municipality in which the proposed marihuana establishment will be located does not notify the department that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 6 of this act and in effect at the time of application;

(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;

(d) no person who holds an ownership interest in the marihuana establishment applicant:

(1) will hold an ownership interest in both a marihuana safety compliance facility or in a marihuana secure transporter and in a marihuana grower, a marihuana processor, a marihuana retailer, or a marihuana microbusiness;

(2) will hold an ownership interest in both a marihuana microbusiness and in a marihuana grower, a marihuana processor, a marihuana retailer, a marihuana safety compliance facility, or a marihuana secure transporter; and

(3) will hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness, except that the department may approve a license application from a person who holds an ownership interest in more than 5 marihuana growers or more than 1 marihuana microbusiness if, after January 1, 2023, the department promulgates a rule authorizing an individual to hold an ownership interest in more than 5 marihuana growers or in more than 1 marihuana microbusiness.

4. If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 6 of this act and that limit prevents the department from issuing a state license to all applicants who meet the requirements of subsection 3 of this section, the municipality shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality.

5. All state licenses are effective for 1 year, unless the department issues the state license for a longer term. A state license is renewed upon receipt of a complete renewal application and a renewal fee from any marihuana establishment in good standing.

6. The department shall begin accepting applications for marihuana establishments within 12 months after the effective date of this act. Except as otherwise provided in this section, for 24 months after the department begins to receive applications for marihuana establishments, the department may only accept applications for licensure: for a class A marihuana grower or for a marihuana microbusiness, from persons who are residents of Michigan; for a marihuana retailer, marihuana processor, class B marihuana grower, class C marihuana grower, or a marihuana secure transporter, from persons holding a state operating license pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801; and for a marihuana safety compliance facility, from any applicant. One year after the department begins to accept applications pursuant to this section, the department shall begin accepting applications from any applicant if the department determines that additional state licenses are necessary to minimize the illegal market for marihuana in this state, to efficiently meet the demand for marihuana, or to provide for reasonable access to marihuana in rural areas.

7. Information obtained from an applicant related to licensure under this act is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018..

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27960 Lawful activities by marihuana grower, processor, transporter, or retailer; limitations; contracts related to operation of marihuana establishments.

Sec. 10. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act or the rules promulgated thereunder, the following acts are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection except as authorized by this act, and are not grounds to deny any other right or privilege:

(a) a marihuana grower or an agent acting on behalf of a marihuana grower who is 21 years of age or older, cultivating not more than the number of marihuana plants authorized by the state license class; possessing, packaging, storing, or testing marihuana; acquiring marihuana seeds or seedlings from a person who is 21 years of age or older; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(b) a marihuana processor or agent acting on behalf of a marihuana processor who is 21 years of age or older, possessing, processing, packaging, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for goods or services;

(c) a marihuana secure transporter or an agent acting on behalf of a marihuana secure transporter who is 21 years of age or older, possessing or storing marihuana; transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(d) a marihuana safety compliance facility or an agent acting on behalf of a marihuana safety compliance facility who is 21 years of age or older, testing, possessing, repackaging, or storing marihuana; transferring, obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(e) a marihuana retailer or an agent acting on behalf of a marihuana retailer who is 21 years of age or older, possessing, storing, or testing marihuana; selling or otherwise transferring, purchasing or otherwise obtaining,

or transporting marihuana to or from a marihuana establishment; selling or otherwise transferring marihuana to a person 21 years of age or older; or receiving compensation for goods or services; or

(f) a marihuana microbusiness or an agent acting on behalf of a marihuana microbusiness who is 21 years of age or older, cultivating not more than 150 marihuana plants; possessing, processing, packaging, storing, or testing marihuana from marihuana plants cultivated on the premises; selling or otherwise transferring marihuana cultivated or processed on the premises to a person 21 years of age or older; or receiving compensation for goods or services.

(g) leasing or otherwise allowing the use of property owned, occupied, or managed for activities allowed under this act;

(h) enrolling or employing a person who engages in marihuana-related activities allowed under this act;

(i) possessing, cultivating, processing, obtaining, transferring, or transporting industrial hemp; or

(j) providing professional services to prospective or licensed marihuana establishments related to activity under this act.

2. A person acting as an agent of a marihuana retailer who sells or otherwise transfers marihuana or marihuana accessories to a person under 21 years of age is not subject to arrest, prosecution, forfeiture of property, disciplinary action by a professional licensing board, denial of any right or privilege, or penalty in any manner, if the person reasonably verified that the recipient appeared to be 21 years of age or older by means of government-issued photographic identification containing a date of birth, and the person complied with any rules promulgated pursuant to this act.

3. It is the public policy of this state that contracts related to the operation of marihuana establishments be enforceable.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27961 Marihuana establishments; requirements; limitations.

Sec. 11. (a) A marihuana establishment may not allow cultivation, processing, sale, or display of marihuana or marihuana accessories to be visible from a public place outside of the marihuana establishment without the use of binoculars, aircraft, or other optical aids.

(b) A marihuana establishment may not cultivate, process, test, or store marihuana at any location other than a physical address approved by the department and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marihuana establishment to access the area.

(c) A marihuana establishment shall secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees and other persons permitted by the marihuana establishment to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and shall secure its inventory and equipment during and after operating hours to deter and prevent theft of marihuana and marihuana accessories.

(d) No marihuana establishment may refuse representatives of the department the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

(e) No marihuana establishment may allow a person under 21 years of age to volunteer or work for the marihuana establishment.

(f) No marihuana establishment may sell or otherwise transfer marihuana that was not produced, distributed, and taxed in compliance with this act.

(g) A marihuana grower, marihuana retailer, marihuana processor, marihuana microbusiness, or marihuana testing facility or agents acting on their behalf may not transport more than 15 ounces of marihuana or more than 60 grams of marihuana concentrate at one time.

(h) A marihuana secure transporter may not hold title to marihuana.

(i) No marihuana processor may process and no marihuana retailer may sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.

(j) No marihuana retailer may sell or otherwise transfer marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995), unless the marihuana is transferred for consumption on the premises where sold.

(k) No marihuana establishment may sell or otherwise transfer tobacco.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27962 Deduction of certain expenses from income.

Sec. 12. In computing net income for marihuana establishments, deductions from state taxes are allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27963 Imposition of excise tax.

Sec. 13. 1. In addition to all other taxes, an excise tax is imposed on each marihuana retailer and on each marihuana microbusiness at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.

2. Except as otherwise provided by a rule promulgated by the department of treasury, a product subject to the tax imposed by this section may not be bundled in a single transaction with a product or service that is not subject to the tax imposed by this section.

3. The department of treasury shall administer the taxes imposed under this act and may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to MCL 24.328, that prescribe a method and manner for payment of the tax to ensure proper tax collection under this act.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27964 Marihuana regulation fund; creation; administration; allocation of expenditures.

Sec. 14. 1. The marihuana regulation fund is created in the state treasury. The department of treasury shall deposit all money collected under section 13 of this act and the department shall deposit all fees collected in the fund. The state treasurer shall direct the investment of the fund and shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund.

2. Funds for the initial activities of the department to implement this act shall be appropriated from the general fund. The department shall repay any amount appropriated under this subsection from proceeds in the fund.

3. The department shall expend money in the fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide $20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:

(a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;

(b) 15% to counties in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the county;

(c) 35% to the school aid fund to be used for K-12 education; and

(d) 35% to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27965 Violations; penalties.

Sec. 15. A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:

1. Except for a person who engaged in conduct described in sections 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), or 4(1)(h), a person who possesses not more than the amount of marihuana allowed by section 5, cultivates not more than the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than $100 and forfeiture of the marihuana.

2. Except for a person who engaged in conduct described in section 4, a person who possesses not more than twice the amount of marihuana allowed by section 5, cultivates not more than twice the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than twice the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than twice the amount of marihuana allowed by section 5:

(a) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than $500 and forfeiture of the marihuana;

(b) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than $1,000 and forfeiture of the marihuana;

(c) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than $2,000 and forfeiture of the marihuana.

3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:

(a) for a first violation, is responsible for a civil infraction and may be punished as follows:

(1) if the person is less than 18 years of age, by a fine of not more than $100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling; or

(2) if the person is at least 18 years of age, by a fine of not more than $100 and forfeiture of the marihuana.

(b) for a second violation, is responsible for a civil infraction and may be punished as follows:

(1) if the person is less than 18 years of age, by a fine of not more than $500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or

(2) if the person is at least 18 years of age, by a fine of not more than $500 and forfeiture of the marihuana.

4. Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27966 Failure to act by department; application to municipality.

Sec. 16. 1. If the department does not timely promulgate rules as required by section 8 of this act or accept or process applications in accordance with section 9 of this act, beginning one year after the effective date of this act, an applicant may submit an application for a marihuana establishment directly to the municipality where the marihuana establishment will be located.

2. If a marihuana establishment submits an application to a municipality under this section, the municipality shall issue a municipal license to the applicant within 90 days after receipt of the application unless the municipality finds and notifies the applicant that the applicant is not in compliance with an ordinance or rule adopted pursuant to this act.

3. If a municipality issues a municipal license pursuant to this section:

(a) the municipality shall notify the department that the municipal license has been issued;

(b) the municipal license has the same force and effect as a state license; and

(c) the holder of the municipal license is not subject to regulation or enforcement by the department during the municipal license term.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

333.27967 Construction of act; effect of federal law; severability.

Sec. 17. This act shall be broadly construed to accomplish its intent as stated in section 2 of this act. Nothing in this act purports to supersede any applicable federal law, except where allowed by federal law. All provisions of this act are self-executing. Any section of this act that is found invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2018, Initiated Law 1, Eff. Dec. 6, 2018.

Compiler's note: This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

Recreational Marihuana Proposition

michigan municipal league

We love where you live.

This paper is being provided by the Michigan Municipal League (MML) to assist its member communities.

The MML Legal Defense Fund authorized its preparation by Kalamazoo City Attorney Clyde Robinson. The document does not constitute legal advice and the material is provided as information only. All references should be independently confirmed.

The spelling of "marihuana" in this paper is the one used in the Michigan statutes and is the equivalent of "marijuana."

Other resources

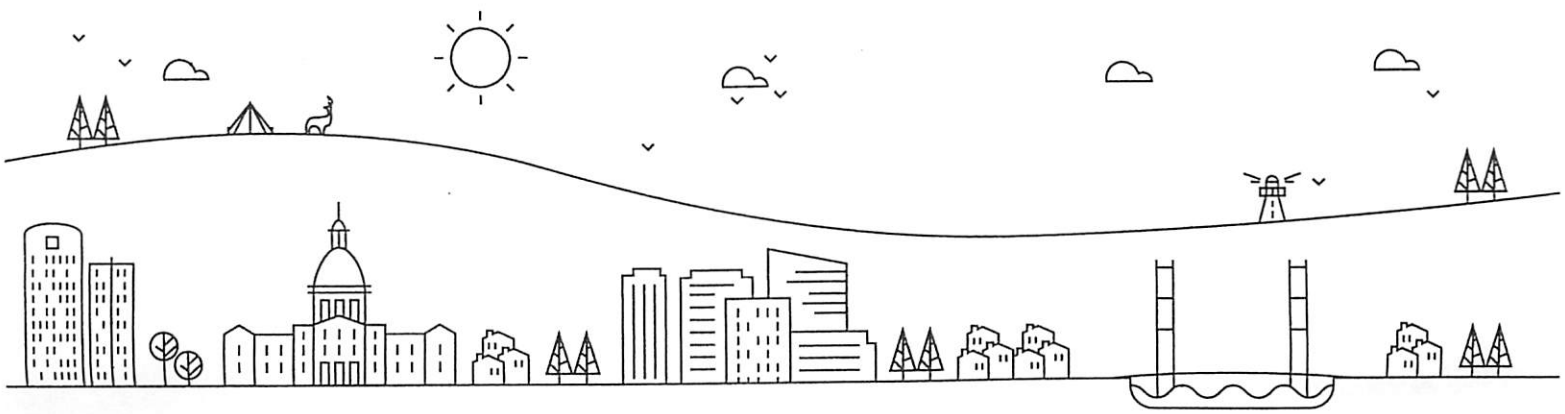
The Michigan Municipal League has compiled numerous resource materials on medical marihuana and is building its resources on recreational marihuana. They are available via the MML web site at:
www.mml.org/resources/information/mi-med-marihuana.html

Introduction

This paper is intended to provide municipal attorneys and their clients an idea of what to expect and the issues to be addressed, given the adoption by Michigan voters of Initiated Law 1 of 2018 generally legalizing marihuana on November 6, 2018. The scope of this paper will outline the provisions of the initiated statute and address some of the practical consequences for municipalities while raising concerns that local governmental officials should be prepared to confront. It is assumed that the reader has a working knowledge of both the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, and in particular the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*

While the initiated law, titled the Michigan Regulation and Taxation of Marihuana Act (MRTMA), uses some of the same terms found in the MMFLA, the language between the two Acts is not consistent. This circumstance alone, as well as other features of the initiated statute, requires a thoughtful and thorough review of the language adopted by Michigan voters and its potential impact at the local municipal level.

At its core, the MRTMA authorizes the possession and nonmedical use of marihuana by individuals 21 years of age and older, while establishing a regulatory framework to control the commercial production and distribution of marihuana outside of the medical context. While the regulatory scheme of the MRTMA is similar to that of the MMFLA, it also differs in significant ways.



When would the proposed law become effective if approved?

Under the provisions of Article II, § 9 of the Michigan Constitution, an initiated law takes effect 10 days after the official declaration of the vote. The State Board of Canvassers met on November 26 and certified the November 6 election results, so the effective date of the law will be December 6, 2018. The immediate effect of the law authorizes individuals age 21 and older to openly possess a small amount of marihuana and marihuana concentrate on their person, and possess and grow a larger amount of marihuana at their residence. Given the relatively short period to adjust to the change in the legal status of marihuana in Michigan, law enforcement officers should be provided training in advance of this change in the law so as to avoid claims of false arrest and allegations of Fourth Amendment unlawful search violations. This becomes particularly acute for law enforcement agencies that use drug-sniffing dogs that were trained to detect marihuana. Those animals will likely have to be retired from service as they cannot be relied upon to provide probable cause to support a search. Additionally, officers will have to deal with how to handle marihuana discovered in the course of a search incident to an arrest for another offense.

Another constitutional feature of a voter-initiated law is that it can only be amended by a vote of the electors or by ¾ vote of each house of the Legislature. This likely makes amending the statute difficult, but not impossible, as the MMMA has been amended at least twice since its adoption by the voters in 2008.

As for the actual licensure of businesses authorized to grow, process, and sell recreational marihuana, the Act requires that the Michigan Department of Licensing and Regulatory Affairs (LARA) begin accepting applications for state-issued licenses no later than a year after the effective date of the law and issue the appropriate license or notice of rejection within 90 days. (MRTMA § 9) Unlike the MMFLA, there is not a specific licensing board created to review and grant recreational marihuana establishment licenses. Given the deliberate speed of LARA and the Medical Marihuana Licensing Board in processing and authorizing licenses under the MMFLA, it is an open question whether the statutory deadline will be met. If it can't, then the burden of licensing recreational marihuana establishments will fall to local municipalities, because the MRTMA specifically provides that if LARA does not timely promulgate rules or accept or process applications, "beginning one year after the effective date of this act," an applicant may seek licensure directly from the municipality where the marihuana business will be located. (MRTMA § 16)

Under this scenario, a municipality has 90 days after receipt of an application to issue a license or deny licensure. Grounds for denial of a license are limited to an applicant not being in compliance with an ordinance whose provisions are not "unreasonably impracticable," or a LARA rule issued pursuant to the MRTMA. If a municipality issues a license under these circumstances, it must notify LARA that a municipal license has been issued. The holder of a municipally-issued license is not subject to LARA regulation during the one-year term of the license; in other words, the municipality becomes the sole licensing and regulatory body for recreational marihuana businesses in the community in this circumstance. Any ordinance seeking to regulate recreational marihuana businesses should be drafted with the potential for this circumstance in mind.

What does the initiated statute seek to do?

The purposes actually stated in the MRTMA are many and varied. In addition to legalizing the recreational use of marihuana by persons 21 years and older, the statute 1) legalizes industrial hemp (cannabis with a THC concentration not exceeding 0.3 percent), and 2) licenses, regulates, and taxes the businesses involved in the commercial production and distribution of nonmedical marihuana. According to Section 2 of the statute, the intent of the law is to:

- prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age and older;
- remove the commercial production and distribution of marihuana from the illicit market;
- prevent revenue generated from commerce and marihuana from going to criminal enterprises or gangs;
- prevent the distribution of marihuana to persons under 21 years of age;

- prevent the diversion of marihuana to elicit markets;
- ensure the safety of marihuana and marihuana infused products; and
- ensure the security of marihuana establishments.

Whether the MRTMA will actually live up to all of these intentions is open to question as many of the areas mentioned are not directly addressed in the law. For instance, since the establishments that will be authorized to grow, process, and sell recreational marihuana will not be licensed until early 2020, how is it that individuals can lawfully obtain and possess marihuana upon the effective date of the Act?

What the statute permits

Under Section 5 of the MRTMA, persons 21 years of age and older are specifically permitted to:

- possess, use, consume, purchase, transport, or process 2.5 ounces or less of marihuana, of which not more than 15 grams (0.53 oz.) may be in the form of marihuana concentrate;
- within a person's residence, possess, store, and process not more than a) 10 ounces of marihuana; b) any marihuana produced by marihuana plants cultivated on the premises; and c) for one's personal use, cultivate up to 12 plants at any one time, on one's premises;
- give away or otherwise transfer, without remuneration, up to 2.5 ounces of marihuana except that not more than 15 g of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older as long as the transfer is not advertised or promoted to the public (registered medical marihuana caregivers and patients will be able to "give away" marihuana to non-patients);
- assist another person who is 21 years of age or more in any of the acts described above; and
- use, manufacture, possess, and purchase marihuana accessories and distribute or sell marihuana accessories to persons who are 21 years of age and older.

Although not a direct concern of municipalities, law enforcement and social service agencies need to be cognizant that the Act specifically provides that "a person shall not be denied custody of or visitation with the minor for conduct that is permitted by the Act, unless the person's behavior such that it creates an unreasonable danger to the minor they can be clearly articulated and substantiated." MRTMA § 5. Exactly what this phrase means will likely be a source of litigation in the family division of the circuit courts.

The possession limits under the MRTMA are the most generous in the nation. Most other states that have legalized marihuana permit possession of only one ounce of usable marihuana, 3.5g to 7g of concentrate, limit the number of plants to six, and do not permit possession of an extra amount within one's residence. An additional concern arises as to how these limits will be applied. It will be asserted that the limits are per every individual age 21 or older who resides at the premises. So, the statutory permissible possessory amounts are ostensibly doubled for a married couple and quadrupled or more for a group of college students or an extended family sharing a residence. While this same concern is also present under the MMMA, the quantity of marihuana permitted to be possessed under the MMMA is significantly less than under the MRTMA, and lawful possessors (patients and caregivers) are required to be registered with the State.

What is "Not Authorized" under the statute

The initiated law does not set forth outright prohibitions, but instead cleverly explains what the "act does not authorize." Specifically, under the terms of Section 4 of the MRTMA, one is not authorized to:

- operate while under the influence of marihuana or consume marihuana while operating a motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoke marihuana while in the passenger area of the vehicle on a public way;
- transfer marihuana or marihuana accessories to a person under the age of 21;

- process, consume, purchase, or otherwise obtain, cultivate, process, transport, or sell marihuana if under the age of 21;
- separate plant resin by butane extraction or other method that utilizes a substance with the flashpoint below 100° Fahrenheit in any public place motor vehicle or within the curtilage of any residential structure (This prohibition is broader than the one limited solely to butane extraction found in the MMMA.);
- consume marihuana in a public place or smoke marihuana where prohibited by a person who owns occupies or manages property; however, a public place does not include an area designated for consumption within the municipality that has authorized consumption in a designated area not accessible to persons under 21 years of age;
- cultivate marihuana plants if plants are visible from a public place without the use of binoculars, aircraft, or other optical aids; or; outside of an enclosed area equipped with locks or other functioning security devices that restrict access;
- possess marihuana accessories or possess or consume marihuana on the grounds of a public or private school where children attend preschool, kindergarten, or grades one through 12; in a school bus; or on the grounds of any correctional facility; and
- possess more than 2.5 ounces of marihuana within a person's place of residence unless any excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

MRTMA § 4.5 then provides that "All other laws inconsistent with this act do not apply to conduct that is permitted by this act." This general statement does not provide for a total repeal of existing marihuana laws, but its lack of specificity to other statutes being impacted, something that the Legislative Service Bureau helps the Legislature avoid, may portend problems in its application.

Differences in terminology between statutes addressing medical and recreational marihuana

The MRTMA does not neatly fit with the MMMA. It provides at Section 4.2 that it "does not limit any privileges, rights, immunities or defenses of a person as provided" by the MMMA. This raises the question whether registered patients and caregivers may lawfully possess marihuana exceeding the amounts permitted under the MMMA. However, this may become a moot point, since in all probability, once the commercial provisions of the MRTMA are fully in operation, the number of registered patients and caregivers under the MMMA could reasonably be expected to drop significantly, as its practical application would largely be limited to registered patients under the age of 21 and their caregivers.

Additionally, the MRTMA references the MMFLA at several places. In addition to the "does not limit" language referenced above, the statute at § 9.6 provides that for the first 24 months after LARA begins accepting applications for marihuana establishment licenses, only those persons holding a MMFLA license may apply for a retailer, processor, class B or class C grower, or secure transporter license issued under the MRTMA. And § 8.3(c), is broadly worded so as to preclude LARA from promulgating rules which prohibit a recreational marihuana establishment from operating at a shared location with a licensed medical marihuana facility.

The lack of consistency between the statute addressing medical marihuana and the recreational marihuana statute is reflected in the following chart.

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes			
	MMFLA	MMMA	Proposed MRTMA
Grower Limits			
Class A	500 plant limit		100 plant limit (limited to Michigan residents for first two years)
Class B	1000 plant limit		500 plant limit
Class C	1500 plant limit; stackable		2000 plant limit; not clear if stackable
Microbusiness	---		150 plant limit (limited to Michigan residents for first two years)
Secure Transporter	Required to move marihuana between licensed facilities; may move money		No specific requirement to use; no authority to transport money
Compliance with Marihuana Tracking Act	Required		No reference or requirement
Plant Resin Separation	---	Butane extraction prohibited in a public place, motor vehicle, or inside a residence or within curtilage of a residential structure or in a reckless manner	Butane extraction or another method that utilizes a substance with a flashpoint below 100° F prohibited in a public place, motor vehicle, or within curtilage of any residential structure
Possession Limits			
Registered Patient (18 years and older, but can be less than 18)		2.5 oz. useable marihuana and 12 plants*	
Registered Caregiver (five patient limit)		2.5 oz. useable marihuana and 12 plants per patient*	

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes

	MMFLA	MMMA	Proposed MRTMA
Possession Limits			
Other Persons (21 years and older under MRTMA)		Not permitted	(a) 2.5 oz. of marihuana, of which not more than 15 grams may be concentrate; (b) 10 oz. secured within one's residence; (c) any amount produced by plants cultivated on the premises; and (d) 12 plants
Inconsistent Terms			
Licensed marihuana businesses	marihuana facility		marihuana establishment
Equipment to grow, process or use marihuana	paraphernalia		marihuana accessories
Business that sells marihuana	provisioning center		marihuana retailer
Certain parts of marihuana plant	Usable marihuana and usable marihuana equivalencies		Term not used
Marihuana-infused products	Excludes products consumed by smoking; exempts products from food law		Does not exclude products consumed by smoking or provide food law exemption
Enclosed, locked facility		Specifically defined to address a structure, an outdoor grow area, and motor vehicles	Container or area within a person's residence equipped with locks or other functioning security device that restricts access to the area or container's contents
Limitations on scope of local regulation	Purity, pricing or conflict with MMFLA or LARA rules		"Unreasonably Impracticable" or conflict with MRTMA or LARA rules

Key Differences between Medical Marihuana and Proposed Recreational Marihuana Statutes			
	MMFLA	MMMA	Proposed MRTMA
Inconsistent Terms			
Property rights	License is a revocable privilege, not a property right; facilities subject to inspection and examination without a warrant		Not addressed
Zoning	Municipalities specifically authorized to zone, but growers limited to industrial, agricultural or unzoned areas	Municipalities may not limit caregiver operations to residential districts as a "home occupation" Deruiter v Byron Twp. (July 2018) and Ypsilanti Twp. v. Pontius (Oct. 2018)	Municipal regulation limited to: (a) reasonable sign restrictions; (b) time, place and manner of operation of marihuana establishments and the production, manufacture, sale and display of marihuana accessories; and (c) authorizing sale of marihuana for consumption in designated areas or at special events
License eligibility			
Elected officials and governmental employees	Not eligible		Not addressed
Felony or controlled substance felony within past 10 years or misdemeanor conviction for controlled substance violation or dishonesty theft or fraud within past five years	Not eligible		A prior conviction for a marihuana-related offense does not disqualify an individual unless offense involved distribution of a controlled substance to a minor
Taxation	3 percent on gross retail receipts of provisioning centers		10 percent on sales price for marihuana sold or transferred by marihuana retailers and micro businesses

*Under § 8 of the MMMA a patient and patient's caregiver may also collectively possess a quantity of marihuana that is not more than reasonably necessary to ensure an uninterrupted availability of marihuana for the purpose of treatment.

There also appears to be some inconsistency within the MRTMA itself. Section 6.1 permits a municipality to "completely prohibit or limit the number of (recreational) marihuana establishments within its boundaries." However, §6.5 provides that a municipality may not prohibit a recreational marihuana grower, processor, and retailer from: 1) operating within a single facility; or 2) *"operating at a location shared with a marihuana facility operating pursuant to the (MMFLA)."* (Emphasis supplied) The italicized phrase has been interpreted by some marihuana advocates as precluding a community that opted in to the MMFLA from opting out of the MRTMA since to do so would prevent recreational establishments from co-locating in a medical marihuana facility, which is prohibited. However, this argument overlooks the clear grant of authority at §6.1 permitting a municipality by either legislative action or initiative ballot from completely prohibiting recreational marihuana establishments. The real concern with §6 is for those communities that permit both recreational and medical marihuana businesses. The plain language at §6.5 seemingly permits the more intensive grower (which under the MMFLA is restricted to industrial, agricultural or unzoned areas) and processing operations to share a location with marihuana businesses more conducive to being located in commercial or office zoning districts. A legislative fix may be needed to clarify that only analogous medical and recreational marihuana businesses can be co-located.

What may a municipality do?

Unlike the MMFLA, where municipalities must "opt in," under the MRTMA, a municipality must "opt out." The proposed statute permits a municipality to "completely prohibit" or "limit the number of marihuana establishments." Given the language used in Section 6 of the MRTMA, a municipality should not rely upon prior ordinances or resolutions adopted in response to the MMFLA, but should affirmatively opt out of the MRTMA or limit the number of marihuana establishments by ordinance, not by resolution. Further, petitions containing the signatures of qualified electors of the municipality in an amount greater than five percent of votes cast for governor in the most recent gubernatorial election, may initiate an ordinance to completely prohibit or provide for the number of marihuana establishments within the municipality.

The initiative language in the MRTMA is problematic. Given the wording, it cannot be assumed that voters can initiate an ordinance to "opt in" should the local governing body choose to exempt the municipality from the Act. Rather, the initiative options are either to "completely prohibit" or "limit the number" of marihuana establishments. It is an open question whether the initiative authority to provide for the number of establishments could be an avenue for voters to override the local governing body's action to "opt out" of the statute. Additionally, the vague wording of the statute leaves it open to question as to whether an initiative providing for the number of marihuana establishments must (or should) set forth proposed numbers or limits for each separate type of marihuana establishment or whether the limit on establishments is collective in nature. Logic would favor the former, but the statute is not precise.

Not opting out of the recreational marihuana statute will impact existing medical marihuana facilities in a municipality because for the first 24 months of the Act, only persons holding a MMFLA license (in any community where such is permitted) may apply for a recreational retailer, class B or C grower, or secure transporter license under the MRTMA unless after the first 12 months of accepting applications LARA determines that additional recreational marihuana establishment licenses are needed. MRTMA §9.6.

A municipality choosing not to opt out of the MRTMA may adopt certain other ordinances addressing recreational marihuana and recreational marihuana establishments provided that they "are not unreasonably impractical" and do not conflict with the Act or any rule promulgated pursuant to the Act. The statutory definition of the redundant term "unreasonably impracticable," found at Section 3(u), almost begs to be litigated. As defined by the initiated statute, the term means:

> "that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent business person would not operate the marihuana establishment."

Unfortunately, given that the possession, cultivation, processing, and sale of marihuana remains a crime under federal law, how does one assess an "unreasonable risk" or determine what constitutes such a high investment of time or money so as to deter a reasonably prudent business person from going forward? Further, does this definition remove the judicial deference and presumption of reasonableness that accompanies ordinances? The term "unreasonably impractical" was taken directly from Colorado law, and as of this writing, it does not appear to have been construed by an appellate court in that State. As an aside, would "reasonably impracticable" regulations be acceptable?

Specifically, an ordinance may establish reasonable restrictions on public signs related to marihuana establishments; regulate the time, place, and manner of operation of marihuana establishments, as well as the production, manufacture, sale, or display of marihuana accessories; and, authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age or special events in limited areas and for a limited time. A violation of ordinances regulating marihuana establishments is limited to a civil fine of not more than $500. MRTMA § 6.2.

However, some of these regulatory authorizations are problematic. For instance, the ability to establish reasonable restrictions on public signs related to recreational marihuana, being content-based, likely runs afoul of the holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). Further, the MRTMA does not, unlike the MMFLA, specifically authorize a municipality to exercise its zoning powers to regulate the location of marihuana establishments. Rather, the MRTMA authorizes ordinances that "regulate the time, place, and manner of operation of marihuana establishments."

The use of the time, place, and manner First Amendment test on the ability of government to regulate speech is ill-suited and inappropriate to the licensure and regulation of local businesses. One cannot help but believe that the choice of the time, place, and manner language was an intentional effort so as to permit marihuana establishments to heavily borrow from established legal precedent that largely circumscribes the ability of governmental authorities to restrict speech. Specifically, valid time, place, and manner type of restrictions must:

1. be content neutral;
2. be narrowly tailored to serve a significant governmental interest; and
3. leave open ample alternative channels for communication.

Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)

The above formulation is not consistent with Michigan zoning law doctrine, which, although subject to the due process and equal protection guarantees of the Fourteenth Amendment, generally requires that there be a reasonable governmental interest being advanced by the regulation. See *Charter Township of Delta v. Dinolfo*, 419 Mich 253, 268 (1984). To this end, the only clear reference to the zoning power in the MRTMA is the grant to municipalities to reduce the separation distance between marihuana establishments and pre-existing public and private schools providing K-12 education from 1000' to a lesser distance.

A municipality's ability to authorize designated areas and special events for the consumption marihuana holds the potential to give rise to specialty businesses such as in California where restaurants make marihuana-infused food and drinks available to diners.

Section 6.5 of the MRTMA specifically precludes a municipality from prohibiting the transportation of marihuana through the municipality, even though it has otherwise opted out.

If a municipality limits the number of establishments that may be licensed, and such limitation prevents LARA from issuing a state license to all applicants who otherwise meet the requirements for the issuance of a license, the MRTMA provides that "the municipality shall decide among the competing applications by competitive process intended to select applicants who are best suited to operate in compliance with the act within the municipality." MRTMA § 9.4. This provision presents the Pandora's Box which confronted municipalities that attempted to cap the number of licenses issued under the MMFLA. Any competitive process that seeks to determine who is "best suited" inherently has a subjective component that may expose the municipality to legal challenges based on alleged due process violations by the municipality from unsuccessful applicants asserting that the process employed was unfair on its face or unfairly administered. While there may be good reasons to limit the number of recreational marihuana establishments, any community that chooses to do so should be prepared to defend itself from challenges by unsuccessful applicants.

A municipality may adopt an ordinance requiring that marihuana establishments located within its boundaries obtain a municipally–issued marihuana establishment license; but, the annual fee for such a license is limited to $5,000 and any qualifications for licensure may not conflict with the MRTMA or rules promulgated by LARA pursuant to the Act.

What limitations on the State are applicable to municipalities?

According to the statute, a State rule may not be unreasonably impracticable, or limit the number of any of the various types of license that may be granted, or require a customer to provide a retailer with identifying information other than to determine a customer's age or acquire personal information other than that typically required in a retail transaction or preclude the co-location of a marihuana establishment with a licensed medical facility. MRTMA §8.3.

The State is required to issue a license under the Act if the municipality does not notify LARA that the proposed establishment is not in compliance with a local ordinance and if the proposed location is not within an area "zoned exclusively for residential use and not within 1000 feet of a pre-existing public or private school providing K-12 education." A municipality is authorized to reduce the 1000' separation from a school requirement. MRTMA §9.3.

Additionally, the grounds for disqualifying a license applicant based on a prior controlled substance conviction is much reduced under the MRTMA than under the MMFLA. An applicant for a medical marihuana facilities license is disqualified if they have any of the following:

- a felony conviction or release from incarceration for a felony within the past 10 years;
- a controlled substance-related felony conviction within the past 10 years; or
- a misdemeanor conviction involving a controlled substance, theft, dishonesty, or fraud within the past five years.

In contrast, under the MRTMA any prior conviction solely for a marihuana offense does not disqualify or affect eligibility for licensure unless the offense involved distribution to a minor. Thus, persons convicted of trafficking in large amounts of marihuana would be eligible for a municipal marihuana establishment license. MRTMA §8.1(c).

Additionally, LARA is precluded from issuing a rule and municipalities may not adopt an ordinance requiring a customer to provide a marihuana retailer with any information other than identification to determine the customer's age. MRTMA §8.3(b). In this regard, the MRTMA provides an affirmative defense to marihuana retailers who sell or otherwise transfer marihuana to a person under 21 years of age if the retailer reasonably verified that the recipient appeared to be 21 years of age or older by means of government issued photographic identification containing a date of birth. MRTMA §10.2.

There are also limitations on holding ownership interests in different types of facilities. Owners of a safety compliance facility or secure transporter may not hold an ownership interest in a grower, or processor, or retailer, or microbusiness establishment. The owner of a microbusiness may not hold an interest in a grower, or processor, or retailer, safety compliance, or secure transporter

establishment. And a person may not hold an interest in more than five marihuana growers or more than one microbusiness, unless after January 1, 2023 LARA issues a rule permitting otherwise. MRTMA §9.3.

Finally, for the first 24 months after LARA begins accepting applications for licensure, only persons who are residents of Michigan may apply for a Class A grower or microbusiness license and to be eligible for all other licenses, persons must hold a State operating license pursuant to the MMFLA. MRTMA §9.6.

What if the State fails to act in a timely fashion?

If the State does not timely promulgate rules (despite the Act not providing when those must be issued) or accept or process applications within 12 months after the effective date of the Act, an applicant may submit an application for a recreational marihuana establishment directly to the municipality where the business will be located. MRTMA §16. A municipality must issue a license to the applicant within 90 days after receipt of the application unless the municipality determines that the applicant is not in compliance with an ordinance or rule adopted pursuant to the Act. If a municipality issues a license, it must notify the department that the license has been issued. That municipal license will have the same force and effect as a State license but the holder will not be subject to regulation or enforcement by the State during the municipal license term. It is unclear whether, if the State puts in place a licensing system during the term of a municipal license, the establishment can be required to seek State licensure or is merely required to renew the license with the municipality.

Municipality as an employer or landlord

The MRTMA does not require that an employer permit or accommodate conduct otherwise allowed by the Act in the workplace or on the employer's property. The Act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. Nor does the Act prevent an employer from refusing to hire a person because of that person's violation of a workplace drug policy. MRTMA §4.3. In this regard, the statute appears to codify the holding of *Casias v. Wal-Mart Stores*, Inc., 764 F Supp 2d 914 (WD Mich 2011) *aff'd*, 695 F3d 428 (6th Cir 2012) permitting a private employer to discharge an employee who as a registered patient under the MMMA used marihuana outside of work hours, was not under the influence while at work, but tested positive after suffering an injury while at work. However, note should be taken that in *Braska v. Challenge Manufacturing Co.*, 307 Mich App 340; 861 NW2d 289 (2014) the Court determined that under the terms of the MMMA, employees discharged from employment solely on the basis of positive drug tests for marihuana were not disqualified from receiving unemployment benefits.

In the event that a municipality has created a housing commission, or otherwise provides housing or otherwise leases property and therefore acts as a landlord, the MRTMA permits the lessor of property to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on leased property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking. MRTMA §4.4.

Municipal share of Marihuana Excise Tax Fund

Under the terms of the MMFLA, municipalities (cities, villages, and townships) in which a medical marihuana facility is located get a *pro rata* share of 25 percent of a medical marihuana excise fund created by the imposition of a 3 percent tax on gross retail sales at provisioning centers. However, under the terms of the MMFLA, if a law authorizing the recreational or nonmedical use of marihuana is enacted, the tax on medical marihuana sales sunsets 90 days following the effective date of the new law. MCL 333.27601. Thus by early March 2019, the excise tax just beginning to be collected by provisioning centers under the MMFLA will be repealed.

The MRTMA seeks to fill the gap created by the loss of the 3 percent excise tax under the MMFLA by creating marihuana regulation fund through the imposition of a 10 percent excise tax (which would be in addition to the 6 percent sales tax) on the sales price of marihuana sold or otherwise transferred by a marihuana retailer or microbusiness to anyone other than another marihuana establishment. However, the sale to be allocated to municipalities is reduced to 15 percent and before any money is provided to cities, villages, and townships in which a marihuana retail store or microbusiness is located, the State is made whole for its implementation, administration, and enforcement of the Act—and until 2022 or for at least two years, $20 million from the fund must be annually provided to one or more clinical trials approved by the FDA that are researching the efficacy of marihuana in the treatment of U.S. armed services veterans and preventing veteran suicide. MRTMA §14.

The net effect for municipalities could result in more money under the MRTMA than under the MMFLA. This is because: a) the tax rate levied is over three times higher under the MRTMA (10 percent v. 3 percent); b) there is a larger pool of potential consumers (registered patients and caregivers v. all persons aged 21 and older); and c) the allocation to municipalities under the MRTMA is based on the number of marihuana retail stores and micro businesses as opposed to all types of marihuana facilities under the MMFLA. However, if a municipality does not permit recreational marihuana retail establishments, it will not receive any revenue under the MRTMA, but will still have to deal with the social consequences of marihuana use.

The following table illustrates the differences between the two statutory approaches based on assumption of $1 billion in annual gross sales, State regulatory expenses being recouped by applicable fees, and a municipality having one percent of the total number of medical marihuana facilities or recreational retail businesses.

	MMFLA	MRTMA
Annual Gross Retail Sales	$1,000,000,000	$1,000,000,000
Applicable Excise Tax Rate	3 percent	10 percent
Amount of Excise Tax Fund	$30,000,000	$100,000,000
Less Allocation for Veterans' Health Research until 2022	0 $30,000,000	-$20,000,000 $80,000,000
Percentage Allocated to Municipalities	25 percent	15 percent
Amount Available for Municipalities	$7,500,000	$12,000,000
1 percent of facilities or retail establishments in municipality	$75,000	$120,000

Seemingly to convince voters to approve the MRTMA, 35 percent of the marihuana regulation fund will be allocated to the school aid fund for K-12 education and another 35 percent to the Michigan transportation fund for the repair and maintenance of roads and bridges. Unlike the MMFLA, which allocated 15 percent split equally (5 percent each) between county sheriffs where a marihuana facility was located, the Commission on Law Enforcement Standards for Officer Training, and to the State Police, there is no allocation directly to law enforcement purposes under the MRTMA.

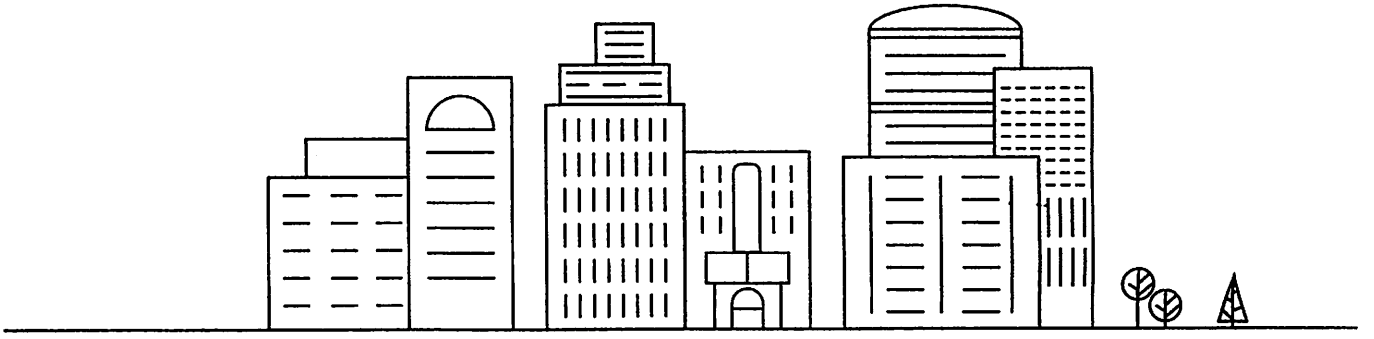
Conclusion

As challenging as it was for municipalities to come to grips with medical marihuana regulation under the MMFLA, the difficulties posed by the proposed MRTMA regarding recreational marihuana are likely to be significantly greater. Under the MMFLA, many municipalities took a "wait and see" position on the issue of broad commercialization of medical marihuana, which only required that the governing body of the municipality do nothing. And for those municipalities that chose to "opt in," the MMFLA granted them a great deal of regulatory discretion, which some representatives of the marihuana industry have called "onerous" [Langwith, "Local Overreach", 97 Mich B J 36, 37 (August 2018)], so as to reasonably safeguard the public safety, health, and welfare.

The MRTMA on the other hand, requires a municipality to affirmatively take legislative action to "opt out" of regulating recreational marihuana commercial enterprises. For those municipalities that choose to permit recreational marihuana establishments to exist in the community, the regulatory framework is much more circumscribed than under the MMFLA, and is certainly more likely to raise legal issues. Fortunately, commercialization of recreational marihuana is at least a year away, and by that time the State regulatory framework for medical marihuana will have been in place for nearly two years.

Apart from the commercialization of recreational marihuana, municipal law enforcement officials and officers will be required to know the new rules surrounding "legalized" marihuana within days of the election. At a minimum, county and municipal prosecutors should be ready to provide training on the law in early November. It is also likely that defendants who committed marihuana offenses prior to November 6 will seek dismissal of those charges given the approval of the ballot proposal. Several county prosecutors have been reported as being willing to dismiss pending marihuana possession charges issued before the election if the alleged conduct falls within the scope of the initiated law.

In the meantime, municipal attorneys would be well-advised to read through the initiated statute more than once and be prepared to advise their clients of the significant ramifications of legalized marihuana on local governmental and social services.



Recreational Marihuana Q&A

michigan municipal league

Updated February 5, 2019

MMMA –	Michigan Medical Marihuana Act, patient/caregiver model
MMFLA –	Medical Marihuana Facilities Licensing Act, medical facilities licensed by the State and located in municipalities that opt in
MRTMA –	Michigan Regulation and Taxation of Marihuana Act, recreational (non-medical) marihuana businesses to be licensed by the State and located in municipalities that do not opt out
LARA –	State of Michigan Department of Licensing and Regulatory Affairs, department responsible for rule making and licensing of marihuana

Opting In/Opting Out

Q1: If a municipality chooses to do nothing in response to the new recreational MRTMA law, how will the law affect it?

A. If you do nothing, then you are effectively "opting in" to permit recreational marihuana commercial businesses.

Q2. What is the timeline for a municipality to opt out?

A. Applications for recreational marihuana business licenses will begin to be accepted on December 6, 2019. Under the terms of the MRTMA, LARA has one year from the date of the November 2018 election certification to prepare. However, there is word that Governor Whitmer would like the timing fast-tracked to perhaps as early as June 2019.

Q3. How does a municipality opt out?

A. Although the statute doesn't provide language for municipalities opting out, nor how to do it, since ordinances are mentioned in the statute you are likely better protected if you opt out by ordinance rather than resolution. Additionally, the MRTMA permits the complete prohibition of recreational commercial establishments by voter initiative.

Q4: May municipalities opt out of the MRTMA now and opt in later? What about the reverse: opt in now and opt out later?

A. Yes, you can opt out now and opt in later. You can change your mind and later revise your ordinance. Opting out after opting in is likely more problematic. The licenses are for one year only, though. A lawfully licensed and established recreational marihuana business which is not in violation of any regulation might argue that is should be permitted to continue to operate as a non-conforming use, or that by prohibiting its continued operation that such amount to a unconstitutional regulatory taking. However, Federal courts would not likely recognize that form of "taking" in the context of marihuana due to it being an unlawful Schedule 1 substance, since one might have a recognizable "reasonable investment backed expectation" by trading in an unlawful substance.

Q5: Does a village have to opt out of both the MMFLA and MRTMA, or just recreational? We don't want either.

A: The MRTMA requires an opt out. The MMFLA does not—medical marihuana facilities can only locate in your municipality if you opt in.

Q6: Our municipality didn't do an ordinance to opt out but instead recently passed a Resolution setting a "moratorium" on recreational marihuana businesses in our community until December 31, 2019. We wanted time to do more research, let State of Michigan establish rules, regs, etc. Are we vulnerable to allowing marihuana businesses to come in since we didn't opt out?

A. While moratoria are generally not favored by courts, they are not unlawful either. It is recommended that a moratorium not last any longer than one year, and a six-month term, even if extended by another 6-month term is likely preferred, so long as the community is actively working on defining the issues and working on options as to how to best address the issues.

Q7. Can municipalities decide to allow only microbusinesses?

A. The statute isn't clear on this, but we think the answer may be a "qualified yes" since the language of the MRTMA permits a municipality to "provide for the number of marihuana establishments." Ostensibly, a community could solely provide for a certain number or perhaps an unlimited number of micro businesses but provide that no other types of recreational marihuana establishment be permitted. However, given the less than certain and vague language of the statute, final guidance will likely come from the courts or clarifying legislation.

Q8. Does "prohibit" mean all, or can the municipality pick and choose the businesses and only choose some?

A: The statute is less than clear on whether municipalities can pick and choose which type of establishments they will allow. However, there is an argument for doing so. If deciding to take this type of course of action, consult with your municipal attorney for guidance.

Q9: If a township opts out, does that mean a village within that township has opted out—and the inverse as well? If township opts in is the village allowed to opt out?

A: The statute doesn't mention counties—just cities, villages, and townships. Villages are governmental entities and pass their own ordinances separate from townships.

Q10. Does the 150-plant limitation for micro business mean 150 growing plants in addition to additional plants drying?

A. No. "Cultivate" means "to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or

mechanical means" under the MRTMA. Since cultivation includes both growing and drying, the 150-plant limitation at any one time would include both operations.

Q11. Does a general law village need to hold public hearings on MRTMA?

A. Our zoning person thinks it's a police action, and doesn't need a hearing. Licensing is the exercise of the police power; determining where a particular business may locate is a zoning issue subject the process set forth in the Michigan Zoning Enabling Act.

Interaction with other Marihuana Statutes – MMMA and MMFLA

Q12: Can a caregiver grow recreational marijuana for his own use?

A: Probably, yes. Being a registered caregiver does not preclude one from growing recreational marihuana for yourself. There's an argument for growing 24 plants on the premises—12 plants could be grown for medical, and 12 plants for recreational.

Q13. Where do caretakers fall? Can they sell directly to consumers?

A. Under the MMMA, the patient/caregiver act, caregivers can be compensated for the costs associated with assisting their patients in the use of medical marihuana. Under the MMFLA, provisioning centers may only sell to registered caregivers and patients. Under the MRTMA, only a micro business or a marihuana retailer may sell marihuana; individuals cannot sell recreational marihuana—it can only be "gifted," so long as the transfer is not advertised or promoted to the public.

Q14. What impact would opting out of medical marijuana have on caregivers using their homes for their businesses?

A. The MRTMA will not affect the MMMA. The patient/caregiver model will continue, the same as it was before the recreational proposal was passed. However, note should be taken that the Michigan court of Appeals has ruled that municipalities may not limit caregivers to being a "home occupation" under local zoning ordinances.

Q15. If a municipality opted in to MMFLA can it keep out recreational marihuana retailing centers?

A. This is not clear in the statute. There are two schools of thought. One approach argues that given the language in the MRTMA permitting municipalities to completely prohibit recreational marihuana establishments, that even though a community has opted to permit medical marihuana facilities, it need not permit recreational marihuana businesses. The

other approach argues that since the MRTMA prohibits a municipality from adopting an ordinance which prohibits a grower, processor or retailer from operating at a location shared with a facility operating pursuant to a MMFLA license, means that a community opting in to permit medical marihuana facilities may not prohibit recreational growers, processor or retailers. The final answer will likely come from the courts. Again, consult with your municipal attorney.

Q16: Could a municipality opt in to medical establishments, but out of recreational? If so, can this be in the same ordinance, or would it have to be in two separate ordinances?

A: See the answer to the question above, but arguably a community can say yes to opt in to medical and no to recreational. Two separate ordinances would seem to be a better approach, but there is nothing that legally requires it, so it might be done with a single ordinance.

Q17: If a business has been licensed as a medical facility, must it also be licensed as a recreational facility if it applies?

A: The business would have to separately qualify for a recreational license. For the first 24 months after the State begins to accept applications, applicants for a recreational retailer, process, class B or C grower, or transporter must be licensed under the MMFLA to engage in the medical marihuana business. For the first 24 months, LARA will only accept applications from Michigan residents for licensure as a class A grower or a microbusiness. However, after one year, LARA may accept applications from anyone, if it determines that additional licenses are needed to minimize the illegal marihuana market, to efficiently meet the demand for marihuana or to provide reasonable access to marihuana in rural areas of the State.

Q18. Has the $5,000 municipal licensing fee (under the MMFLA) been challenged (if municipality is not even doing fire inspections, etc.)?

A. You must be able to demonstrate that the cost of enforcement and administrating of the law is costing the local government approximately $5,000. If those costs are substantially less than $5000, the fee needs to be reduced to reflect the actual cost of those services.

* Kalamazoo requires an upfront application fee for its medical marihuana licenses but refunds a portion of the application fee for those who didn't get a license.

Licensing

Q19: When will LARA start issuing licenses?

A. Under the MRTMA, LARA has one year from the law's effective date of December 6, 2018 to put its regulatory framework in place and begin to accept applications. But indications are that Governor Whitmer would like LARA to start accepting applications as early as the summer of 2019. If the State isn't ready by December 2019, then municipalities are on the front line—businesses can come to your community and ask for a license. Your municipality becomes the regulatory agency for a year, not the State.

Q20: Can municipalities license and regulate businesses ahead of the State?

A: Only in the circumstances where the State does not begin accepting applications in December 2019. Otherwise the MRTMA says that a business needs a State license first. Once get State license then can get municipal license (if municipality wants to license, don't have to). It is ill-advised to regulate before a State license is issued. Municipalities will be the regulatory agency IF, after one year, the State hasn't put in a regulatory framework.

Q21. What are the pros and cons of a municipality deciding to license marihuana?

A. LARA will come up with rules but will not decide anything about zoning (where businesses can be located) and hours of operation, for instance. So, zoning needs to be addressed at the local level, regardless. Licensing at the local level may permit greater ability to inspect and monitor recreational marihuana businesses, but the ability for law enforcement inspections under the MRTMA is not as broad as under the MMFLA. Additionally, if the municipality seeks to limit the number of licensed recreational marihuana establishments, it must employ a "competitive process intended to select applicants who are best suited to operate in compliance with (the MRTMA) within the municipality." Unfortunately, the statute provides no other guidance as to what that process should look like so as to provide a safe harbor; as a result, this may

put municipalities at risk of lawsuits from applicants who do not receive a license.

Q22. Will LARA regulate how many licenses in one municipality, such as liquor licenses?

A. No.

Q23. Will a village with 10 empty buildings be forced to potentially allow 10 if they allow one?

A. It depends on whether the village chooses to limit the number of establishments and how its zoning ordinance is written regarding the applicable zones where the various types of marihuana establishment are permitted to operate, along with separation distances from schools and residential zones.

Q24: Can you charge an application fee along with the annual license—for example, a $2,500 application fee? This is done in Colorado with many communities.

A: The statute is silent on this. The $5,000 fee set forth in the MRTMA is for administration (and enforcement) costs—seems like processing an application would be included in this fee. Also, keep in mind that an administrative fee must approximate the actual cost of providing the service; otherwise it is an unlawful tax. It is also not a good idea to follow another state's process since the underlying statutory authority is likely to be different from that in the Michigan law.

Q25: Are the licensing restrictions applicable for the first 24 months after the effective date of the Act, or first 24 months after LARA's rules and regulations are released?

A: 24 months from effective the date of Act (December 6, 2019,)

Q26: If a municipality does have a license fee of up to $5,000, what types of expenses CAN it go toward for enforcement? (Since the new law doesn't allow for inspections like officers do routinely for liquor).

A: Anything your municipal clerk, law enforcement agency, or inspections staff does to review the application, the applicant, or proposed site of the business. Then once the business is established, if you can demonstrate that that these businesses generate complaints or more calls for services so as to demonstrate the need for increased resources, then those costs ought to be included as well so as to demonstrate the need to charge up to $5,000 as a fee.

Q27: It seems this will cost villages a bit to get their lawyer/zoning official up to speed on this. Couldn't an argument be made that the $5,000 is used to help recoup upfront costs?

A: Probably. Legal services associated with administration and enforcement would be part of a legitimate argument to support the amount of the fee.

Effects of Opting In

Q28: If a municipality opts in is it required to have 24-7 police support?

A: No. Police support is not required by this new Act.

Q29: If a municipality opts in, how will that effect eligibility for federal/State grants? If a municipality is getting federal grant money, won't the federal government deny it because you allow recreational marijuana?

A: You will have to look at the language of the grants—for instance, is there language on maintaining a drug free work place or anything like that. Certain municipal employees who are federally-grant funded, could be made subject to a zero-tolerance drug policy. Otherwise you are probably OK. If the grant language poses a problem, municipality might consider whether the federal government is co-opting local and State government to carry out federal drug policy? Several communities have successfully challenged law enforcement grants that require compliance with federal immigration law by the local municipality. The issue is currently in litigation in several federal courts.

Q30: May the municipality increase the distance from preexisting schools to further than 1,000 feet?

A. 1,000 feet is the limitation set forth in the MRTMA You would likely get challenged if you increased the distance. 1,000 feet is a standard under both Michigan and federal Drug-Free School Zone laws. It should be noted that the MRTMA permits a municipality to reduce the distance requirement.

Miscellaneous

Q.31: What can a city do if a citizen calls and says his neighbor is selling marihuana out of his home?

A. Not much. This would be very hard to prove. Marihuana has been decriminalized—now a civil infraction.

Q32: Can home growers sell their marihuana?

A. No, the recreational statute says that it may be "gifted," but not sold. Caregivers, under the MMMA, can get paid as recompense for the cost of providing the service/product.

Q33: Since people can't "sell" recreational marihuana, can they sell other things, such as t-shirts or $75 and give a "gift" baggie of marihuana as a thank-you, like we've seen in other States?

A. A real possibility. That is already happening in Michigan—there is a company that is selling and delivering chocolate and the driver is giving away free pot to those that purchase chocolate. This practice will likely be challenged. It will be up for the courts to decide.

Q34: Can you clarify if it is 12 plants per person per household or 12 plants per household?

A. 12 Plants per person over 21 in the household. That said, there may be argument to assert that it is a 12 plant per premises limit. The MRTMA at § 5.1 (b) says "provided that not more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once," leading to the assertion of a 12 plant per premises limit. However, the introductory language to §5.1 says "the following acts by a person 21 years of age or older are not unlawful", and then subsection (b), begins with the phrase "within the person's residence" before stating the 12-plant limit. Like other issues with the MRTMA, this issue of the proper interpretation of the language in question will likely be decided by the courts

Q35: Can municipalities pass odor control ordinances?

A. This will depend on whether and to what extent LARA addresses the issue. Any local regulation may not be inconsistent with State administrative rules, but a municipality could adopt a provision to require system to diffuse odors consistent with an applicable State rule or in the absence of a rule, look to see what the Stille DeRosset Construction Code allows you to do.

Q36: Can tourists come to Michigan and purchase marihuana?

A. As long as they are 21 years of age or older.

Q37: Can the DDA prohibit Marijuana establishments in the downtown district?

A: It is not likely that a DDA can do that—the municipality has authority for zoning, etc. not the DDA. A DDA is not really empowered regulate businesses. But ask your municipal attorney.

Q38: How does CBD oil/products fit into all this? Is a store allowed to sell CBD oil if the municipality opts out?

A: CBD oil is considered a form of marihuana under the statute. To sell CBD oil, a business seeming would have to get a recreational marihuana license. However, in the lame duck session of the Legislature, several bills were adopted addressing hemp and hemp products which severely limited or prohibited local regulation. Thus, a definitive answer requires more research.

Q39: On the subject of the taxes going toward municipalities, schools, etc. with a cash-based business, how can we be sure there is accurate reporting of the sale prices and actual income a business may have? Couldn't they charge a steep price and only report a lesser price to avoid paying as much tax?

A: LARA (and the Michigan Department of Treasury) will probably address this issue in their rules. Most likely there will be a tracking system to track recreational seed to sale just like medical.

Q40. Can a city charge a city sales tax on the sale of the recreational marijuana?

A. No. Michigan cities are not authorized to charge sales tax.

Q41: Has there been any input from the Michigan Building Codes Commissioner as far as ventilation requirements for odors, fire suppression requirements due to flammability concerns...can a municipality restrict an establishment based on building code issues?

A: LARA has addressed some of that in the rules for medical marihuana, so we expect similar standards will be applicable to recreational. As a municipality, you cannot be stricter than LARA rules.

Q42: It is my understanding that municipal governments cannot limit marijuana related accessory business? i.e.: hydroponic stores, smoking supplies.

A: Pipes and bongs can be used for tobacco and pipe tobacco—not specifically for marihuana. Soil and fertilizer aren't just for marihuana. The definition of "marihuana accessories" in the MRTMA states that the equipment, product, or material must be "specifically-designed" for marihuana. This language makes it very difficult for a municipality to somehow regulate or say someone violated a law because they are trading in marihuana accessories. It would have to be shown that it is exclusively designed for marihuana.

Q43. How effective is the testing of under the influence of marijuana in a motor vehicle?

A. This area is still under development. Tests can show if an individual has used marihuana, not necessarily that he or she is presently under the influence.

Q44. If a car is pulled over for speeding and the police find marihuana, what happens to the marihuana?

A. If possible, the driver can a) turn it over to person who is 21 years of age or older; or b) secure it in the motor vehicle. If those options are not available, and it is confiscated by police officers a municipality should consider requiring the individual to seek a court order for its return. Under the federal Controlled Substances Act, there is a law enforcement exception, but it is an open question whether returning marihuana in this circumstance falls within the exception. California courts say it does, while Colorado courts say that it doesn't. This issue will likely have to be decided by Michigan courts.

Q45. Are hemp products now legal in Michigan?

A. It appears so given that several pieces of recently adopted legislation addressed and legalized industrial hemp in Michigan. Consult with your municipal attorney to see how these new laws might impact your community.

Q46. Can a community pass an ordinance that the city is the only entity allowed to sell retail marijuana? A community in Oregon has done this.

A. Interesting question. More research is necessary to provide an answer.

Q47. Do you agree that a city-owned campground can prohibit recreational marijuana use inside their mobile homes?

A. The MRTMA permits a landlord to prohibit or regulate the consumption and cultivation of marihuana on rented premises, but a landlord may not prohibit a tenant from lawfully possessing or consuming marihuana other than smoking.

FACT SHEET

michigan municipal league

Medical Marihuana Facilities Licensing Act (MMFLA) compared with Proposal 1—the Michigan Regulation and Taxation of Marihuana Act (MRTMA)

Votes required for future amendments:

- MMFLA (PA 281 of 2016) requires a simple majority of vote of the Legislature (56 House votes and 20 Senate votes).
- Proposed MRTMA will require a 3/4 vote of the Legislature (83 House votes and 29 Senate votes).

Local Control:

- MMFLA requires municipality to OPT IN.
- Proposed MRTMA requires a municipality to OPT OUT. Municipal decision to limit the number of marihuana establishments or opt out is subject to override by the voters of that municipality through initiative petition.
- MMFLA, a state operating license may not be issued to an applicant unless the municipality in which the proposed facility will be located in has adopted an ordinance authorizing that type of license.
    - If municipality does nothing, no marihuana facilities can be licensed/operate in that municipality.
    - If municipality adopts ordinance (opts in), then it may:
        - Authorize any specific or all license types
        - Limit the number of each license type
- Proposed MRTMA, a state operating license shall be issued to operate in every municipality unless a municipality enacts an ordinance to opt out.
    - Municipality can completely prohibit all license types or limit the types of establishments allowed and the total number of each license type.
    - If the municipal limit on licenses prevents the State from issuing a license to all qualifying applicants, the municipality, not the State, is required to select from the competing applicants using a competitive process intended to identify those who are best suited to operate in compliance with the Act.
- Nothing under the MMFLA nor the proposed MRTMA has direct effect on the Michigan Medical Marihuana Act (MMMA, Initiated Law 1 of 2008; patient caregiver model).
- Proposed MRTMA broadens the prohibition on the separation of plant resin by butane extraction on residential premises under the MMMA to include methods using a substance with a flash point below 100 degrees Fahrenheit within the curtilage of a residence.
- Proposed MRMTA substantially increases the amount of marihuana that may be lawfully possessed from 2.5 ounces and 12 plants by a qualifying patient to 2.5 ounces on one's person, 10 ounces secured in one's residence, and no more than 12 plants at a time.
- While a municipality may regulate the time, place and manner of operation of marihuana establishments, the State must approve and issue a license to a proposed marihuana establishment that is not within an area exclusively zoned for residential use and is not within 1000 feet of a pre-existing K-12 public or private school. A municipality may reduce this distance by ordinance.

License Types:

- MMFLA has five license types:
    1. Grower
        - Class A – 500 plant limit
        - Class B – 1,000 plant limit
        - Class C – 1,500 plant limit

2. Processor
3. Secure transporter
4. Provisioning center
5. Safety compliance facility

• Proposed MRTMA has six "marihuana establishment" license types:
1. Grower (plant limits are different than MMFLA)
    - Class A – 100 plant limit
    - Class B – 500 plant limit
    - Class C – 2,000 plant limit
2. Processor
3. Secure transporter
    - Provides for license, but nowhere in the language is there a requirement that marihuana must only be transported by a secure transporter.
4. Retailer
    - MMFLA license is a provisioning center, not retailer.
5. Safety compliance facility
6. Microbusiness
    - Person licensed to cultivate not more than 150 plants; process and package; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a safety compliance facility, but not to other marihuana establishments.

- MRMTA also defines an "establishment" as, "any other type of marihuana-related business licensed" by the State, which would include licensed "marihuana facilities" under the MMFLA.
- MMFLA prohibits a caregiver from grower, processor, or secure transporter license types.
- Proposed MRTMA does not prohibit a caregiver from holding any of the six license types.
- A person may be licensed under both the MMFLA as well as the proposed MRTMA.

Unreasonably Impracticable:
- MMFLA does not reference this term, found in proposed MRTMA.
- Proposed MRTMA prohibits any administrative rule or municipal ordinance that subjects the licensee to unreasonable risk or requires such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.
    - Any rule or ordinance could be legally challenged if a person considers it to require too much time, money, etc.

Additional information:
- Definitions of key statutory terms are not consistent between the MMFLA and the proposed MRTMA.
- Grower license plant limits are not consistent between the MMFLA and the proposed MRTMA.
- Application process is not consistent between the MMFLA and the proposed MRTMA.
    - If the State does not begin accepting/processing MRTMA applications within one year of the effective date of the Act, applicants can submit an application to a municipality that has not opted out of the act. Municipality shall issue a municipal license to applicant within 90 days. Municipal license has same force and effect as state license, but the municipal license holder is not subject to regulation or enforcement by the State during the municipal license term.
- If proposed MRTMA passes, the MMFLA requirement that a three percent tax is imposed on each provisioning center's gross retail receipts is no longer applicable. However, a 10 percent tax will be imposed on marihuana retailers on sales price of marihuana sold or otherwise transferred to anyone other than a marihuana establishment.
- The percent of the municipal portion of the excise tax collected is reduced from 25 percent under the MMFLA to 15 percent under the MRTMA and is paid only after the State is compensated for its implementation, administration, and enforcement of the Act; and until 2022 or for at least two years, $20 million annually is provided to FDA-approved clinical trials researching the efficacy of marihuana in treating U.S. armed services veterans for medical conditions and suicide prevention.
- If proposed MRTMA passes, it goes in to effect 10 days after the election is certified by the State Board of Canvassers.

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **DATE PREPARED:** February 11, 2019

AGENDA SUBJECT: Master Plan Consulting Services

RECOMMENDATION: That the City Council authorize the service agreement

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Background Pursuant to the Michigan Planning Enabling Act, a Planning Commission is required to review its master plan every five years for possible updates. The last major re-write of the plan was adopted in 2009, which was then reviewed and updated in 2014. Progress on implementation of the strategies identified to achieve the plan goals and objectives has been significant (see Table 9.1 enclosed), which indicates a major update is needed.

City Council identified sustainability as a priority goal during its 2018 strategic planning process. Staff determined that incorporating sustainability and resiliency as an overarching framework of the plan would achieve broader implementation than creating a stand-alone sustainability plan, and requested a proposal from LIAA, a leader in community resiliency planning. The proposal includes significant resources to maximize community engagement.

There is $20,000 budgeted in the Office of City Planner budget for consultant assistance, and as part of the grant received by the Mott Foundation from area community foundations, the City was awarded $6,000 to assist with public engagement.

Action A scope of services is enclosed with the agreement for Council's consideration.

at
Enclosures

Table 9.1
Implementation Strategies Timetable
With 2014 Status Updates
(NP= No Progress; P=Progress; C=Complete)
2018 Updates

	Plan Element(s)	Recommendation	Responsible Parties/ Participating Partners	Implementation Timeframe
1	Historic, Cultural, Natural Resources	Explore public purchase and private donation of façade easements and air rights for significant community structures	City Staff, Downtown Management Board, State Historic Preservation Office	2011-2013 NP
2	Historic Resources/ Housing and Neighborhoods/ Economic Development	Promote the use of federal and state rehabilitation tax credits to encourage historically accurate rehabilitation projects	City Staff, Downtown Management Board, State Historic Preservation Office	On-going P State-eliminated credits but there is potential legislation for reinstatement
3	Historic, Cultural Resources/ Economic Development	Work with the Little Traverse Historical Society to develop exhibits and events that promote community heritage	City Staff, Historical Society, Chamber of Commerce, Crooked Tree Arts Council	On-going P
4	Historic, Cultural Resources/ Economic Development/ Transportation	Develop the Greenway Corridor Plan improvements through Pennsylvania Park to include use of a ~~passenger trolley~~ and a multi-use trail	Michigan Department of Transportation (MDOT), City, Downtown Management Board	2014-2016 P Southern Section Complete 2018
5	Historic and Cultural Resources	Develop/ compile informational resources to promote/ advocate for appropriate historic building renovations.	City Staff	2011 P

6	Cultural Resources/ Community Facilities	Work with the Crooked Tree Arts Council (CTAC) on the development of any needed ancillary facilities for cultural performances	CTAC Staff, Planning Commission, City Staff	2010-2020 P Great Lakes Center for the Arts completed
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
7	Cultural Resources/ Economic Development	Assist in the dissemination of cultural event information such as a Web-based community calendar	City, Chamber of Commerce, Convention and Visitors Bureau, Area Hospitality Businesses, Library, Schools	On-going
8	Cultural Resources	Work with the CTAC to identify locations and funding for public art throughout the community	City Staff, Crooked Tree Arts Council, Civic Groups, Chamber of Commerce	2009-2011 NP A public art plan was created for downtown, but plan not adopted by City Council
9	Cultural Resources	Explore the possibility of a “percent for art” ordinance to provide annual funding for public art	City, Crooked Tree Arts Council	2012-2014 NP
10	Natural Resources	Complete and implement the City’s Wellhead Protection Plan;	City Staff	2009-2010 P
11	Natural Resources/ Community Facilities	Implement the City 2008-2012 Parks and Recreation Master Plan and update every five years	City Staff	2012, 2017 C
12	Natural Resources/ Intergovernmental Cooperation	Seek additional intergovernmental agreements with adjoining communities to protect open space	City, Bear Creek, Resort Townships	2009-2011 NP
13	Natural Resources/ Community Utilities, Facilities and Services	Continue to implement the Little Traverse Bay Watershed Protection Plan in conjunction with the Little Traverse Bay Watershed Protection Project Advisory Committee and Tip of the Mitt Watershed Council	City, Home and Business Owners, Watershed Council, other governmental jurisdictions	On-going P Stormwater Management Plan and Asset

				Management Plan created with SAW Grant
14	Natural Resources/ Community Facilities	Incorporate Winter City considerations into updated ordinances, public works projects and park design	City Staff	On-going P
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
15	Natural Resources/ Economic Development/ Community Utilities, Facilities and Services/ Intergovernmental Cooperation	Work with the Michigan Public Power Association (MPPA) and other jurisdictions to develop and utilize alternative, renewable energy resources	City Staff, Northern Lakes Economic Alliance, Northwest Michigan Council of Governments, NCMC	2009-2013 P The City is working with MPPA to reach 20% renewables by 2020
16	Natural Resources/ Community Utilities, Facilities and Services/ Economic Development	Develop a City energy policy	City, Chamber of Commerce, Northern Lakes Economic Alliance	2009-2010 P City working with the PHSACF Green Energy Collaborative on energy efficiency and green energy projects
17	Natural Resources/ Housing and Neighborhoods	Accelerate neighborhood and corridor tree-planting to enhance the tree canopy of neighborhoods; Use native species where feasible	City staff	On-going
18	Natural Resources/ Community Utilities, Facilities and Services/ Economic Development	Install state-of-the-art drinking water and waste water infrastructure	City	2013-2016 P Major upgrades to the WWTP completed in 2018

19	Natural Resources/ Community Utilities, Facilities and Services/ Economic Development	Develop a City Sustainability Plan that incorporates goals, strategies and indicators of how the four sustainability objectives will be addressed in the City	City staff, Planning Commission, Citizens	2009-2010 P City has been engaged with the Green Communities Challenge that tracks sustainability measures and benchmarks. New Master Plan to comprehensively incorporate resilience and sustainability
20	Community Utilities, Facilities, Services/ Intergovernmental Cooperation	Seek additional intergovernmental agreements with adjoining communities to provide the most efficient and cost-effective delivery of public services and facilities	City staff	On-going P Updated agreement between the City and Bear Creek Sewer District in 2018
21	Community Utilities, Facilities, Services	Update the City's Capital Improvements Program in order to effectively plan for facility improvements and manage debt capacity for large projects	City Staff, Planning Commission	Annually C
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
22	Community Utilities, Facilities, Services/ Transportation/ Housing and Neighborhoods	Update the sidewalk maintenance and installation plan	City Staff	2009-2010 C Sidewalk Plan expanded to Non-motorized Facilities Plan in 2015
23	Community Utilities, Facilities, Services/ Transportation/ Housing and Neighborhoods	Implement the sidewalk maintenance and installation plan	City Staff	On-going P

				Many sidewalk and trail improvements have occurred over past five years
24	Transportation	Extend Atkins Road westerly to connect to Howard Street	City, College	2010-2015 C
25	Transportation	Connect Howard Street to Standish Avenue via the Grimes Avenue right of way or other route that would not require an additional river crossing for access to traffic from the south	City	2012-2016 P
26	Transportation/ Economic Development	Realign Jackson Street to intersect with Greenwood Road at Charlevoix Avenue and signalize the intersection	City, McLaren Northern Michigan, MDOT	2010-2015 C Road realignment complete with hospital expansion; awaiting MDOT determination if signal warranted
27	Transportation/ Economic Development	Create a US 31 Corridor Improvement Authority under P.A. 280 of 2005 to develop and implement a plan for landscaping, traffic calming and pedestrian crossing improvements to the West Mitchell Street Corridor. Also explore an Authority along the Charlevoix Avenue and Spring Street Corridors	City, Bear Creek Township, Resort Township, Emmet County, Emmet County Road Commission	2010-2012 C Authority not created, but City works with MDOT to implement the US 31 Access Management Plan in all reconstruction projects
28	Transportation	Extend McDougal Road north to intersect with Northmen Drive.	City, Public Schools of Petoskey	2010-2015 C Completed with High School Sports Complex project with BIA funding

	Plan Element(s)	Recommendation	Responsible Parties/ Participating Partners	Implementation Timeframe
29	Transportation/ Community Utilities, Facilities, Services	Develop/ maintain a roadway pavement standards program based on functional classifications. Evaluate the program with respect to necessary programming and budget on a regular basis	City Staff	On-going P PASER updated every 2-3 years
30	Transportation/ Economic Development/ Cultural Resources	Explore possibilities of a Little Traverse Bay ferry for commuters and visitors	Chamber of Commerce, City	2012-2013 NP
31	Transportation/ Natural Resources	Work with area organizations, schools and businesses to create events such as "Walk or Bike to School Day" and "Bike to Work Week" to promote alternatives to automobile travel. The Traverse City Smart Commute Week is an example and provides a cookbook for other communities to follow.	City, School District, Top of Michigan Trails Council, Chamber of Commerce, Major Employers, NCMC	2009-2010 C
32	Transportation/ Natural Resources	Install bike racks community wide	City	2009-2013 P
33	Transportation	Develop an incentive program to promote use of North Central Michigan College (NCMC) parking lot for downtown employees during the summer	Chamber of Commerce Downtown Parking Division, NCMC	2010-2011
34	Transportation/ Natural Resources	Work with schools to develop a "walking school bus" for children as an alternative to having parents drive children to school	School District, City, Parents	2009 P
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
35				

	Transportation/ Natural Resources/ Economic Development/ Intergovernmental Cooperation	Continue to work jointly with area communities to develop a regional multi-modal transportation system	All area governments and existing transit providers	2009-2030 P Emmet County expanding funding for Straits Regional Ride
36	Transportation/ Natural Resources/ Community Utilities, Facilities, Services	Designate on-street bike routes	City	2009-2010 P
37	Housing and Neighborhoods/ Economic Development	Develop a housing plan that addresses the needs of the service industry including part-year employees, young families and the elderly	City, Northern Homes CDC, Chamber of Commerce	2009-2010 P Networks Northwest has created a Northwest Michigan Rural Housing Partnership
38	Housing and Neighborhoods/ Historic Resources	Investigate the creation of a local historic district for all or parts of the East Mitchell National Register district and other neighborhoods, to ensure historic integrity of neighborhoods is maintained	City, Neighborhood Residents	2010 NP
39	Housing and Neighborhoods	Develop landlord resources such as tenant screening assistance, revolving loan fund for building improvements, and management assistance	City, Realtors, Landlords	2011 P Information on landlord and tenant rights and responsibilities shared with the Emmet County Landlords Association
40	Housing and Neighborhoods	Develop a program for residents who wish to establish neighborhood associations	City	2009-2010 P

				Information included in the Old Town Emmet Neighborhood Plan
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
41	Housing and Neighborhoods/ Transportation	Work with the MDOT to improve pedestrian amenities along US 31 and 131	City, MDOT	2009-2012 P Many improvements made; Additional improvements will be made with the realignment of US 31 in 2019
42	Housing and Neighborhoods/ Economic Development	Promote and facilitate the development of residential uses of upper stories in the Urban Core/ Central Business District	City, DMB	On-going 13 new units in upper stories of downtown from 2015-2018
43	Housing and Neighborhoods/ Economic Development	Work with organizations such as the Northern Homes Community Development Corporation to develop affordable housing ownership options within the City	City, Northern Homes Community Development Corporation, Habitat for Humanity, Banks	2009-2012 P A new house was constructed by NMCAA on Bridge Street in 2017
44	Economic Development	Implement the 2007 Petoskey Downtown Blueprint	City, Downtown Management Board, Downtown Businesses and Property Owners	2009-2013 C Plan updated in 2018
45	Economic Development/ Intergovernmental Cooperation	Work with area local governments, businesses and organizations to develop community-wide broadband communications	Area governments and schools, communications providers, Chamber of Commerce, Northern Lakes Economic Alliance	2009-2012 P

46	Economic Development	Work with the Chamber of Commerce to support further development and growth of small, entrepreneurial businesses and retention/attraction of young professionals	City, Chamber of Commerce	On-going P
47	Economic Development	Work with McLaren Northern Michigan, area physicians and Northern Lakes Economic Alliance to promote medical-related business opportunities	Northern Michigan Regional Hospital, Area Physicians, Northern Lakes Economic Alliance, County Economic Development Corp.	On-going P Worked with MMN to create new hospital zoning districts
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
48	Economic Development/ Cultural Resources	Work with the Crooked Tree Arts Council and area arts groups to grow the arts community into a larger tourist draw (e.g., Stratford, Ontario's focus on theater)	CTAC, Little Traverse Civic Theater, Great Lakes Chamber Orchestra	On-going P Great Lakes Center for the Arts opened 2018 with Brownfield TIF assistance
49	Economic Development	Work with Northern Lakes Economic Alliance and the Chamber of Commerce on business and industry retention efforts	City Staff	On-going P
50	Economic Development	Develop Winter City events to increase activity for the tourist economy	City Staff, DMB Board, Chamber of Commerce Staff and Committees	2010 P
51	Economic Development/ Housing and Neighborhoods	Create redevelopment concept plans for former industrial sites that will enhance neighborhoods with a mix of housing and business incubator spaces.	City, Planning Commission, property owners	2010-2013 P Through the workshops on the Emmet Streetscape concept developed for Gruler

				property and RRC technical assistance concepts will create concept for Darling Lot
52	Economic Development/ Housing and Neighborhoods	Continue to upgrade infrastructure and streetscapes of neighborhood commercial areas while protecting the predominantly residential character.	City	On-going P The Old Town Emmet four corners were upgraded with street reconstruction
53	Economic Development/ Intergovernmental Cooperation	Work with educational institutions to ensure quality local education and life-long learning opportunities	City, Petoskey Public Schools Staff, North Central Michigan College Staff	On-going P
54	Economic Development/ Transportation	Construct roadway projects that will improve access to the North Central Michigan College and McLaren Northern Michigan	City	2010-2020 P Jackson Street Realignment
55	Economic Development	Work with North Central Michigan College on development of a university center at the Petoskey campus	City, NCMC, Chamber of Commerce, Northern Lakes Economic Alliance	2009-2010 C
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
56	Economic Development/ Transportation	Continue to develop a multi-modal transportation system including improvements to roads, trails, sidewalks and rail infrastructure that will support and enhance economic development	City, County, Townships, LTBB Odawa Indians	On-going P
57	Economic Development/ Transportation	Continue to work with the Harbor Springs Airport Authority and Pellston Regional Airport to ensure access to area for business and visitors	City, County, Area local Governments and Businesses	On-going P

58	Land Use	Develop and adopt a zoning ordinance that incorporates community-wide form standards and architectural standards where needed;	City Staff, Planning Commission and City Council	2009-2010 P
59	Land Use/Economic Development	Work with existing businesses to identify needs and expansion possibilities	City, Northern Lakes Economic Alliance, Chamber of Commerce	On-going P
60	Intergovernmental Cooperation	Expand the use of shared facilities and the coordination of services provided by local governments and educational institutions	City, Bear Creek and Resort Townships, County, County Road Commission, Public Schools of Petoskey, NCMC	On-going
61	Intergovernmental Cooperation	Continue to support regional organizations that enhance the area quality of life such as the Chamber of Commerce, Harbor-Petoskey Area Airport Authority, and Northern Lakes Economic Alliance	City	On-going P
	Plan Element(s)	**Recommendation**	**Responsible Parties/ Participating Partners**	**Implementation Timeframe**
62	Intergovernmental Cooperation	Expand the use of intergovernmental service agreements when new or existing development in one jurisdiction may be most efficiently and cost-effectively served by another entity's facilities.	City, Bear Creek and Resort Townships, LTBB Odawa Indians	On-going
63	Intergovernmental Cooperation	Establish a District Library	Public Library, City, Townships	2009-2010 C
64	Intergovernmental Cooperation	Explore the use of a joint corridor TIFA with adjoining townships for US 31 North and South and US 131 South	City, Bear Creek and Resort Townships	2010-2013 P With improvements to the highways over the past several years by the

				City working closely with MDOT, there is less of a need for a corridor TIF
65	Intergovernmental Cooperation	Explore the formation of a regional housing authority	City, Bear Creek and Resort Townships	2009-2011 NP
66	Intergovernmental Cooperation	Explore the creation of a regional recreation authority	City, Bear Creek and Resort Townships	2011-2012 NP
67	Land Use/Economic Development/ Housing and Neighborhoods	Adopt New Zoning Regulations	City	2009-2010 On-going
68	Land Use	Update Land Division Ordinance	City	NP
69	Housing and Neighborhoods	Adopt Rental Inspection Ordinance	City	P City adopted International Property Maintenance Code
70	Housing and Neighborhoods	Adopt Blight Ordinance	City	P City updated Nuisance ordinance
71	Natural Resources/ Economic Development	Update Storm Water and Erosion Control Ordinances	City	P SAW grant documents being finalized
72	Housing and Neighborhoods/ Historic Resources	Adopt Local Historic District Ordinance	City	P City Council to be receiving another presentation on Local Historic Districts specifically related to downtown in January 2019
73	Historic, Cultural, Natural Resources/ Economic Development	Review and Update Sign Ordinance	City	On-going

Proposal
Sustainability Framework Report and Civic Engagement Process

INTRODUCTION

Communities across Michigan are wrestling with difficult economic, social and environmental challenges. The shifting global economy is forcing big changes in business practices and employment. State and federal cost-sharing has declined, and new long-term assistance appears unlikely. A booming housing market has created housing instability and affordability issues for some of the most vulnerable citizens. Making matters worst, the harmful impacts of climate variability on agriculture, infrastructure, human health, energy systems and the natural environment are being felt everywhere. This is especially true in coastal communities, where changes in the climate along with dynamic changes in Great Lakes water levels has led to increased shoreline erosion and coastal flooding.

However, with thoughtful consideration, planning and preparation, communities can weather the storms and recover, becoming even better places to live and thrive. Through robust and sincere civic engagement and community-wide planning, cities like Petoskey can actively cultivate their abilities to respond to and recover from adverse situations and events, work to strengthen and build local economies and communication networks, increase social capital and civic engagement, enhance ecosystem services, improve human health and social systems, and build local capacity to adapt to changing times. In doing so, cities like Petoskey can truly become sustainable cities — cities in which economic, environmental and social systems are optimized and in balance to create and sustain an improved and positive quality of life for their citizens.

Over the last year, the City of Petoskey has participated in a series of discussions around building and fostering sustainability and resilience in cooperation with other municipalities, regional advocacy groups and several community foundations throughout northwest Lower Michigan. Based on these robust discussions, the City of Petoskey is now ready to take the next step and develop a *Sustainability Framework* for the City. In doing so, the *Sustainability Framework* would provide the structure for a new Master Plan for the City (2019) and help unify past and current planning efforts by recognizing a common set of priorities and establishing a set of overarching sustainability goals for the City. As part of this effort, the City plans to inform and engage the community, key staff and local officials about sustainability, resilience and related best practices, and how these concepts are important to Petoskey.

In addition, the civic engagement activities proposed here could complement and/or supplement future civic engagement activities planned by Emmet County as part of its upcoming County-wide Master Planning process.

ABOUT LIAA

Founded in 1993, the Land Information Access Association (LIAA) is a federally approved, Section 501(c)(3) nonprofit corporation that works to make Michigan communities even better places to live, work and play. From its headquarters in Traverse City, LIAA serves communities throughout the state with a staff of nine professionals. LIAA provides innovative community-building and support services for governments, organizations and individual citizens, including: community planning and development; geographic information systems (GIS) and cartography; asset inventories and asset mapping; website development, software and database development, and IT support; community media and video

production; public resource management; and related facilitation, training and education. A four-member volunteer Board of Directors oversees all of LIAA's operations, finances and programs. LIAA staff are all based in Traverse City.

LIAA is recognized as a leading organization in coastal resilience planning. LIAA has developed *Resilient Master Plans* in over a dozen communities across Michigan as well as plans for the three primary military installations in Michigan. In addition, LIAA and its partners have developed several statewide resilience planning resources, including the *Planning for Resilient Communities Handbook*. Most recently, LIAA worked with the Michigan Association of Planning to develop the content for its annual Spring Institute as well as a series of statewide training workshops.

PRELIMINARY PROPOSED SCOPE OF SERVICES

Task 1 – Kickoff Meeting with Key City Staff and Local Officials
LIAA will begin the project by facilitating a kickoff meeting with key city staff members and local officials. The meeting will help the project team finalize the project work plan and project schedule; review and agree upon project objectives, deliverables and desired outcomes; and determine roles, responsibilities and assignments. This meeting will provide an opportunity to begin discussing a "bottom-line" (e.g., triple bottom line) framework for sustainability, and to establish an internal staff working group to support the process.

Task 2 – Complete Data Collection/Aggregation and Asset Mapping
LIAA will compile summaries of related local plans and efforts (e.g., Tip of the Mitt, Petoskey Green Team), organizing existing goals/objectives into planning themes and sustainability goals. LIAA will also reach out to field experts to provide background information (as needed) on specific topics of interest.

Task 3 – Engage with the Public
LIAA will convene a series of "sustainability forums" to provide background and information about specific sustainability and resilience topics of interest, share sustainability efforts and goals with the community, and foster a community discussion around these issues. In addition, LIAA will work with the Public Schools of Petoskey to organize and facilitate sustainability education and discussions with students. In support of these engagement efforts and to further broaden the conversation with the community, LIAA will develop an engaging mobile-compatible website that includes interactive maps, surveys and idea-gathering applications to involve the public and stakeholders. The website will also serve as an ongoing communications tool to share information (e.g., meetings, workshops, documents, etc.) about the process. The project website can be integrated into the City of Petoskey's website, offering a way for participants to easily share links and ideas. If needed, LIAA will also develop media releases to generate awareness for the civic engagement process.

Task 4 – Final Compilation of Results (Report) for Incorporation into Master Plan
Lastly, LIAA will develop and finalize a *Draft Sustainability Framework Report.* The Sustainability Report will succinctly summarize the planning themes (e.g., climate and energy, community, land use and resource management) and sustainability goals (e.g., energy conservation, diverse housing, transportation options, healthy ecosystems, etc.) from the data collection and civic engagement processes, which the City can incorporate as it wishes into its new Master Plan.

LIAA Proposed Budget

			Resources*							Totals	
			ED	TD	GS	CD	GA	AD	VC		
			$80.00	$70.00	$70.00	$75.00	$60.00	$45.00	$45.00	Hours	Cost
Project Scope											
Task 1	**Project Kickoff with Key City Staff and Local Officials**										
	Sub Task 1.1	*Work Plan Refinement*									
		A. Meet with City Staff to refine work plan	4							4	$320.00
		B. Revise work plan	6			2				8	$630.00
		C. Present final work plan to city and planning commissions	6							6	$480.00
	Sub Task 1.2	*Administration & Management*	4					4		8	$500.00
		Sub Total Hours and Cost:	**20**	**0**	**0**	**2**	**0**	**4**	**0**	**26**	$1,930.00
Task 2	**Data Collection/Aggregation and Asset Mapping**										
	Sub Task 2.1	*Identify and Aggregate All Relevant Documents/Plans*	20		5					25	$1,950.00
	Sub Task 2.2	*Engagement with Field Experts, As Needed*	20		3					23	$1,810.00
	Sub Task 2.3	*Organize Goals/Objectives into Themes and Sustainability Goals*	20		3	4				27	$2,110.00
		Sub Total Hours and Cost:	**60**	**0**	**11**	**4**	**0**	**0**	**0**	**75**	$5,870.00
Task 3	**Engage with the Public**										
	Sub Task 3.1	*Develop/Update Website*		25	5		10			40	$2,700.00
	Sub Task 3.2	*Facilitate Youth Forum(s)*	20							20	$1,600.00
	Sub Task 3.3	*Facilitate Sustainability Forums*								0	$0.00
		A. Identify topics of need and interest	10							10	$800.00
		B. Identify relevant persons/organizations	10							10	$800.00
		C. Coordinate meetings, logistics and promotion	30			6				36	$2,850.00
		D. Aggregate results of the Forums	20			4				24	$1,900.00
		Sub Total Hours and Cost:	**90**	**25**	**5**	**10**	**10**	**0**	**0**	**140**	$10,650.00
Task 4	**Final Compilation of Results (Report) for Incorporation into Master Plan**										
	Sub Task 4.1	*Compile Results to Define Opportunities, Goals & Priorities*	50							50	$4,000.00
		Sub Total Hours and Cost:	**50**	**0**	**0**	**0**	**0**	**0**	**0**	**50**	$4,000.00
		Total Hours and Cost:	**220**	**25**	**16**	**16**	**10**	**4**	**0**	**291**	$22,450.00

All Other Project Costs Anticipated

Travel	Meetings (-- miles/round-trip = x $0.53/mile)	**$150.00**
Project Logistics	Project supplies, meeting materials, and meals	**$100.00**
Paper/Prints	Includes printed reports, meeting materials, maps, duplication, and digital copies	**$100.00**

Total for All Other Costs	**$350.00**
Grand Total Direct Expenditures for Engagement Effort and Report	**$22,800.00**

*Resource Key:

ED	Executive Director
TD	Technology Director
GS	GIS Specialist
CD	Communications Director
GA	Graphic Artist
AD	Financial Administrator
VM	Video Coordinator

LIAA

Innovative ideas for sustainable communities since 1993

Cooperative Agreement
Between the
Land Information Access Association and
the City of Petoskey

This is a Cooperative Agreement between the Land Information Access Association (hereafter referred to as "LIAA") and the City of Petoskey ("City") for LIAA to provide technical and professional services in support of the City's Sustainability Framework. The following shall be deemed to be a part of this Agreement, attached hereto and made a part hereof:

1. LIAA's proposal dated February 1, 2019

This Cooperative Agreement may be amended in writing by the parties as needed in response to necessary changes in the project scope or specifications. LIAA will not exceed the costs projected in the proposal without seeking and receiving prior approval. For any additional labor requested by the City, LIAA will honor the hourly rates identified in the proposal.

LIAA will invoice the City on a quarterly basis for work completed and costs incurred and expect payment within 30 days of receipt of the invoice.

An authorized signature will commit the City of Petoskey to working with LIAA and paying for properly invoiced work as described in the proposal.

_____ _____

For the City of Petoskey Date

Its: _____

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Collective Bargaining Agreement between FOPLC Lieutenant's and the City of Petoskey

RECOMMENDATION: That the City Council adopt the enclosed proposed resolution

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Background After completing 312 Arbitration, the City of Petoskey's negotiating team as well as representatives for the FOPLC Lieutenants division have agreed to a three-year contract beginning on January 1, 2018 with an expiration date of December 31, 2020. (Wage increases for 2018 and 2019 will be retroactive beginning January 1, 2018.) Both a marked-up copy of the contract showing the proposed changes and a final clean copy have been included in this agenda item. The collective bargaining agreement has been approved and signed by the Business Agent and the Union Steward on February 1, 2019.

Highlights of the new contract include the following:

- **Section 8.9 Use of Part-Time Employees –** Establishes protocol for when part-time employees may be used based upon a Memorandum of Understanding established in a prior collective bargaining agreement.

- **Section 11.3 Vacation Scheduling –** Updated language according to current practice within the Lieutenants Division.

- **Section 12.1 Uniforms –** Increased the City's contribution towards offsetting costs of uniforms.

- **Section 15.1 Medical and Hospitalization Insurance –** Increased City's contribution towards health insurance according to State caps.

- **Section 16.1 Pension Plan –** Increased by .5% the Employee's contribution towards MMERS defined benefit plan - 3.5% in 2018, 4% in 2019, 4.5% in 2020.

- **Appendix "A" –** Wage increases for three year contract - 2% 2018, 1% in 2019 and 1% in 2020 (Note: Wage increase is actually 1.5% in 2018 to satisfy the increased employee pension contribution for 2018 that was included in the Act 312 Award. Agreed upon by both parties as the most effective manner to administer both the wage increase and increase in employee contribution to MMERS in 2018).

Action City Council motion to adopt the resolution approving the 2018-2020 FOPLC Lieutenants Contract.

sb
Enclosures

City of Petoskey

Resolution

WHEREAS, certain Department of Public Safety Lieutenants unionized staff members are represented by the Fraternal Order of Police Labor Council (FOPLC); and

WHEREAS, City and bargaining unit representatives negotiated provisions of a proposed agreement for the Lieutenants Division; and

WHEREAS, the City Manager now has reported that an agreement has been reached with the FOPLC Lieutenants Division for the period of January 1, 2018 – December 31, 2020:

NOW, THEREFORE, BE IT RESOLVED that the City Manager be and is hereby directed to execute on behalf of the City an employment agreement with the Department of Public Safety Lieutenants Division who are represented by the Fraternal Order of Police Labor Council.

AGREEMENT

(Covering Department of Public Safety Lieutenants)

between

CITY OF PETOSKEY

and

FOPLC

For the period from ~~January 1, 2016 through December 31, 2017~~**January 1, 2018 through December 31, 2020**
(Effective on ~~September __, 2016~~**December __, 2018**)

AGREEMENT

AN AGREEMENT, made this __ day of ~~September, 2016~~**December, 2018**, by and between the CITY OF PETOSKEY, hereinafter referred to as the "Employer" and the MICHIGAN FRATERNAL ORDER OF POLICE LABOR COUNCIL, hereinafter referred to as the "FOPLC" or "Union."

RECOGNITION

Section 1.1. Collective Bargaining Unit. Pursuant to the provisions of Act 379 of the Public Acts of 1965, as amended, the Employer hereby recognizes the FOPLC as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment for those employees within the City's Department of Public Safety with the classification title of "Public Safety Lieutenant", and excluding all other departmental personnel with different classification titles.

UNION SECURITY

Section 2.1. Agency Shop. All employees in the bargaining unit who are subject to this Agreement shall, as a condition of employment, upon hire or for present non-probationary employees within thirty (30) days following the effective date of this Agreement, maintain membership in the Labor Council or pay a service fee as established by the FOPLC, but such fee shall not exceed the dues for membership.

Section 2.2. Payroll Deduction. The Employer agrees to deduct from the pay of each employee the amount of FOPLC dues or Agency fees required under this Agreement and remit the same to the authorized agent of the FOPLC provided that the Employer first receives written authorization from such employee for such deduction. The Employer will only make such deduction if the employee has sufficient pay to cover such deduction.

Section 2.3. Indemnification. The Employer will not be responsible for a refund to an employee if a duplicate deduction has been made. The FOPLC agrees to defend, indemnify and save the Employer harmless against any and all claims, suits, or other forms of liability arising out of its deduction from an employee's pay of FOPLC dues or Agency fees.

REPRESENTATION

Section 3.1. Steward. The Employer agrees to recognize a steward and alternate steward selected by the FOPLC from members of the collective bargaining unit, provided: (1) That the steward is a non-probationary employee, and (2) That the City has received written notification from the Union as to the name of the steward and assistant steward selected. The duties of the steward and assistant steward shall be to represent employees in accordance with the grievance procedure established in this Agreement and to receive and transmit official communications between the FOPLC and the Employer.

Section 3.2. Union Access. A non-employee Union representative may consult with employees in the assembly area before the start of each work shift or at the end thereof. Before entering the assembly area, notification shall be given to the Director of Public Safety or the Director's designee.

Section 3.3. Lost Time. The Employer agrees to compensate the steward for all reasonable time lost from the employee's regular schedule of work while processing a grievance in accordance with the grievance procedure or while attending a special conference or negotiations with Employer representatives. It is understood that the time and place of meetings and the number of representatives attending these meeting shall be agreed upon in advance. All meetings or use of other time related to union activities must be requested in writing to, and approved by the Director or his/her designate, allowing not less than 48 hours for scheduling. The Employer reserves the right to revoke this benefit in whole or in part if it is abused.

MANAGEMENT RIGHTS

Section 4.1. Management Rights. The City hereby retains and reserves unto itself all powers, rights, duties, and responsibilities conferred upon and vested in it by the laws and the Constitutions of the United States and the State of Michigan and the laws and Charter of the City of Petoskey. Among the rights of management, included only by way of illustration and not by way of limitation, is the right to determine all matters pertaining to the City's services to be furnished and the methods, procedures, means, personnel, equipment, and machines to provide such services; to determine the organizational structures of all the City's offices and departments and their various divisions; to determine the size of the City's workforce and to increase and decrease the numbers of employees retained; to hire new City employees; to determine the nature and number of City facilities and their locations; to adopt, modify, change, or alter budgets; to establish classifications of work; to determine the skills required of employees; to combine or reorganize any part or all of the City's operations; to maintain order and efficiency; to study and use improved methods and equipment and outside assistance either in or out of the City's organization or its facilities; to enter into contracts with private persons or corporations or with other public agencies for the undertaking of any project or for the provision of any product or service; to direct the City's workforce; to assign work within the Department of Public Safety or any off ice or department of the City and to determine the location of work assignments and related work to be performed; to determine the numbers of employees to be assigned to the City's operations; to establish work standards; to select employees for promotion or transfer to supervisory or other positions; to determine the numbers of supervisors; to make judgments regarding skills and abilities and the qualifications and competencies of employees; to establish training requirements for purposes of maintaining or improving the professional skills of employees and for advancement. The City shall also have the right to suspend, discipline, or discharge employees for just cause; to transfer, lay off, and recall personnel; to establish reasonable work rules and to fix and determine penalties for violations of such rules; to establish and change work schedules and hours; to provide and assign relief personnel; to continue and maintain its operations as in the past. All such rights are vested exclusively in the City and shall not be subject to the grievance and arbitration procedure established in this agreement, provided, however, that these rights shall not be exercised in violation of any specific provision of this agreement. It is further agreed by the parties that the enumeration of management prerogatives set forth above shall not be deemed to exclude other prerogatives not enumerated and, except as specifically abridged or modified by this agreement, all of the rights, powers, and authority possessed by the City prior to the signing of this agreement are retained by the City and remain within the rights of the City, regardless of whether such rights have or have not been exercised in the past.

GRIEVANCE AND ARBITRATION PROCEDURE

Section 5.1. Definition of Grievance. A grievance shall be a complaint by an employee concerning the application and interpretation of this written Agreement.

Section 5.2. Grievance Procedure. All grievances shall be processed in the following manner:

Step 1. An employee with a complaint shall discuss the matter with the officer in charge or the Director of Public Safety. If requested, an employee may have the employee's steward present. If the complaint is not satisfactorily settled, the employee shall reduce the complaint to writing on the grievance form by listing the sections of the Agreement alleged to have been violated, sign the grievance and submit it to the Director within seven (7) calendar days from the events which caused the complaint. The Director shall place an answer on the grievance form and return it to the employee within seven (7) calendar days after receipt.

Step 2. If the employee is not satisfied with the Director of Public Safety's answer, the employee may appeal the decision by submitting the written grievance to the City Manager within five (5) calendar days. The employee and the steward shall discuss the grievance with designated representatives of the City Manager within five (5) calendar days. The City Manager shall place an answer on the grievance and return it to the steward within fourteen (14) calendar days after its receipt.

Step3. The Union may appeal the Employer's decision to arbitration on any grievance that is arbitrable by giving the Employer written notice of its desire to arbitrate within twenty (20) calendar days after receipt of the City Manager's answer.

Section 5.3. Selection of Arbitrator. If a timely request for arbitration is filed by the Union, the parties to this Agreement shall select by mutual agreement one (1) arbitrator who shall decide the matter. If the parties are unable to agree upon an arbitrator, the arbitrator shall be selected by each party alternatively striking a name from a panel of arbitrators submitted by the Michigan Employment Relations Commission (MERC). The remaining name shall serve as the arbitrator, whose fees and expenses shall be shared equally by the Union and the City. Each party shall pay the expenses, wages and any other compensation of its own witnesses and representatives.

Section 5.4. Arbitrator's Powers. The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written, and the arbitrator shall be governed at all times wholly by the terms of this Agreement. The arbitrator shall have no power or authority to alter or modify this Agreement in any respect, directly or indirectly, or any authority to hear or determine any dispute involving the exercise of any of the City's inherent rights not specifically limited by the express terms of this Agreement. Further, the arbitrator shall not be empowered to consider any question or matter outside of this Agreement or pass upon the propriety of written warnings administered to employees covered

by this Agreement, set any wage rate or specify the terms of a new Agreement. If the issue of arbitrability is raised, the arbitrator shall only decide the merits of the grievance if arbitrability is affirmatively decided. The arbitrator's decision shall be final and binding upon the Union, the City, and employees in the bargaining unit, provided, however, that either party may have its legal remedies if the arbitrator exceeds the arbitrator's jurisdiction as provided in this Agreement. Any award of the arbitrator on a grievance involving a continuing violation shall not be retroactive any earlier than the time the grievance was first submitted in writing.

Section 5.5. Time Limitations. The time limits established in this Grievance and Arbitration Procedure shall be followed by the parties and employees hereto. If the Union fails to follow the time limits, the grievance shall be considered settled. If the City fails to follow the time limits, the grievance shall automatically advance to the next step, including arbitration upon written notice. The time limits may be extended by mutual agreement of the parties in writing.

PROHIBITION

Section 6.1. No Strike. During the term of this Agreement or any extensions thereof, the Union agrees that there will be no strikes, sit-downs, slowdowns, stoppages of work, boycotts, picketing of City property or equipment, or any other interference with the normal operations of the City, nor will there be any observation of or refusal to cross any picket line which may be established at or near the City's property or equipment whether said picket line has been established by the Union or by any other organization.

Section 6.2. Breach. If a strike or other action occurs as prohibited in Section 6.1 of this Agreement, the Union shall undertake every reasonable means to induce such employees to return to their jobs. It is specifically understood and agreed that the City shall have the authority to discharge or discipline any employee who is engaged in a strike or other prohibited conduct as set forth in Section 6.1 of this Agreement.

Section 6.3. No Lockout. During the term of this Agreement or any extensions thereof, the City agrees that there will be no lockouts, except that this provision shall not apply in the event a strike or other action occurs as prohibited in Section 6.1 of this Agreement.

SENIORITY

Section 7.1. Seniority Definition. Seniority shall be defined to mean that length of the employee's service with the Employer in the Department of Public Safety commencing from the last date of hire. The application of seniority shall be limited to the preferences recited in this Agreement.

Section 7.2. Probationary Period. When hired, or promoted into the bargaining unit, an employee shall be considered a probationary employee for a period of one (1) year, provided however, that such probationary period shall be extended for a period of time equal to the time that an employee is absent from duty due to schooling or personal reasons if such period of absence is greater than fourteen (14) consecutive days. If hired from outside the Petoskey Public Safety Department, upon completion of the probationary period, an employee shall be placed on the seniority list and shall have seniority dating from his last date of hire. Promoted employees shall be immediately placed on the seniority list with bargaining unit seniority calculated from his/her first day worked in this bargaining unit. The Union shall represent

probationary employees for the purposes of collective bargaining; however, probationary employees may be laid off or terminated by the Employer at any time without regard and without recourse to this Agreement, except that a Public Safety Officer promoted into this bargaining unit who fails to complete the probationary period may return to the public safety bargaining unit unless he/she is the lowest seniority employee in that unit and there are no positions open. All promoted employees shall be cross-trained as a law-enforcement officer, firefighter, and emergency-medical technician at the time of promotion, and any newly hired bargaining unit member must be fully cross trained by the end of the probationary period. The Employer shall provide opportunities to employees to obtain training to receive certifications in these vocations as issued by the State of Michigan. Should such employee fail or refuse the cross-training, it shall be grounds for administrative action up to and including termination. All reasonable expenses incurred by the employee during the training shall be paid by the employer.

Section 7.3. Seniority List. The Employer shall maintain a roster of employees arranged according to seniority by classification and seniority date and shall furnish a copy to the Union the first month of each year or as soon thereafter as is practicable.

Section 7.4. Loss of Seniority. An employee shall lose his seniority if the employee:

(a) Resigns or quits;

(b) Is discharged or terminated from work and such discharge or termination is not reversed in the grievance procedure herein;

(c) Retires;

(d) Has been laid off for a period equal to his seniority at the time of the employee's layoff or two (2) years, whichever is lesser; or

(e) Is absent from work including failure to return at the expiration of a leave of absence, vacation, or disciplinary layoff, for three (3) consecutive working days without written notice given the Employer or the Employer's designee, coupled with the Employer's written permission.

Section 7.5. Layoff and Recall.

a. The first employee to be laid off shall be the probationary employee and thereafter the employee with the least seniority in the classification, provided however, the employees with the greater seniority have the experience, qualifications and present ability to perform the required work.

b. Recall to work following a layoff shall be in order of seniority in the classification, provided that the employee has the experience, qualifications and present ability to perform the required work.

c. The City agrees to provide fourteen (14) calendar days' advance notice of a layoff if reasonably possible.

Section 7.6. Educational Opportunities. Seniority will be given consideration in educational opportunities available, but final determination will be at the discretion of the Director of Public Safety.

HOURS OF WORK

Section 8.1 Tour of Duty. A tour of duty shall average two (2) bi-weekly work periods of eighty (80) hours each within a twenty-eight (28) day cycle; however, this shall not be considered as a guarantee of work. Work schedules shall be established by the Employer and posted in advance. Work schedules may be changed by the Employer when required by operating conditions.

Daily-duty shifts shall be twelve (12) hours long, normally from 6:00 A.M. to 6:00 P.M. or from 6:00 P.M. to 6:00 A.M. For hours worked in excess of eighty (80) hours, but not more than eighty-four (84) hours worked during a tour of duty, Employees may select payment at the straight time rate, or use the hours as time off, so long as taking the time off does not result in overtime in the department. Should an intended use of time off result in overtime, at the time requested, the Employee shall not be allowed to take the time off and shall be paid for the hours at the straight time rate.

Section 8.2 Equalization of Overtime. All Public Safety Lieutenants shall be expected to work reasonable amounts of overtime upon request of the Employer. Overtime assignments shall be requested by Public Safety Lieutenants with use of a sign-up sheet. A listing of overtime hours that have been worked by each Public Safety Officer and Public Safety Lieutenants shall be maintained and updated by the Employer on a weekly basis. Overtime hours will be offered to the Public Safety Officer or Public Safety Lieutenant with the least amount of overtime. Said listing shall be renewed on January 1 of each year, with overtime hours assigned in order of seniority.

Section 8.3. Premium Pay. Time and one-half (1-1/2) of an employee's regular straight time hourly rate shall be paid for:

(a) All work performed by an employee when called to duty on the employee's day off or called back to work after having completed a regularly schedule shift for the day.

(b) There shall be no pyramiding or duplication of overtime, call in or premium pay.

Section 8.4. Call-in. Employees who are called back for any emergency duty or must report back outside normal duty schedule for fire calls, court appearances, or depositions, etc., will be paid a minimum of two (2) hours' pay at the rate of time and one-half (1-1/2) of the normal rate, including pay for court appearances that are cancelled, provided that the court had not provided notice of such cancellation by 5:00 P.M. on the last business day preceding the scheduled court hearing. Employees that are called in for duty while on vacation, floating holiday, personal leave time, or compensatory time, shall be credited leave time in an amount consistent with this section in lieu of overtime pay.

Employees called in for emergency duty may be required at the discretion of the director or his designee to remain on duty for the entire two (2) hour period or a portion of the two (2) hour period for which they are being paid under this section, and may be required to perform any duties as requested by the Director or his designee. The Director or his designee, at his discretion, may release the employees to leave the station.

Section 8.5. Hourly Rate. An employee's regular straight time hourly rate shall be determined by dividing the employee's annual salary set forth in Appendix "A" by 2,080 hours.

Section 8.6. Wages. Attached hereto and incorporated herein is Appendix "A," Classifications and Wage Rates.

Section 8.7. Compensatory Time. In lieu of premium pay, upon the request of an employee, and upon approval by the Director of Public Safety or the Director of Public Safety's designee, the employee may be allowed time off with pay at the employee's regular straight-time, hourly rate of one and one-half (1-1/2) hours for each hour of overtime worked. Employees cannot accumulate more than seventy-five (75) hours of compensatory time. Employees shall be permitted to use no more than 150 hours of compensatory time as leave time per calendar year, that is, January 1 to December 31, annually.

Employees shall not request compensatory time leaves more than two (2) weeks in advance of the leave time requested, and requests for compensatory-time leave may be turned down if such leave would create the need for the City to pay overtime-wage rates to the substitute for the employee who would be on compensatory-time leave. Once posted within that two-week period, employee would be guaranteed the compensatory time off, unless that compensatory-leave time created an undue hardship for the City as a result of other, unscheduled leaves that since had occurred as a result of other employees being absent from shifts while receiving workers' compensation or disability benefits.

Notwithstanding the procedure above, the Director shall have the right to approve or deny requests to use compensatory time so as to not interfere with the efficient operation of the Department. Denial of such requests shall not be arbitrary or capricious.

Section 8.8. Training. The parties acknowledge that in order to maintain a fully-trained Department of Public Safety, considerable training of employees will be required. Such training shall include those skills necessary to effectively deliver public-safety services to the citizens of Petoskey as developed and ordered by the Director of Public Safety. Such training shall include, but not be limited to, law enforcement, firefighting, and emergency medical techniques. The City agrees to pay employees at regular rates of pay for all hours spent in such training, including time that is required to travel to and from such training, and at rates one-and-one-half ($1^1/2$) times the hourly rates of pay for time spent in such training that occurs in excess of regular hours.

Section 8.9 Use of Part Time Officers. This section addresses the utilization of part-time public safety officers:

1. The Union recognizes that the Employer has been required to modify its operations as a result of the opening of the new Public Safety Station serving Bay Harbor that became operational in late 2011.

2. Employer may hire part time employees to perform work for the Department of Public Safety, including work of the type that has been previously performed exclusively by members of this bargaining unit at the new Public Safety Station serving Bay Harbor and the Main Station only if no bargaining unit member accepted the overtime.

3. It is agreed by the Union that the part time positions that are the subject of this agreement shall not be positions in this bargaining unit and that the employees hired by the City to fill the part time positions shall not be subject to any provision of this Collective Bargaining Agreement.

4. It is agreed by the Employer that the hiring of part time employees will not result in the layoff of any full-time bargaining unit member.

5. It is agreed by the parties that the Employer will create a schedule for the part time employees that is separate and distinct from the schedule for bargaining unit members. The bargaining unit schedule will be posted as set forth in Section 8.1 of the Collective Bargaining Agreement. In the event a bargaining unit shift becomes vacant resulting in the need for overtime. the employer will first attempt to fill the vacant shift by offering it to bargaining unit members. If no bargaining unit member accepts the shift. the Employer may fill the vacant shift using a part time employee. This agreement specifically modifies the overtime provisions of Section 8.2.

6. The part time schedule will be created by the Director. In the event that a scheduled part time shift becomes vacant, the Employer will first attempt to fill the vacant shift by offering it to a part time employee. If the shift cannot be filled using a part time employee, the Employer may offer the shift to bargaining unit members.

LEAVES OF ABSENCE

Section 9.1. Seniority Accumulation. Seniority shall continue on all approved leaves of absence unless otherwise specifically provided in one of the leaves of absence sections of • this Agreement. Benefits such as vacation, short-term leave and long-term accident-illness leave, and insurance do not accrue or continue during any leave of absence unless otherwise specifically provided in one of the leaves of absence sections of this Agreement.

Section 9.2. Extended and Personal Leave. Extended medical leave will be granted upon written request from the employee for illness or injury, subject to the Employer's rightto require medical proof of disability.

A personal leave of absence may be granted at the discretion of and upon approval by the Employer. A request for a personal leave shall be in writing stating the reason for such leave. Leaves granted under this section shall be without pay and will not be granted until an employee has exhausted his accumulated leave benefits. An employee may be on such leave for a period of not more than twelve (12) months or the length of his seniority, whichever is less, and seniority shall not continue beyond that time, unless otherwise mutually agreed.

Except for leaves of absences covered under the Federal Family and Medical Leave Act, an employee on such leave shall be responsible for payment of his health, and life and accidental death and dismemberment, dental, and optical insurance coverage beginning thirty (30) days after the employee has exhausted all accumulated leave time and is no longer on the active payroll.

Section 9.3. Short-term Leave and Long-term Accident-Illness Insurance. On December 1 of each year each employee shall be given fifty-six (56) hours of short-term leave time that may be used for illness or non-illness reasons. In addition, the Employer shall provide a lost-income insurance program for non-work related illness or injury within the following minimum coverages:

(a) Up to twenty-six (26) weeks of coverage per illness or injury in any calendar year;

(b) Disability benefit in an amount of sixty-six and two-thirds percent (66-2/3%) of the employee's gross weekly wage, not to exceed one-thousand dollars ($1,000) per week; and

(c) Disability benefit to be effective beginning the seventh consecutive calendar day of illness or the first full day of injury.

The Employer shall continue to pay the cost of the employee's health, life, and optical dental insurance coverages while the employee is receiving disability payments under the insurance plan. At the first full pay period in December or by December 15 of each year, the Employer shall pay each employee for all unused short-term leave time from the preceding year beginning the previous December 1 not to exceed fifty-six (56) hours. Such payment shall be by separate check and at the employee's regular base rate of pay. Employees may not bank short-term leave time.

Section 9.4. Personal Days. Employees may take twenty-four (24) hours of personal time off per calendar year (such leave also is commonly referred to as "floating holidays"). Personal days shall be requested in writing, and approval shall be subject to personnel needs of the department.

Section 9.5. Workers' Compensation. In the event an employee sustains an injury compensable by workers' compensation, the City will supplement workers' compensation payments to provide normal or usual pay for six (6) months.

Section 9.6. Jury Duty Leave. An employee summoned by the Court to serve as a juror shall be given a jury leave of absence for a period of the employee's jury duty. For each day that an employee serves as a juror when the employee would have otherwise worked, the employee shall receive the difference between the employee's straight time regular rate of pay for eight (8) hours and the amount the employee receives from the Court, including mileage, up to a maximum of two hundred forty (240) hours per year.

Section 9.7. Funeral Leave. When death occurs in an employee's immediate family, the employee, upon request, shall be excused with pay for up to three (3) normally scheduled working days **within 7 days** immediately following the date of death. For out-of-state funerals, employees shall be excused for up to two (2) additional work days with pay.

Immediate family shall be defined as an employee's spouse, children, parent, brother, sister, grandparent, grandchildren, aunt, uncle, current mother-in-law, current father-in-law, current sister-in-law, current brother-in-law, current grandparent-in-law, step-mother, step-father, step-sister, step-brother, step-children, or member of the employee's family living in the employee's household.

Time off will be granted to attend the funeral of an employee's relative, other than immediate family, or a friend. This time may be without pay or may be, at the employee's option, taken via any paid time off benefit.

Section 9.8. Military Leave. The re-employment rights of employees who have served in the military services of the United States shall be in accordance with the Uniformed Services Employment and Re-employment Rights Act.

HOLIDAYS

Section 10.1. Holidays. The following days shall be recognized holidays:

New Year's Day (January 1)	Thanksgiving Day
Memorial Day (Monday Observed)	Thanksgiving Friday
Independence Day (July4)	Christmas Eve (December 24)
Labor Day	Christmas Day (December 25)

Section 10.2. Holiday Pay Eligibility. In order to be eligible for holiday pay, an employee must have worked the employee's last regularly scheduled work day immediately before and immediately after the holiday unless the employee is off duty due to approved leaves that would include vacation, personal, funeral, or compensatory.

Section 10.3. Holiday Pay. Each eligible employee shall receive eight (8) hours of pay at the employee's regular straight-time hourly rate for each recognized holiday. In addition to holiday pay, time and one half (1-1/2) shall be paid for hours of work during a regular scheduled shift on the holiday and double time (2) shall be paid for all work in excess of hours of work in the regular scheduled shift.

VACATIONS

Section 11.1. Vacation Benefits. The schedule of vacation leave time for years of service is as follows:

½ Year of Service:	40 Hours
2 Years of Service:	80 Hours
7 Years of Service:	120 Hours
12 Years of Service	160 Hours

Section 11.2. Vacation Pay. Vacation pay shall be at the employee's regular rate at the time of eligibility. Eligibility will be determined using the employee's anniversary date of hire. Vacation benefits shall be calculated annually on January 1 for each vacation year. In a year when an employee's service time results in an increase in vacation eligibility, the additional vacation benefit for that year will be calculated on a prorated basis, and the additional prorated vacation time must be used in that calendar year. An employee who works less than 1,800 hours during the employee's anniversary year shall receive vacation leave and pay based on a pro rata formula on the basis of the employee's hours actually worked. For purposes of vacation eligibility, time off from duty for paid vacation and paid sick leave shall be considered as hours worked.

Section 11.3. Vacation Scheduling. Each year, the Employer shall post a vacation schedule on ~~December 1~~ **November 1** listing employees' names, seniority and employment anniversary dates. Vacations shall be granted as follows:

(a) Vacation leave requests must be posted between ~~December 1 and February 1~~ **November 1 and December 1**.

(1) Vacation time preference for those requests made on or prior to ~~February 1~~ **December 1** shall be granted according to employment seniority.

~~(2)~~ Vacation approvals pursuant to this provision will be posted by ~~February 15~~ **December 15**.

(b) Any employee who fails to post the employee's vacation time preference by ~~February 1~~ **December 1** of each year shall lose the right to exercise seniority privilege for that year, and all requests after ~~February 1~~ **December 1** will be

considered for approval on a first-request basis.

(c) Once vacation leave is granted, it may not be revoked except pursuant to paragraph (f) below. Once granted, vacation leave must be taken as vacation leave. An employee may cancel a requested vacation no later than 72 hours before the vacation is scheduled to begin, and work the scheduled shift at the normal rate of pay.

(d) Employees may split their accrued vacation leave, but seniority privilege shall apply only to one (1) period of the split vacation.

(e) During the months of June, July, and August, unless otherwise approved by the Director of Public Safety, only a two (2) week maximum vacation period shall be permitted for any one employee.

(f) Notwithstanding the procedure set forth above, the Director shall have the right to rescind or deny any request for vacation leave due to exigent or emergency circumstances (the creation of overtime shall not be considered exigent or emergency circumstances). Vacation approval will not be unreasonably withheld.

(g) For the duration of this agreement, the employees will be permitted to carry over up to 40 hours of accumulated vacation time into the next calendar year. Any vacation time carried over in this manner must be used on or before March 1 of the next calendar year, or will be forfeited.

(1) The parties agree that this carry over provision may be rescinded by the Employer in the event it is determined that allowing the carryover of vacation poses an undue hardship on the Employer. The Union will be given notice of the rescission, and any vacations already scheduled when the rescission occurs will be permitted.

UNIFORMS AND EQUIPMENT

Section 12.1 Uniforms. The City shall continue to provide uniforms for employees and shall continue to pay cleaning bills for those uniforms on a monthly basis in accordance with rules established by the City. Shoes/boots worn with uniforms shall be of a style, color, and pattern approved by the Director of Public Safety. Each year while this agreement is in effect, the Employer will pay each employee ~~one hundred fifty ($150)~~ **two-hundred fifty ($250)** on the first payday in July in the form of a separate check from the employee's regular payroll check.

Section 12.2. Ownership of Property. All uniforms, pistols, and equipment furnished by the City shall remain the property of the City and shall be delivered to the City upon an employee's retirement or the termination of employment.

Section 12.3. Safety Glasses. Employees who normally wear eyeglasses on duty shall be required to wear safety glasses. The City will pay one-half the cost of required glasses (lens and/or frame), but employees shall pay the cost of the examination.

PHYSICAL REQUIREMENTS

Section 13.1. Physical Fitness. Because physical fitness and conditioning are particularly

important for public safety operations, employees, as a condition for continued employment, may be required to undergo physical examination on a yearly basis. Exams will be by City physicians at City expense. Employees shall be required to meet physical requirements reasonably related to the ability to meet the physical demands of all public safety duties. The employer will provide three (3) hours of compensatory leave time per pay period for physical fitness activities.

Section 13.2. Medical Examination. The Employer reserves the right to suspend or discharge employees who are not medically fit to perform their duties in a satisfactory manner. Such action shall only be taken if a physical examination performed by a medical doctor of the Employer's choice at the Employer's expense reveals such physical unfitness. If the employee disagrees with such doctor's findings, the employee may, at the employee's own expense, obtain a physical examination from a medical doctor of the employee's choice. Should there be a conflict in the findings of the two doctors, then a third doctor mutually satisfactory to the Employer and the employee shall give the employee a physical examination. The fee charged by the third doctor shall be shared by the Employer and employee and that doctor's findings shall be binding on the employee, Employer, and the Union. The Employer shall attempt, but shall not be bound to place the employee in another position with the City, provided that the employee meets the qualifications for such position as may be available, and is physically and mentally able to perform such job.

DISCIPLINARY PROCEDURE

Section 14.1. Just Cause. The Employer agrees that all discipline shall be for just cause. Minor offenses, those punishable by oral or written reprimand, shall be treated with progressive discipline so that an employee will have the opportunity to correct the employee's conduct. However, the Union acknowledges that Public Safety Officers have a public duty to conduct themselves in a manner that will not bring discredit upon the City or department. Major offenses shall be defined as any violation of any department rule which carries a penalty of disciplinary suspension without pay or discharge for the first offense. Penalties for major offenses shall be given in writing stating the infractions. Disciplinary actions shall be administered uniformly. Disciplinary action shall be removed from an employee's personnel file and destroyed after a period of two (2) years provided that the employee maintains an infraction-free record during such two (2) year period. Any employee who is to receive a disciplinary suspension or discharge may have the employee's steward present.

Section 14.2. Waiver. In consideration of the arbitration procedure provided herein, an employee who has a disciplinary grievance submitted to arbitration hereby waives, on behalf of the employee and the Union, the right to participate in any other hearing provided by the City Charter, Civil Service, or Veterans' Preference. An employee or the Union who participates in any other proceeding, hereby waives the right to proceed to arbitration under this Agreement. The intent of this waiver is to avoid multiplicity of forums.

INSURANCES

Section 15.1 Medical and Hospitalization Insurance:

Effective January 1, ~~2015~~ **2018**, the City will make available a high-deductible Blue Cross/Blue Shield of Michigan insurance plan for employees and employees' dependents, being Group Number 01208/661. In addition, the Employer will consider other health care alternatives proposed by the employees or the Union, however, the Employer retains the right to refuse to offer any plan that does not provide adequate benefits for the employees, or results in excessive or undue administration by the Employer. The City's participation in payment for health care

benefits, including medical, dental and optical benefits, shall be limited to the payment of premiums only, and shall be capped as follows:

Single – ~~$5,992.30/yr, paid $499.36/month~~ **$6,560.52/yr. paid $546.71/month**
Couple - ~~$12,531.75/yr, paid $1,044.31/month~~ **$13,720.07/yr. paid $1,143.34/month**
Family - ~~$16,342.66/yr, paid $1,361.89/month~~ **$17,892.36/yr. paid $1,491.03/month**

In the event the premiums to be paid by the Employer are less than the cap amounts, the Employer will deposit the applicable difference between the premium and the cap into the employees' health savings account.

The City's payments will begin on the first day of eligibility in monthly increments toward the Employee's health care premiums. Employees shall pay the balance of all health care costs, including premiums, deductibles, co-pays and contributions to their health savings accounts. The Employee portion of health care premiums, if applicable, shall be deducted from the employee's bi-weekly pay.

The City shall commence payment of its portion of the insurance premiums in accordance with its established policy and all City paid premium percentages shall cease when employment is terminated and at the end of the month in which an employee is placed on layoff or on a leave of absence. The City will continue its portion of premium payments during a medical leave for up to 12 weeks provided that the Employee is eligible under FMLA and the employee's premium payments are made. Health insurance may be also continued in accordance with COBRA upon the employee's payment of the required total premiums.

Employees who have the ability to obtain medical and hospitalization insurance from another source, may decline such coverage by the City, and the City shall reimburse employees who elect not to participate in the City's program in an amount equal to 50% of the City's cap for single-person coverage.

For subsequent years of this agreement, the City's cap shall be adjusted in accordance with Public Act 152 of 2011.

Section 15.2. Lost-Income Insurance. The City shall provide lost-income insurance in conjunction with the short term leave program for non-work related illness and injury for minimums of up to twenty-six (26) weeks of coverage per illness or injury in any calendar year with such disability benefit in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's gross weekly wage, not to exceed one-thousand dollars ($1,000) per week. Such disability benefits shall become effective with the seventh (7th) consecutive calendar day of illness or the first (1st) day of injury.

Section 15.3. Workers' Compensation Insurance. The City shall provide workers' compensation coverage to all employees at no cost to employees.

Section 15.4. Dental Insurance. The City shall provide employees the same dental insurance benefit as provided the City's non-unionized employees, being Blue Cross Blue Shield of Michigan, Group Number 01208/661.

Section 15.5. Optical Insurance. The City shall provide employees the same optical insurance benefit as provided the City's non-unionized employees, being Blue Cross Blue Shield of Michigan, Policy Number 01208/661.

Section 15.6. Life and Accidental Death-Dismemberment Insurance. The City shall provide, at the City's expense, term life insurance coverage inclusive of accidental death and dismemberment benefits, in the amount of fifty-thousand dollars ($50,000).

Section 15.7. Coverage During Short Term Leave. The City shall continue to pay its share of the costs of employees' health, life and accidental death and dismemberment, dental, and optical insurance coverages while employees are receiving disability benefits under the short term leave insurance plan.

Section 15.8. Coverage during Workers' Compensation Leave. The City shall continue to pay its share of the costs of the employees' health, life and accidental death and dismemberment, dental, and optical insurance coverages while employees are receiving disability benefits under the workers' compensation program for a maximum of twenty-four (24) months.

Section 15.9. Coverage during Layoff. When employees are laid off, the City will pay its share of the next two (2) monthly premiums for health, life and accidental death and dismemberment, dental, and optical insurance coverages. Employees shall be responsible f or costs of coverages beyond two (2) payments in accordance with provisions of the Federal Consolidated Omnibus Budget Reconciliation Act, as amended.

Section 15.10. Changes in Providers. The City shall have the right to change insurance providers if there is no decrease in benefits. The City shall give notice of such changes prior to implementation.

RETIREMENT

Section 16.1 Pension Plan. Effective January 1, 2012, current Employees shall be covered under the Michigan Municipal Employees' Retirement System (MMERS) Plan B-4, inclusive of the F50/25 and FAC3 riders. **Effective January 1, 2018, t**~~T~~he current employees shall pay ~~three percent (3%)~~ **three and one-half percent (3.5%)** of their wages toward the retirement plan**, four percent (4%) effective January 1, 2019, and four and one-half percent (4.5%) effective January 1, 2020.**

All employees hired after December 31, 2016, shall be enrolled in the MMERS Defined Contribution Retirement Plan. Once enrolled, the Employer shall pay into each employee's individual contribution plan account on a bi-weekly basis a sum equal to three percent (3%) of the employee's base wage and overtime for that pay period. In addition, the employer will match contributions made by the employee up to two percent (2%), resulting in a maximum total contribution by the employer of five percent (5%) of wages. Vesting in the plan (as it relates to the employer's contribution) shall be as follows:

Completion of one year of service	25%
Completion of 2 years of service	50%
Completion of 3 years of service	75%
Completion of 4 years of service	100%

Public Safety Officers promoted into this bargaining unit will be covered by the defined benefit pension benefit currently in effect for existing bargaining unit members, unless that employee is covered by the defined contribution plan for the PSO unit at the time of the promotion, in which case, the employee will be enrolled in the defined contribution plan for this bargaining unit.

Section 16.2. Deferred Compensation. The City shall offer those employees who request it the opportunity to participate in the International City/County Management Association's Retirement Corporation, a deferred compensation program for municipal employees permitting employees to defer a portion of their salaries. Contributions shall be made only by the employee.

MISCELLANEOUS

Section 17.1. Public-Safety Concept. All employees covered by this Agreement acknowledge and pledge their support of the concept of combined police, fire, and emergency- medical services and their commitment to the Employer's goal of maintaining a service- integrated and cross-trained Department of Public Safety, and agree to obtain and maintain certifications as are issued by the State of Michigan for proficiency in law enforcement, firefighting and emergency-medical techniques. The City shall be responsible f or costs associated with obtaining and maintaining such certifications. Employees further recognize that the City Manager's decision in 1988 to establish a Department of Public Safety was to provide enhancements and efficiencies in services, as well as long-range operating economies through future cost avoidance. Employees, therefore, certify their understanding that the Employer must consider cost benefits and that, while the Employer will recognize that employees deserve consideration of their individual achievements in obtaining and maintaining certifications within the various public- safety vocational disciplines, employees recognize that such consideration must remain economically viable f or the Employer so that costs for such integrated services can be justified.

Section 17.2. Residency. All employees covered by the Agreement on the effective date of this Agreement, shall be required to have telephone service**, ~~at their residences~~** and shall maintain their residences either within the corporate limits of the City of Petoskey or within parameters as established by law, currently 20 (twenty) miles from the City's corporate limits.

Section 17.3. Educational Benefit. Officers desiring to improve their educational qualifications during their off-duty hours shall be reimbursed one-half (1/2) of their tuition cost upon satisfactory completion of courses which have been approved in advance by the Director of Public Safety as having appropriate relevance to the field of professional public - safety work.

Section 17.4. Captions. The captions used in each section are for the purpose of identification only and are not a substantive part of this Agreement.

Section 17.5. Gender. Reference to any gender shall equally apply to the other and vice versa.

Section 17.6. Separability. In the event that any section of this contract shall be declared invalid or illegal, such declaration shall in no way affect the validity or legality of the remaining provisions.

Section 17.7. Waiver. It is the intent of the parties hereto that the provisions of this Agreement, which supersedes all prior agreements and understandings, oral or written, express or implied, between such parties, shall govern their entire relationship and shall be the sole source of any and all claims which may be asserted in arbitration hereunder, or otherwise. The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Section 17.8. Liability Insurance Coverage. Employees shall be provided liability insurance

coverage for work related matters to the extent and under the terms of the City's then existing insurance policy.

DURATION

Section 18.1. Term of Agreement. This Agreement shall remain in full force and effect until midnight, December 31, ~~**2017**~~ **2020**. It shall be automatically renewed from year to year thereafter unless either party notifies the other in writing at least ninety (90) days prior to the termination date above that modification or termination is desired.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year first above written.

CITY OF PETOSKEY

_____
By: Robert Straebel
Its: City Manager

Dated:_____

FOPLC

_____
By: **Steve Warren**
Its: Business Agent

Dated:_____

_____
By **Todd Troxel**
Its Union Steward

Dated_____

APPENDIX "A"

Classifications and Wage Rates. The following hourly base wage rates shall be effective the first full period on or after **January 1, 2018** or the effective date of the Agreement, whichever is later, and shall be adjusted annually as set forth below.

	2018	2019	2020
Public Safety Lieutenant	**$38.58***	**$39.98**	**$40.38**

***Retroactive to January 1, 2018. Per agreement, the actual payments will be $38.38, based upon a 1-1/2% increase. The difference will satisfy the increased pension contribution for 2018 that was included in the Act 312 Award.**

AGREEMENT

(Covering Department of Public Safety Lieutenants)

between

CITY OF PETOSKEY

and

FOPLC

For the period from January 1, 2018 through December 31, 2020
(Effective on December __, 2018)

AGREEMENT

AN AGREEMENT, made this __ day of December, 2018, by and between the CITY OF PETOSKEY, hereinafter referred to as the "Employer" and the MICHIGAN FRATERNAL ORDER OF POLICE LABOR COUNCIL, hereinafter referred to as the "FOPLC" or "Union."

RECOGNITION

Section 1.1. Collective Bargaining Unit. Pursuant to the provisions of Act 379 of the Public Acts of 1965, as amended, the Employer hereby recognizes the FOPLC as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment for those employees within the City's Department of Public Safety with the classification title of "Public Safety Lieutenant", and excluding all other departmental personnel with different classification titles.

UNION SECURITY

Section 2.1. Agency Shop. All employees in the bargaining unit who are subject to this Agreement shall, as a condition of employment, upon hire or for present non-probationary employees within thirty (30) days following the effective date of this Agreement, maintain membership in the Labor Council or pay a service fee as established by the FOPLC, but such fee shall not exceed the dues for membership.

Section 2.2. Payroll Deduction. The Employer agrees to deduct from the pay of each employee the amount of FOPLC dues or Agency fees required under this Agreement and remit the same to the authorized agent of the FOPLC provided that the Employer first receives written authorization from such employee for such deduction. The Employer will only make such deduction if the employee has sufficient pay to cover such deduction.

Section 2.3. Indemnification. The Employer will not be responsible for a refund to an employee if a duplicate deduction has been made. The FOPLC agrees to defend, indemnify and save the Employer harmless against any and all claims, suits, or other forms of liability arising out of its deduction from an employee's pay of FOPLC dues or Agency fees.

REPRESENTATION

Section 3.1. Steward. The Employer agrees to recognize a steward and alternate steward selected by the FOPLC from members of the collective bargaining unit, provided: (1) That the steward is a non-probationary employee, and (2) That the City has received written notification from the Union as to the name of the steward and assistant steward selected. The duties of the steward and assistant steward shall be to represent employees in accordance with the grievance procedure established in this Agreement and to receive and transmit official communications between the FOPLC and the Employer.

Section 3.2. Union Access. A non-employee Union representative may consult with employees in the assembly area before the start of each work shift or at the end thereof. Before entering the assembly area, notification shall be given to the Director of Public Safety or the Director's designee.

Section 3.3. Lost Time. The Employer agrees to compensate the steward for all reasonable time lost from the employee's regular schedule of work while processing a grievance in accordance with the grievance procedure or while attending a special conference or negotiations with Employer representatives. It is understood that the time and place of meetings and the number of representatives attending these meeting shall be agreed upon in advance. All meetings or use of other time related to union activities must be requested in writing to, and approved by the Director or his/her designate, allowing not less than 48 hours for scheduling. The Employer reserves the right to revoke this benefit in whole or in part if it is abused.

MANAGEMENT RIGHTS

Section 4.1. Management Rights. The City hereby retains and reserves unto itself all powers, rights, duties, and responsibilities conferred upon and vested in it by the laws and the Constitutions of the United States and the State of Michigan and the laws and Charter of the City of Petoskey. Among the rights of management, included only by way of illustration and not by way of limitation, is the right to determine all matters pertaining to the City's services to be furnished and the methods, procedures, means, personnel, equipment, and machines to provide such services; to determine the organizational structures of all the City's offices and departments and their various divisions; to determine the size of the City's workforce and to increase and decrease the numbers of employees retained; to hire new City employees; to determine the nature and number of City facilities and their locations; to adopt, modify, change, or alter budgets; to establish classifications of work; to determine the skills required of employees; to combine or reorganize any part or all of the City's operations; to maintain order and efficiency; to study and use improved methods and equipment and outside assistance either in or out of the City's organization or its facilities; to enter into contracts with private persons or corporations or with other public agencies for the undertaking of any project or for the provision of any product or service; to direct the City's workforce; to assign work within the Department of Public Safety or any off ice or department of the City and to determine the location of work assignments and related work to be performed; to determine the numbers of employees to be assigned to the City's operations; to establish work standards; to select employees for promotion or transfer to supervisory or other positions; to determine the numbers of supervisors; to make judgments regarding skills and abilities and the qualifications and competencies of employees; to establish training requirements for purposes of maintaining or improving the professional skills of employees and for advancement. The City shall also have the right to suspend, discipline, or discharge employees for just cause; to transfer, lay off, and recall personnel; to establish reasonable work rules and to fix and determine penalties for violations of such rules; to establish and change work schedules and hours; to provide and assign relief personnel; to continue and maintain its operations as in the past. All such rights are vested exclusively in the City and shall not be subject to the grievance and arbitration procedure established in this agreement, provided, however, that these rights shall not be exercised in violation of any specific provision of this agreement. It is further agreed by the parties that the enumeration of management prerogatives set forth above shall not be deemed to exclude other prerogatives not enumerated and, except as specifically abridged or modified by this agreement, all of the rights, powers, and authority possessed by the City prior to the signing of this agreement are retained by the City and remain within the rights of the City, regardless of whether such rights have or have not been exercised in the past.

GRIEVANCE AND ARBITRATION PROCEDURE

Section 5.1. Definition of Grievance. A grievance shall be a complaint by an employee concerning the application and interpretation of this written Agreement.

Section 5.2. Grievance Procedure. All grievances shall be processed in the following manner:

Step 1. An employee with a complaint shall discuss the matter with the officer in charge or the Director of Public Safety. If requested, an employee may have the employee's steward present. If the complaint is not satisfactorily settled, the employee shall reduce the complaint to writing on the grievance form by listing the sections of the Agreement alleged to have been violated, sign the grievance and submit it to the Director within seven (7) calendar days from the events which caused the complaint. The Director shall place an answer on the grievance form and return it to the employee within seven (7) calendar days after receipt.

Step 2. If the employee is not satisfied with the Director of Public Safety's answer, the employee may appeal the decision by submitting the written grievance to the City Manager within five (5) calendar days. The employee and the steward shall discuss the grievance with designated representatives of the City Manager within five (5) calendar days. The City Manager shall place an answer on the grievance and return it to the steward within fourteen (14) calendar days after its receipt.

Step3. The Union may appeal the Employer's decision to arbitration on any grievance that is arbitrable by giving the Employer written notice of its desire to arbitrate within twenty (20) calendar days after receipt of the City Manager's answer.

Section 5.3. Selection of Arbitrator. If a timely request for arbitration is filed by the Union, the parties to this Agreement shall select by mutual agreement one (1) arbitrator who shall decide the matter. If the parties are unable to agree upon an arbitrator, the arbitrator shall be selected by each party alternatively striking a name from a panel of arbitrators submitted by the Michigan Employment Relations Commission (MERC). The remaining name shall serve as the arbitrator, whose fees and expenses shall be shared equally by the Union and the City. Each party shall pay the expenses, wages and any other compensation of its own witnesses and representatives.

Section 5.4. Arbitrator's Powers. The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written, and the arbitrator shall be governed at all times wholly by the terms of this Agreement. The arbitrator shall have no power or authority to alter or modify this Agreement in any respect, directly or indirectly, or any authority to hear or determine any dispute involving the exercise of any of the City's inherent rights not specifically limited by the express terms of this Agreement. Further, the arbitrator shall not be empowered to consider any question or matter outside of this Agreement or pass upon the propriety of written warnings administered to employees covered

by this Agreement, set any wage rate or specify the terms of a new Agreement. If the issue of arbitrability is raised, the arbitrator shall only decide the merits of the grievance if arbitrability is affirmatively decided. The arbitrator's decision shall be final and binding upon the Union, the City, and employees in the bargaining unit, provided, however, that either party may have its legal remedies if the arbitrator exceeds the arbitrator's jurisdiction as provided in this Agreement. Any award of the arbitrator on a grievance involving a continuing violation shall not be retroactive any earlier than the time the grievance was first submitted in writing.

Section 5.5. Time Limitations. The time limits established in this Grievance and Arbitration Procedure shall be followed by the parties and employees hereto. If the Union fails to follow the time limits, the grievance shall be considered settled. If the City fails to follow the time limits, the grievance shall automatically advance to the next step, including arbitration upon written notice. The time limits may be extended by mutual agreement of the parties in writing.

PROHIBITION

Section 6.1. No Strike. During the term of this Agreement or any extensions thereof, the Union agrees that there will be no strikes, sit-downs, slowdowns, stoppages of work, boycotts, picketing of City property or equipment, or any other interference with the normal operations of the City, nor will there be any observation of or refusal to cross any picket line which may be established at or near the City's property or equipment whether said picket line has been established by the Union or by any other organization.

Section 6.2. Breach. If a strike or other action occurs as prohibited in Section 6.1 of this Agreement, the Union shall undertake every reasonable means to induce such employees to return to their jobs. It is specifically understood and agreed that the City shall have the authority to discharge or discipline any employee who is engaged in a strike or other prohibited conduct as set forth in Section 6.1 of this Agreement.

Section 6.3. No Lockout. During the term of this Agreement or any extensions thereof, the City agrees that there will be no lockouts, except that this provision shall not apply in the event a strike or other action occurs as prohibited in Section 6.1 of this Agreement.

SENIORITY

Section 7.1. Seniority Definition. Seniority shall be defined to mean that length of the employee's service with the Employer in the Department of Public Safety commencing from the last date of hire. The application of seniority shall be limited to the preferences recited in this Agreement.

Section 7.2. Probationary Period. When hired, or promoted into the bargaining unit, an employee shall be considered a probationary employee for a period of one (1) year, provided however, that such probationary period shall be extended for a period of time equal to the time that an employee is absent from duty due to schooling or personal reasons if such period of absence is greater than fourteen (14) consecutive days. If hired from outside the Petoskey Public Safety Department, upon completion of the probationary period, an employee shall be placed on the seniority list and shall have seniority dating from his last date of hire. Promoted employees shall be immediately placed on the seniority list with bargaining unit seniority calculated from his/her first day worked in this bargaining unit. The Union shall represent

probationary employees for the purposes of collective bargaining; however, probationary employees may be laid off or terminated by the Employer at any time without regard and without recourse to this Agreement, except that a Public Safety Officer promoted into this bargaining unit who fails to complete the probationary period may return to the public safety bargaining unit unless he/she is the lowest seniority employee in that unit and there are no positions open. All promoted employees shall be cross-trained as a law-enforcement officer, firefighter, and emergency-medical technician at the time of promotion, and any newly hired bargaining unit member must be fully cross trained by the end of the probationary period. The Employer shall provide opportunities to employees to obtain training to receive certifications in these vocations as issued by the State of Michigan. Should such employee fail or refuse the cross-training, it shall be grounds for administrative action up to and including termination. All reasonable expenses incurred by the employee during the training shall be paid by the employer.

Section 7.3. Seniority List. The Employer shall maintain a roster of employees arranged according to seniority by classification and seniority date and shall furnish a copy to the Union the first month of each year or as soon thereafter as is practicable.

Section 7.4. Loss of Seniority. An employee shall lose his seniority if the employee:

(a) Resigns orquits;

(b) Is discharged or terminated from work and such discharge or termination is not reversed in the grievance procedure herein;

(c) Retires;

(d) Has been laid off for a period equal to his seniority at the time of the employee's layoff or two (2) years, whichever is lesser; or

(e) Is absent from work including failure to return at the expiration of a leave of absence, vacation, or disciplinary layoff, for three (3) consecutive working days without written notice given the Employer or the Employer's designee, coupled with the Employer's written permission.

Section 7.5. Layoff and Recall.

a. The first employee to be laid off shall be the probationary employee and thereafter the employee with the least seniority in the classification, provided however, the employees with the greater seniority have the experience, qualifications and present ability to perform the required work.

b. Recall to work following a layoff shall be in order of seniority in the classification, provided that the employee has the experience, qualifications and present ability to perform the required work.

c. The City agrees to provide fourteen (14) calendar days' advance notice of a layoff if reasonably possible.

Section 7.6. Educational Opportunities. Seniority will be given consideration in educational opportunities available, but final determination will be at the discretion of the Director of Public Safety.

HOURS OF WORK

Section 8.1 Tour of Duty. A tour of duty shall average two (2) bi-weekly work periods of eighty (80) hours each within a twenty-eight (28) day cycle; however, this shall not be considered as a guarantee of work. Work schedules shall be established by the Employer and posted in advance. Work schedules may be changed by the Employer when required by operating conditions.

Daily-duty shifts shall be twelve (12) hours long, normally from 6:00 A.M. to 6:00 P.M. or from 6:00 P.M. to 6:00 A.M. For hours worked in excess of eighty (80) hours, but not more than eighty-four (84) hours worked during a tour of duty, Employees may select payment at the straight time rate, or use the hours as time off, so long as taking the time off does not result in overtime in the department. Should an intended use of time off result in overtime, at the time requested, the Employee shall not be allowed to take the time off and shall be paid for the hours at the straight time rate.

Section 8.2 Equalization of Overtime. All Public Safety Lieutenants shall be expected to work reasonable amounts of overtime upon request of the Employer. Overtime assignments shall be requested by Public Safety Lieutenants with use of a sign-up sheet. A listing of overtime hours that have been worked by each Public Safety Officer and Public Safety Lieutenants shall be maintained and updated by the Employer on a weekly basis. Overtime hours will be offered to the Public Safety Officer or Public Safety Lieutenant with the least amount of overtime. Said listing shall be renewed on January 1 of each year, with overtime hours assigned in order of seniority.

Section 8.3. Premium Pay. Time and one-half (1-1/2) of an employee's regular straight time hourly rate shall be paid for:

(a) All work performed by an employee when called to duty on the employee's day off or called back to work after having completed a regularly schedule shift for the day.

(b) There shall be no pyramiding or duplication of overtime, call in or premium pay.

Section 8.4. Call-in. Employees who are called back for any emergency duty or must report back outside normal duty schedule for fire calls, court appearances, or depositions, etc., will be paid a minimum of two (2) hours' pay at the rate of time and one-half (1-1/2) of the normal rate, including pay for court appearances that are cancelled, provided that the court had not provided notice of such cancellation by 5:00 P.M. on the last business day preceding the scheduled court hearing. Employees that are called in for duty while on vacation, floating holiday, personal leave time, or compensatory time, shall be credited leave time in an amount consistent with this section in lieu of overtime pay.

Employees called in for emergency duty may be required at the discretion of the director or his designee to remain on duty for the entire two (2) hour period or a portion of the two (2) hour period for which they are being paid under this section, and may be required to perform any duties as requested by the Director or his designee. The Director or his designee, at his discretion, may release the employees to leave the station.

Section 8.5. Hourly Rate. An employee's regular straight time hourly rate shall be determined by dividing the employee's annual salary set forth in Appendix "A" by 2,080 hours.

Section 8.6. Wages. Attached hereto and incorporated herein is Appendix "A," Classifications and Wage Rates.

Section 8.7. Compensatory Time. In lieu of premium pay, upon the request of an employee, and upon approval by the Director of Public Safety or the Director of Public Safety's designee, the employee may be allowed time off with pay at the employee's regular straight-time, hourly rate of one and one-half (1-1/2) hours for each hour of overtime worked. Employees cannot accumulate more than seventy-five (75) hours of compensatory time. Employees shall be permitted to use no more than 150 hours of compensatory time as leave time per calendar year, that is, January 1 to December 31, annually.

Employees shall not request compensatory time leaves more than two (2) weeks in advance of the leave time requested, and requests for compensatory-time leave may be turned down if such leave would create the need for the City to pay overtime-wage rates to the substitute for the employee who would be on compensatory-time leave. Once posted within that two-week period, employee would be guaranteed the compensatory time off, unless that compensatory-leave time created an undue hardship for the City as a result of other, unscheduled leaves that since had occurred as a result of other employees being absent from shifts while receiving workers' compensation or disability benefits.

Notwithstanding the procedure above, the Director shall have the right to approve or deny requests to use compensatory time so as to not interfere with the efficient operation of the Department. Denial of such requests shall not be arbitrary or capricious.

Section 8.8. Training. The parties acknowledge that in order to maintain a fully-trained Department of Public Safety, considerable training of employees will be required. Such training shall include those skills necessary to effectively deliver public-safety services to the citizens of Petoskey as developed and ordered by the Director of Public Safety. Such training shall include, but not be limited to, law enforcement, firefighting, and emergency medical techniques. The City agrees to pay employees at regular rates of pay for all hours spent in such training, including time that is required to travel to and from such training, and at rates one-and-one-half ($1^1/2$) times the hourly rates of pay for time spent in such training that occurs in excess of regular hours.

Section 8.9 Use of Part Time Officers. This section addresses the utilization of part-time public safety officers:

1. The Union recognizes that the Employer has been required to modify its operations as a result of the opening of the new Public Safety Station serving Bay Harbor that became operational in late 2011.

2. Employer may hire part time employees to perform work for the Department of Public Safety, including work of the type that has been previously performed exclusively by members of this bargaining unit at the new Public Safety Station serving Bay Harbor and the Main Station only if no bargaining unit member accepted the overtime.

3. It is agreed by the Union that the part time positions that are the subject of this agreement shall not be positions in this bargaining unit and that the employees hired by the City to fill the part time positions shall not be subject to any provision of this Collective Bargaining Agreement.

4. It is agreed by the Employer that the hiring of part time employees will not result in the layoff of any full-time bargaining unit member.

5. It is agreed by the parties that the Employer will create a schedule for the part time employees that is separate and distinct from the schedule for bargaining unit members. The bargaining unit schedule will be posted as set forth in Section 8.1 of the Collective Bargaining Agreement. In the event a bargaining unit shift becomes vacant resulting in the need for overtime. the employer will first attempt to fill the vacant shift by offering it to bargaining unit members. If no bargaining unit member accepts the shift. the Employer may fill the vacant shift using a part time employee. This agreement specifically modifies the overtime provisions of Section 8.2.

6. The part time schedule will be created by the Director. In the event that a scheduled part time shift becomes vacant, the Employer will first attempt to fill the vacant shift by offering it to a part time employee. If the shift cannot be filled using a part time employee, the Employer may offer the shift to bargaining unit members.

LEAVES OF ABSENCE

Section 9.1. Seniority Accumulation. Seniority shall continue on all approved leaves of absence unless otherwise specifically provided in one of the leaves of absence sections of • this Agreement. Benefits such as vacation, short-term leave and long-term accident-illness leave, and insurance do not accrue or continue during any leave of absence unless otherwise specifically provided in one of the leaves of absence sections of this Agreement.

Section 9.2. Extended and Personal Leave. Extended medical leave will be granted upon written request from the employee for illness or injury, subject to the Employer's rightto require medical proof of disability.

A personal leave of absence may be granted at the discretion of and upon approval by the Employer. A request for a personal leave shall be in writing stating the reason for such leave. Leaves granted under this section shall be without pay and will not be granted until an employee has exhausted his accumulated leave benefits. An employee may be on such leave for a period of not more than twelve (12) months or the length of his seniority, whichever is less, and seniority shall not continue beyond that time, unless otherwise mutually agreed.

Except for leaves of absences covered under the Federal Family and Medical Leave Act, an employee on such leave shall be responsible for payment of his health, and life and accidental death and dismemberment, dental, and optical insurance coverage beginning thirty (30) days after the employee has exhausted all accumulated leave time and is no longer on the active payroll.

Section 9.3. Short-term Leave and Long-term Accident-Illness Insurance. On December 1 of each year each employee shall be given fifty-six (56) hours of short-term leave time that may be used for illness or non-illness reasons. In addition, the Employer shall provide a lost-income insurance program for non-work related illness or injury within the following minimum coverages:

(a) Up to twenty-six (26) weeks of coverage per illness or injury in any calendar year;

(b) Disability benefit in an amount of sixty-six and two-thirds percent (66-2/3%) of the employee's gross weekly wage, not to exceed one-thousand dollars ($1,000)

per week; and

(c) Disability benefit to be effective beginning the seventh consecutive calendar day of illness or the first full day of injury.

The Employer shall continue to pay the cost of the employee's health, life, and optical dental insurance coverages while the employee is receiving disability payments under the insurance plan. At the first full pay period in December or by December 15 of each year, the Employer shall pay each employee for all unused short-term leave time from the preceding year beginning the previous December 1 not to exceed fifty-six (56) hours. Such payment shall be by separate check and at the employee's regular base rate of pay. Employees may not bank short-term leave time.

Section 9.4. Personal Days. Employees may take twenty-four (24) hours of personal time off per calendar year (such leave also is commonly referred to as "floating holidays"). Personal days shall be requested in writing, and approval shall be subject to personnel needs of the department.

Section 9.5. Workers' Compensation. In the event an employee sustains an injury compensable by workers' compensation, the City will supplement workers' compensation payments to provide normal or usual pay for six (6) months.

Section 9.6. Jury Duty Leave. An employee summoned by the Court to serve as a juror shall be given a jury leave of absence for a period of the employee's jury duty. For each day that an employee serves as a juror when the employee would have otherwise worked, the employee shall receive the difference between the employee's straight time regular rate of pay for eight (8) hours and the amount the employee receives from the Court, including mileage, up to a maximum of two hundred forty (240) hours per year.

Section 9.7. Funeral Leave. When death occurs in an employee's immediate family, the employee, upon request, shall be excused with pay for up to three (3) normally scheduled working days within 7 days immediately following the date of death. For out-of-state funerals, employees shall be excused for up to two (2) additional work days with pay.

Immediate family shall be defined as an employee's spouse, children, parent, brother, sister, grandparent, grandchildren, aunt, uncle, current mother-in-law, current father-in-law, current sister-in-law, current brother-in-law, current grandparent-in-law, step-mother, step-father, step-sister, step-brother, step-children, or member of the employee's family living in the employee's household.

Time off will be granted to attend the funeral of an employee's relative, other than immediate family, or a friend. This time may be without pay or may be, at the employee's option, taken via any paid time off benefit.

Section 9.8. Military Leave. The re-employment rights of employees who have served in the military services of the United States shall be in accordance with the Uniformed Services Employment and Re-employment Rights Act.

HOLIDAYS

Section 10.1. Holidays. The following days shall be recognized holidays:

New Year's Day (January 1)	Thanksgiving Day
Memorial Day (Monday Observed)	Thanksgiving Friday

Independence Day (July4)	Christmas Eve (December 24)
Labor Day	Christmas Day (December 25)

Section 10.2. Holiday Pay Eligibility. In order to be eligible for holiday pay, an employee must have worked the employee's last regularly scheduled work day immediately before and immediately after the holiday unless the employee is off duty due to approved leaves that would include vacation, personal, funeral, or compensatory.

Section 10.3. Holiday Pay. Each eligible employee shall receive eight (8) hours of pay at the employee's regular straight-time hourly rate for each recognized holiday. In addition to holiday pay, time and one half (1-1/2) shall be paid for hours of work during a regular scheduled shift on the holiday and double time (2) shall be paid for all work in excess of hours of work in the regular scheduled shift.

VACATIONS

Section 11.1. Vacation Benefits. The schedule of vacation leave time for years of service is as follows:

½ Year of Service:	40 Hours
2 Years of Service:	80 Hours
7 Years of Service:	120 Hours
12 Years of Service	160 Hours

Section 11.2. Vacation Pay. Vacation pay shall be at the employee's regular rate at the time of eligibility. Eligibility will be determined using the employee's anniversary date of hire. Vacation benefits shall be calculated annually on January 1 for each vacation year. In a year when an employee's service time results in an increase in vacation eligibility, the additional vacation benefit for that year will be calculated on a prorated basis, and the additional prorated vacation time must be used in that calendar year. An employee who works less than 1,800 hours during the employee's anniversary year shall receive vacation leave and pay based on a pro rata formula on the basis of the employee's hours actually worked. For purposes of vacation eligibility, time off from duty for paid vacation and paid sick leave shall be considered as hours worked.

Section 11.3. Vacation Scheduling. Each year, the Employer shall post a vacation schedule on November 1 listing employees' names, seniority and employment anniversary dates. Vacations shall be granted as follows:

(a) Vacation leave requests must be posted between November 1 and December 1.

(1) Vacation time preference for those requests made on or prior to February 1 shall be granted according to employment seniority.

(2) Vacation approvals pursuant to this provision will be posted by December 15.

(b) Any employee who fails to post the employee's vacation time preference by December 1 of each year shall lose the right to exercise seniority privilege for that year, and all requests after December 1 will be considered for approval on a first-request basis.

(c) Once vacation leave is granted, it may not be revoked except pursuant to

paragraph (f) below. Once granted, vacation leave must be taken as vacation leave. An employee may cancel a requested vacation no later than 72 hours before the vacation is scheduled to begin, and work the scheduled shift at the normal rateof pay.

(d) Employees may split their accrued vacation leave, but seniority privilege shall apply only to one (1) period of the split vacation.

(e) During the months of June, July, and August, unless otherwise approved by the Director of Public Safety, only a two (2) week maximum vacation period shall be permitted for any one employee.

(f) Notwithstanding the procedure set forth above, the Director shall have the right to rescind or deny any request for vacation leave due to exigent or emergency circumstances (the creation of overtime shall not be considered exigent or emergency circumstances). Vacation approval will not be unreasonably withheld.

(g) For the duration of this agreement, the employees will be permitted to carry over up to 40 hours of accumulated vacation time into the next calendar year. Any vacation time carried over in this manner must be used on or before March 1 of the next calendar year, or will be forfeited.

(1) The parties agree that this carry over provision may be rescinded by the Employer in the event it is determined that allowing the carryover of vacation poses an undue hardship on the Employer. The Union will be given notice of the rescission, and any vacations already scheduled when the rescission occurs will be permitted.

UNIFORMS AND EQUIPMENT

Section 12.1 Uniforms. The City shall continue to provide uniforms for employees and shall continue to pay cleaning bills for those uniforms on a monthly basis in accordance with rules established by the City. Shoes/boots worn with uniforms shall be of a style, color, and pattern approved by the Director of Public Safety. Each year while this agreement is in effect, the Employer will pay each employee two-hundred fifty ($250) on the first payday in July in the form of a separate check from the employee's regular payroll check.

Section 12.2. Ownership of Property. All uniforms, pistols, and equipment furnished by the City shall remain the property of the City and shall be delivered to the City upon an employee's retirement or the termination of employment.

Section 12.3. Safety Glasses. Employees who normally wear eyeglasses on duty shall be required to wear safety glasses. The City will pay one-half the cost of required glasses (lens and/or frame), but employees shall pay the cost of the examination.

PHYSICAL REQUIREMENTS

Section 13.1. Physical Fitness. Because physical fitness and conditioning are particularly important for public safety operations, employees, as a condition for continued employment, may be required to undergo physical examination on a yearly basis. Exams will be by City

physicians at City expense. Employees shall be required to meet physical requirements reasonably related to the ability to meet the physical demands of all public safety duties. The employer will provide three (3) hours of compensatory leave time per pay period for physical fitness activities.

Section 13.2. Medical Examination. The Employer reserves the right to suspend or discharge employees who are not medically fit to perform their duties in a satisfactory manner. Such action shall only be taken if a physical examination performed by a medical doctor of the Employer's choice at the Employer's expense reveals such physical unfitness. If the employee disagrees with such doctor's findings, the employee may, at the employee's own expense, obtain a physical examination from a medical doctor of the employee's choice. Should there be a conflict in the findings of the two doctors, then a third doctor mutually satisfactory to the Employer and the employee shall give the employee a physical examination. The fee charged by the third doctor shall be shared by the Employer and employee and that doctor's findings shall be binding on the employee, Employer, and the Union. The Employer shall attempt, but shall not be bound to place the employee in another position with the City, provided that the employee meets the qualifications for such position as may be available, and is physically and mentally able to perform such job.

DISCIPLINARY PROCEDURE

Section 14.1. Just Cause. The Employer agrees that all discipline shall be for just cause. Minor offenses, those punishable by oral or written reprimand, shall be treated with progressive discipline so that an employee will have the opportunity to correct the employee's conduct. However, the Union acknowledges that Public Safety Officers have a public duty to conduct themselves in a manner that will not bring discredit upon the City or department. Major offenses shall be defined as any violation of any department rule which carries a penalty of disciplinary suspension without pay or discharge for the first offense. Penalties for major offenses shall be given in writing stating the infractions. Disciplinary actions shall be administered uniformly. Disciplinary action shall be removed from an employee's personnel file and destroyed after a period of two (2) years provided that the employee maintains an infraction-free record during such two (2) year period. Any employee who is to receive a disciplinary suspension or discharge may have the employee's steward present.

Section 14.2. Waiver. In consideration of the arbitration procedure provided herein, an employee who has a disciplinary grievance submitted to arbitration hereby waives, on behalf of the employee and the Union, the right to participate in any other hearing provided by the City Charter, Civil Service, or Veterans' Preference. An employee or the Union who participates in any other proceeding, hereby waives the right to proceed to arbitration under this Agreement. The intent of this waiver is to avoid multiplicity of forums.

INSURANCES

Section 15.1 Medical and Hospitalization Insurance:

Effective January 1, ~~2015~~ **2018**, the City will make available a high-deductible Blue Cross/Blue Shield of Michigan insurance plan for employees and employees' dependents, being Group Number 01208/661. In addition, the Employer will consider other health care alternatives proposed by the employees or the Union, however, the Employer retains the right to refuse to offer any plan that does not provide adequate benefits for the employees, or results in excessive or undue administration by the Employer. The City's participation in payment for health care benefits, including medical, dental and optical benefits, shall be limited to the payment of premiums only, and shall be capped as follows:

Single – $6,560.52/yr. paid $546.71/month
Couple - $13,720.07/yr. paid $1,143.34/month
Family - $17,892.36/yr. paid $1,491.03/month

In the event the premiums to be paid by the Employer are less than the cap amounts, the Employer will deposit the applicable difference between the premium and the cap into the employees' health savings account.

The City's payments will begin on the first day of eligibility in monthly increments toward the Employee's health care premiums. Employees shall pay the balance of all health care costs, including premiums, deductibles, co-pays and contributions to their health savings accounts. The Employee portion of health care premiums, if applicable, shall be deducted from the employee's bi-weekly pay.

The City shall commence payment of its portion of the insurance premiums in accordance with its established policy and all City paid premium percentages shall cease when employment is terminated and at the end of the month in which an employee is placed on layoff or on a leave of absence. The City will continue its portion of premium payments during a medical leave for up to 12 weeks provided that the Employee is eligible under FMLA and the employee's premium payments are made. Health insurance may be also continued in accordance with COBRA upon the employee's payment of the required total premiums.

Employees who have the ability to obtain medical and hospitalization insurance from another source, may decline such coverage by the City, and the City shall reimburse employees who elect not to participate in the City's program in an amount equal to 50% of the City's cap for single-person coverage.

For subsequent years of this agreement, the City's cap shall be adjusted in accordance with Public Act 152 of 2011.

Section 15.2. Lost-Income Insurance. The City shall provide lost-income insurance in conjunction with the short term leave program for non-work related illness and injury for minimums of up to twenty-six (26) weeks of coverage per illness or injury in any calendar year with such disability benefit in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's gross weekly wage, not to exceed one-thousand dollars ($1,000) per week. Such disability benefits shall become effective with the seventh (7th) consecutive calendar day of illness or the first (1st) day of injury.

Section 15.3. Workers' Compensation Insurance. The City shall provide workers' compensation coverage to all employees at no cost to employees.

Section 15.4. Dental Insurance. The City shall provide employees the same dental insurance benefit as provided the City's non-unionized employees, being Blue Cross Blue Shield of Michigan, Group Number 01208/661.

Section 15.5. Optical Insurance. The City shall provide employees the same optical insurance benefit as provided the City's non-unionized employees, being Blue Cross Blue Shield of Michigan, Policy Number 01208/661.

Section 15.6. Life and Accidental Death-Dismemberment Insurance. The City shall provide, at the City's expense, term life insurance coverage inclusive of accidental death and dismemberment benefits, in the amount of fifty-thousand dollars ($50,000).

Section 15.7. Coverage During Short Term Leave. The City shall continue to pay its share

of the costs of employees' health, life and accidental death and dismemberment, dental, and optical insurance coverages while employees are receiving disability benefits under the short term leave insurance plan.

Section 15.8. Coverage during Workers' Compensation Leave. The City shall continue to pay its share of the costs of the employees' health, life and accidental death and dismemberment, dental, and optical insurance coverages while employees are receiving disability benefits under the workers' compensation program for a maximum of twenty-four (24) months.

Section 15.9. Coverage during Layoff. When employees are laid off, the City will pay its share of the next two (2) monthly premiums for health, life and accidental death and dismemberment, dental, and optical insurance coverages. Employees shall be responsible f or costs of coverages beyond two (2) payments in accordance with provisions of the Federal Consolidated Omnibus Budget Reconciliation Act, as amended.

Section 15.10. Changes in Providers. The City shall have the right to change insurance providers if there is no decrease in benefits. The City shall give notice of such changes prior to implementation.

RETIREMENT

Section 16.1 Pension Plan. Effective January 1, 2012, current Employees shall be covered under the Michigan Municipal Employees' Retirement System (MMERS) Plan B-4, inclusive of the F50/25 and FAC3 riders. Effective January 1, 2018, the current employees shall pay three and one-half percent (3.5%) of their wages toward the retirement plan, four percent (4%) effective January 1, 2019, and four and one-half percent (4.5%) effective January 1, 2020.

All employees hired after December 31, 2016, shall be enrolled in the MMERS Defined Contribution Retirement Plan. Once enrolled, the Employer shall pay into each employee's individual contribution plan account on a bi-weekly basis a sum equal to three percent (3%) of the employee's base wage and overtime for that pay period. In addition, the employer will match contributions made by the employee up to two percent (2%), resulting in a maximum total contribution by the employer of five percent (5%) of wages. Vesting in the plan (as it relates to the employer's contribution) shall be as follows:

Completion of one year of service	25%
Completion of 2 years of service	50%
Completion of 3 years of service	75%
Completion of 4 years of service	100%

Public Safety Officers promoted into this bargaining unit will be covered by the defined benefit pension benefit currently in effect for existing bargaining unit members, unless that employee is covered by the defined contribution plan for the PSO unit at the time of the promotion, in which case, the employee will be enrolled in the defined contribution plan for this bargaining unit.

Section 16.2. Deferred Compensation. The City shall offer those employees who request it the opportunity to participate in the International City/County Management Association's Retirement Corporation, a deferred compensation program for municipal employees permitting employees to defer a portion of their salaries. Contributions shall be made only by the employee.

MISCELLANEOUS

Section 17.1. Public-Safety Concept. All employees covered by this Agreement acknowledge

and pledge their support of the concept of combined police, fire, and emergency- medical services and their commitment to the Employer's goal of maintaining a service- integrated and cross-trained Department of Public Safety, and agree to obtain and maintain certifications as are issued by the State of Michigan for proficiency in law enforcement, firefighting and emergency-medical techniques. The City shall be responsible f or costs associated with obtaining and maintaining such certifications. Employees further recognize that the City Manager's decision in 1988 to establish a Department of Public Safety was to provide enhancements and efficiencies in services, as well as long-range operating economies through future cost avoidance. Employees, therefore, certify their understanding that the Employer must consider cost benefits and that, while the Employer will recognize that employees deserve consideration of their individual achievements in obtaining and maintaining certifications within the various public- safety vocational disciplines, employees recognize that such consideration must remain economically viable f or the Employer so that costs for such integrated services can be justified.

Section 17.2. Residency. All employees covered by the Agreement on the effective date of this Agreement, shall be required to have telephone service, and shall maintain their residences either within the corporate limits of the City of Petoskey or within parameters as established by law, currently 20 (twenty) miles from the City's corporate limits.

Section 17.3. Educational Benefit. Officers desiring to improve their educational qualifications during their off-duty hours shall be reimbursed one-half (1/2) of their tuition cost upon satisfactory completion of courses which have been approved in advance by the Director of Public Safety as having appropriate relevance to the field of professional public - safety work.

Section 17.4. Captions. The captions used in each section are for the purpose of identification only and are not a substantive part of this Agreement.

Section 17.5. Gender. Reference to any gender shall equally apply to the other and vice versa.

Section 17.6. Separability. In the event that any section of this contract shall be declared invalid or illegal, such declaration shall in no way affect the validity or legality of the remaining provisions.

Section 17.7. Waiver. It is the intent of the parties hereto that the provisions of this Agreement, which supersedes all prior agreements and understandings, oral or written, express or implied, between such parties, shall govern their entire relationship and shall be the sole source of any and all claims which may be asserted in arbitration hereunder, or otherwise. The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Section 17.8. Liability Insurance Coverage. Employees shall be provided liability insurance coverage for work related matters to the extent and under the terms of the City's then existing insurance policy.

DURATION

Section 18.1. Term of Agreement. This Agreement shall remain in full force and effect until midnight, December 31, 2020. It shall be automatically renewed from year to year thereafter unless either party notifies the other in writing at least ninety (90) days prior to the termination date above that modification or termination is desired.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year first above written.

CITY OF PETOSKEY

By: Robert Straebel
Its: City Manager

Dated:_____

FOPLC

By: Steve Warren
Its: Business Agent

Dated: 2/1/2019

By Todd Troxel
Its Union Steward

Dated 02/01/2019

APPENDIX "A"

Classifications and Wage Rates. The following hourly base wage rates shall be effective the first full period on or after January 1, 2016 or the effective date of the Agreement, whichever is later, and shall be adjusted annually as set forth below.

	2018	2019	2020
Public Safety Lieutenant	$39.58*	$39.98	$40.38

*Retroactive to January 1, 2018. Per agreement, the actual payments will be $39.39, based upon a "net" 1-1/2% increase. The difference will satisfy the increased pension contribution for 2018 that was included in the Act 312 Award.

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Retirement Plan Contribution Changes

RECOMMENDATION: That City Council adopt the proposed resolution

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Background The City provides defined contribution retirement benefits through the Michigan Municipal Employees' Retirement System (MMERS), which covers three separate groups of employees; Nonunion, DPW union, and Public Safety union.

The newly approved collective bargaining agreement covering the Public Safety Lieutenant unionized employees for the period January 1, 2018 through December 31, 2020 includes provisions that requires annual increases in employee contributions for the next three years towards the Lieutenants pension plan. Contribution rates are to increase on January 1 of each year as follows; 2018 at 3.5%, 2019 at 4.0% and 2020 and thereafter, at a rate of 4.5%.

Since 2018 has passed the City and FOPLC Union have agreed to reduce the 2018 wage increase from 2.0% to 1.5% to account for the additional 0.5% increase in employee pension contributions due the City. Therefore, the pension plan will only require changes to increased contributions for the two years of 2019 and 2020. Separate adoption agreements are required for each year of changes in contribution rates.

Action Enclosed are two adoption agreements, required by MERS, and a resolution authorizing execution of the two agreements for Council's approval that will enact the changes to the retirement plan employee contributions for 2019 and 2020 for unionized Public Safety Lieutenants.

at
Enclosures

City of Petoskey

Resolution

WHEREAS, the City is a participating governmental unit in the Michigan Municipal Employees' Retirement System (MMERS) pension plan document of 1996; and

WHEREAS, in accordance with pension provisions of a renewed collective bargaining agreement with certain unionized employees for the City's Public Safety Lieutenants require changes to the City's current MMERS plan:

NOW, THERFORE, BE IT RESOLVED that the City of Petoskey City Council does and hereby elects to change current Michigan Municipal Employees' Retirement System (MMERS) benefits for Department of Public Safety unionized personnel, referred to as City of Petoskey (2402), Division 11 – Public Safety Lieutenants Union, a defined benefit plan with employees contributing 4% beginning January 2019 and 4.5% beginning January 2020 as set forth in the plan adoption agreements for 2019 and 2020; and

BE IT FURTHER RESOLVED that the City of Petoskey City Council does and hereby authorizes the City Manager and Director of Finance to prepare and sign the Defined Benefit Plan Adoption Agreements with MMERS for Division 11 to make changes as set forth above to the existing defined benefit plan.

State of Michigan)
County of Emmet) ss
City of Petoskey)

I, Alan Terry, Clerk for the City of Petoskey, hereby certifies that the foregoing resolution was duly introduced and adopted at a regular meeting of the City Council for the City of Petoskey held on this 18th day of February, 2019.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said City of Petoskey this ____ day of February, 2019.

_____
Alan Terry, City Clerk

Defined Benefit Plan Adoption Agreement

MERS
Municipal Employees' Retirement System

1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711 www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Petoskey **Municipality #:** 2402

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20___.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 11), the effective date shall be the first day of January, 20 19. *Please note:* You only need to mark ***changes*** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark ***changes*** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees** *from an existing Defined Benefit division* (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

Public Safety - Lieutenants Union

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☑ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the _____ (Board, Finance Cmte, etc.) on _____ (mm/dd/yyyy).

☐ As an authorized representative of this municipality, I _____ (Name) _____ (Title) waive the right for a presentation of the results.

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

   ☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

   If checked, select one below:

   ☐ Termination Final Average Compensation (calculated over the members entire wage history)

   ☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) 4.0 %

7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

   Employers shall define compensation using the following options (choose one):

   ☐ Compensation including all items as allowed in the MERS Plan Document (Section 14). If anything varies, specify here:

   Included: _____

   Excluded: _____

   ☐ Base wages only.
   If any items should be included, specify here:

   Included: _____

   ☐ Medicare taxable wages as reported on W2.

   ☐ Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals.

8. Unreduced Early Retirement/Service Requirements:

☐ Age 50 – 54_____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65_____ Service between 15 and 30 years _____
☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other
   - ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
   - ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
   - ☐ Deferred Retirement Option Program (DROP)
   - ☐ Annuity Withdrawal Program (AWP)

     Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
     - ☐ Interest rate for employee contributions as determined by the Retirement Board, or
     - ☐ MERS' assumed rate of return as of the date of the distribution.

10. Cost-of-Living Adjustment

☐ All **current** retirees as of effective date ☐ Retirees who retire **between** ____/01/____ and ____/01/____	☐ **Future** retirees who retire after effective date
Increase of _____% or $_____ per month	Increase of _____% or $_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

11. Service Credit Purchase Estimates are:
    - ❒ Not permitted
    - ❒ Permitted

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Benefit Plan Adoption Agreement, the provisions of the Plan Document control.

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by City of Petoskey (Name of Approving Employer) on the 21st day of January, 2019.

Authorized signature: _____

Title: _____

Witness signature: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____ (Authorized MERS Signatory)

Defined Benefit Plan Adoption Agreement

MERS
Municipal Employees' Retirement System

1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711 www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Petoskey **Municipality #:** 2402

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20___.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 11), the effective date shall be the first day of January, 20 20. *Please note:* You only need to mark ***changes*** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark ***changes*** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees** *from an existing Defined Benefit division* (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

Public Safety - Lieutenants Union

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☑ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. **Review the valuation results**

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the _____ (Board, Finance Cmte, etc.) on _____ (mm/dd/yyyy).

☐ As an authorized representative of this municipality, I _____ (Name) _____ (Title) waive the right for a presentation of the results.

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

   ☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

   If checked, select one below:

   ☐ Termination Final Average Compensation (calculated over the members entire wage history)

   ☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) 4.5 %

7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

   Employers shall define compensation using the following options (choose one):

   ☐ Compensation including all items as allowed in the MERS Plan Document (Section 14). If anything varies, specify here:

   Included: _____

   Excluded: _____

   ☐ Base wages only.
   If any items should be included, specify here:

   Included: _____

   ☐ Medicare taxable wages as reported on W2.

   ☐ Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals.

8. Unreduced Early Retirement/Service Requirements:

☐ Age 50 – 54_____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65_____ Service between 15 and 30 years _____
☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other
   - ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
   - ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
   - ☐ Deferred Retirement Option Program (DROP)
   - ☐ Annuity Withdrawal Program (AWP)

     Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
     - ☐ Interest rate for employee contributions as determined by the Retirement Board, or
     - ☐ MERS' assumed rate of return as of the date of the distribution.

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☐ All **current** retirees as of effective date ☐ Retirees who retire **between** ____/01/____ and ____/01/____	☐ **Future** retirees who retire after effective date
Increase of _____% or $_____ per month	Increase of _____% or $_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
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VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by City of Petoskey (Name of Approving Employer) on the 21st day of January, 2019.

Authorized signature: _____

Title: _____

Witness signature: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____ (Authorized MERS Signatory)

City of Petoskey

Agenda Memo

BOARD: City Council

MEETING DATE: February 18, 2019 **PREPARED:** February 14, 2019

AGENDA SUBJECT: Odawa Litigation Update

RECOMMENDATION: That the City Council hear update

The City Attorney will provide a brief update on the Odawa Litigation. Enclosed are two judgements that were issued and filed on January 31, 2019 concerning the litigation.

sb
Enclosures

PLUNKETT COONEY

INTEROFFICE MEMORANDUM

TO: Robert Straebel, City Manager

FROM: James J. Murray

DATED: February 13, 2019

RE: LTBB v Whitmer, et al. ("Odawa Litigation")

On January 31, 2019, Judge Maloney, Judge of the United States District Court for the Western District of Michigan, issued two decisions in the Odawa Litigation. In short, Judge Maloney the Tribes Motion as well the Defendants Motion.

The Tribe filed a Motion for Partial Summary Judgment. In its Motion, the Tribe requested the Court find that the 1994 Reaffirmation of the Tribe's status restored the existence of a supposed reservation. The goal of the Motion was to argue that the 1994 Act of Congress wiped away any actions of the Federal Government in any way that negatively affected the Tribe's rights between 1955 and 1994.

We prepared and filed a Motion for Summary Judgment on behalf of the City of Petoskey and other local units, including Emmet County, Charlevoix County and the City of Harbor Springs. Our Motion focused on the Tribes prior claims before the Indian Claims Commission ("ICC"). The Tribes predecessor filed several claims with the ICC back in the 1940's. The Tribe asserted they had been given inadequate consideration for land that was ceded in the Treaty of 1836. This is the same land they now claim is a reservation. Ultimately, the ICC issued an opinion in favor of the Tribe ruling the fair market value of the land ceded by the Tribe was $10,800,000. Then in 1951 the Tribe again filed another petition with the ICC for additional compensation for land ceded by the Tribe under the 1855 Treaty. The ICC denied that claim finding that the Tribe had already been compensated for any unallotted lands by virtue of the prior ICC petition. In other words, the ICC found the Tribe was barred by their prior petition. As such, we argued that the Tribe's claim to a reservation fails under the Doctrines of Judicial Estoppel, Issue Preclusion and the ICC Act's Statute of Limitations. Our Motion was based on the fact that members of the Tribe already received compensation for underpayment of land sold by the Tribe's predecessors.

As such, the Tribe's predecessors conceded that all lands being claimed as a reservation had been sold and they could not now assert that the land is a reservation.

These Court decisions do not end the case. Rather, still under consideration are questions of appeal of these decisions, as well as the Court's request for additional Motions for Summary Judgment to be filed in March of 2019. Oral argument on those motions may take place sometime in late June. Thereafter, the Court indicated that if a trial is necessary it would likely be scheduled sometime in the year 2020.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, Plaintiff,	
v.	No. 1:15-cv-850
GRETCHEN WHITMER, GOVERNOR OF THE STATE OF MICHIGAN, Defendant.	HONORABLE PAUL L. MALONEY

ORDER

This matter is before the Court on the Tribe's motion for partial summary judgment on the Defendants' affirmative defenses of diminishment and disestablishment. The Tribe asks the Court to assume, for purposes of this motion, that a reservation was created. It argues that, in the event that a reservation was created, the Court should rule that an Act of Congress in 1994 reaffirmed the existence of the reservation, such that any diminishment or disestablishment between 1855 and 1994 was reversed. Accordingly, the Defendants would be precluded from raising it as a defense in this case. In other words, the Tribe has proceeded to the second logical question the Court must answer, without first addressing whether a reservation exists. The Court will dismiss the motion without prejudice.

I.

In 1872, the Federal Government terminated federal recognition of both the Ottawa and Chippewa and Chippewa Indian Tribes, based on the Treaty of Detroit (Treaty of 1855). The Tribe lobbied Congress to re-establish federal recognition of the Tribe in 1994.

The government's action to terminate recognition of the Tribe in 1872 must be understood with an eye to the historical context. In 1836, Henry Schoolcraft, who negotiated the Treaty of Washington on behalf of the United States, combined the Ottawa and Chippewa nations into a joint political unit

solely for purposes of facilitating the negotiation of that treaty. In the years that followed, the Ottawa and Chippewa "vociferously complained" about being joined together as a single political unit. To address their complaints, the 1855 Treaty of Detroit contained language dissolving the artificial joinder of the two tribes.

In 1872, Secretary Delano interpreted the 1855 treaty as providing for the dissolution of the tribes once the annuity payments it called for were completed in the spring of 1872, and hence decreed that upon finalization of those payments "tribal relations will be terminated." Letter from Secretary of the Interior Delano to Commission of Indian Affairs at 3 (Mar. 27, 1872). Beginning in that year, the Department of the Interior, believing that the federal government no longer had any trust obligations to the tribes, ceased to recognize the tribes either jointly or separately.

In 1979, Judge Fox held that the Secretary's termination of the Tribe's federal status was erroneous in a case involving the reservation of fishing rights by the Tribe under the Treaty of 1836. *See United States v. State of Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979). Thereafter, the Tribe began the highly bureaucratic task of officially reaffirming its relationship with the federal government as a recognized Indian Tribe. The Tribe's efforts culminated in 1994 when Congress passed an Act to "reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes." Pub. L. No. 103-324, 108 Stat. 2156, 2158 (1994) ("The Reaffirmation Act").

The Tribe's instant motion relates directly to the Reaffirmation Act, which The Tribe asserts was intended to restore any and all treaty rights and privileges that may have been abrogated or diminished in the past. The Defendants all takes the position that the Act was intended only to formally recognize the Tribe's status as an Indian Tribe, and to reaffirm only the general rights and privileges that are part and parcel of being an Indian Tribe.

The Defendants have raised as an affirmative defense diminishment and/or disestablishment. Generally, the creation of a reservation "may survive the mere opening of a reservation to settlement[.]" *Decoteau v. Dist. Cnty. Ct. for the Tenth Jud. Dist.*, 420 U.S. 425, 444 (1975). However, Congress may divest an Indian sovereign of its land (disestablishment) or reduce its boundaries (diminishment). *See Rose Bud Sioux Tribe v. Kneip*, 430 U.S. 584, 586 (1977); *Solem v. Bartlett*, 465 U.S. 463 (1984). Before a court may declare a reservation disestablished or diminished, it must find that Congress "clearly evince[d] an intent to change boundaries[.]" *Id.* at 471.

The Defendants argue that Congress opened Michigan to settlement in the 1870s, and the series of Opening Acts meet the requirements for either diminishment or disestablishment of the Tribe's claimed reservation. The Tribe now asks the Court to declare, as a matter of law, the Reaffirmation Act precludes the Defendants in this matter from asserting diminishment or disestablishment as defenses to its claim for a declaratory judgment establishing the existence of a reservation.

II.

The Tribe's motion presents a question of statutory interpretation that is a solely a question of law. Courts *may* dismiss an insufficient defense on summary judgment, as whether a defense may lie is often "solely [an issue] of law." *Oscar W. Larson Co. v. United Capitol Ins. Co.*, 845 F. Supp. 445, 449 (W.D. Mich. 1993), *aff'd*, 64 F.3d 1010 (6th Cir. 1995) (granting summary judgment "to the extent that it asks this Court to declare the defense legally insufficient"); *see, e.g., Office & Prof'l Emp. Int'l Union, Local 9, AFL-CIO v. Allied Indus. Workers Int'l Union*, 397 F. Supp. 688, 691 (E.D. Wisc. 1975), *aff'd sub nom.* 535 F.2d 1257 (7th Cir. 1976) ("If the claim of settlement is an insufficient defense, or even if proved it is not a material fact, then summary judgment may be granted."). However, the Court also has inherent authority to manage its docket in the manner best suited to expeditiously resolve cases and effect judicial efficiency. *See Dietz v. Bouldin*, 136 S. Ct. 1885 (2016) ("[D]istrict courts have the

inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases[.]")

III.

The Court has been presented with a hypothetical question that, at some point, may require resolution. However, until the first major question in the case has been decided—whether a reservation was set aside for the Tribe's use by the Treaty of 1855—the effect of the Reaffirmation Act remains a purely academic exercise. And even then, it is not apparent whether the Opening Acts of the 1870s will support the Defendants' disestablishment or diminishment defenses. The Reaffirmation Act only become relevant once it is determined that a reservation was created *and* that it was subsequently diminished or disestablished. Under the latest briefing schedule, (*See* ECF No. 552), the Court anticipates receiving dispositive motions on those issues in the coming months.

Thus, while the motion has been capably briefed by all parties, the unresolved predicate issues lead the Court to the conclusion that the most efficient way forward is to consider the effect of the Reaffirmation Act only after resolving whether a reservation was created—which itself will be a complex and document-voluminous inquiry. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the Tribe's motion for partial summary judgment.

IT IS SO ORDERED.

Date: January 31, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, Plaintiff,	)	
	)	No. 1:15-cv-850
v.	)	
	)	HONORABLE PAUL L. MALONEY
GRETCHEN WHITMER, GOVERNOR OF THE STATE OF MICHIGAN, Defendant.	)	

OPINION

Plaintiff Little Traverse Bay Bands of Odawa Indians ("the Tribe") filed suit in 2015, claiming that the State of Michigan has continually failed to recognize an Indian Reservation spanning more than 300 square miles in the Northwest portion of Michigan's Lower Peninsula. The Tribe seeks a declaratory judgment from the Court that the claimed Reservation was created via treaty between its predecessor and the Federal Government in 1855, and that the Reservation has continued to exist to this day and has not been diminished or disestablished by any subsequent government action.[1]

The matter is now before the Court on the City and County Intervenor-Defendants' motion for judgment on the pleadings. The Cities and Counties argue that the Tribe should be: (1) judicially

[1] The Court allowed various local units of government and related entities to intervene as Defendants, (*See* ECF No. 38), as well as two associations. (ECF No. 50).

The Court then issued an order bifurcating the case into two parts: (1) whether an Indian reservation had been created and if it had, if it was later diminished by Congress—issues to which equitable defenses cannot apply; and (2) whether any equitable defenses were implicated by the relief sought by the Tribe. The parties thus proceeded through discovery on phase one, focusing on whether a reservation had been created and, if a reservation was created, whether it had subsequently been diminished. (ECF No. 91).

estopped from claiming the existence of the Reservation, (2) barred from relitigating the claims under the doctrine of issue preclusion, and (3) barred from raising the claims under the Indian Claims Commission Act by the Act's statute of limitations.[2]

I.

The historical background relevant to the Tribe's claim spans more than 150 years. The Court does not attempt here to fully set forth an exhaustive history of all facts relevant to the claim but offers this limited recitation of the facts for purposes of resolving the Rule 12 motion before it.

The Treaties

The Little Traverse Bay Bands of Odawa Indians are a federally-recognized Indian tribe that traces its origins back to the Odawa Indians (sometimes also referred to as Ottawa) that inhabited land in Northern Michigan. The Odawa were first encountered by European explorers in 1615, and they continued to occupy the northwest corner of Michigan's Lower Peninsula for the next 200 years.

The Odawa began ceding territory to the United States in the 1820s and following decades. First, in 1820, the Tribe's predecessors entered into a treaty with the US government in which it agreed to cede the Saint Martin Islands in exchange for "a quantity of goods."

By the 1830s, the Federal Government's Indian policy became more focused on utilizing treaties to secure cessions of land from Indians, removing Indians from these lands, and encouraging non-Indian settlement of the lands. Thus, the government engaged in many more treaties, including one with the Tribe's predecessors.

[2] The State of Michigan did not join the Cities and Counties' motion, but it noted that it intends to use evidence concerning the ICC proceedings in its own dispositive motion. (ECF No. 459.) The Township Defendants filed a Notice of Joinder and Concurrence in the motion. (ECF No. 534.) Finally, the Court struck an untimely response in support of the motion by the Association Defendants. (ECF Nos. 533; 535; 539.)

In 1836, Henry Schoolcraft negotiated the Treaty of Washington ("1836 Treaty" or "Treaty of Washington") on behalf of the United States with the Odawa. Treaty of Washington, March 28, 1836, 7 Stat. 491. This time, the bands were to cede 13,837,207 acres of Michigan's Lower Peninsula but would retain fourteen reservations within that territory—including a 50,000-acre reservation on Little Traverse Bay. The bands also maintained hunting, fishing, and usufructuary rights in the ceded territory.

After the treaty had been agreed upon, it went to the Senate for ratification. But instead of ratifying the treaty, the Senate modified the treaty terms. Rather than making the reservations permanent, the Senate inserted a clause time-limiting the reservations to five years "unless the United States grant[ed] them permission to remain on said lands for a longer period." *See* 7 Stat. 497. In return, the Tribe would receive $200,000 in consideration for the land, which would generate interest annually until the government reclaimed the land. *Id.*

After the Senate's unilateral modification, Schoolcraft called a council at Mackinac Island to assure the bands that the government did not intend to remove them from the reservations at the end of the five-year term. (ECF No. 1 at PageID.5; ECF No. 429-3 at PageID.5143.) Thus, the Tribe agreed to the treaty even with the altered terms. And in fact, the government did not enforce the five-year term on the newly-created reservations. (*Id.*)

On July 31, 1855, the Chippewa and Ottawa Tribes entered into a third treaty—The Treaty of Detroit. *Treaty with the Ottawa and Chippewa*, 31 July 1855, 11 Stat. 621-629 ("1855 Treaty"). The Tribe now claims that the 1855 Treaty and a corresponding Executive Order established an Indian reservation in Emmet and Charlevoix Counties, which continues to exist to this day and which it relies on in this action. Accordingly, the Court must describe the treaty terms in some detail.

In Article 1, the United States agreed to withdraw from sale public lands certain tracts of land for each of six bands within the Ottawa and Chippewa Indian Tribes. Pertinent here, the government

agreed to withdraw from sale the lands two parcels. The first made up of "fractional townships 38 and 39 north, range 11 west—40 north, range 10 west, and in part 39 north, range 9 and 10 west." The second was made up of "townships 29, 30, and 31 north, range 11 west, and townships 29, 30, and 31 north, range 12 west, and the east half of township 29 north, range 9 west" for the bands to which the Tribe is the successor. The government also agreed that it would give each head of a family eighty acres of land from within the parcel and forty acres of land to each single person over the age of 21 or orphan child under 21. Finally, Article I stipulated that any lands that were not selected or appropriated within five years would remain the property of the United States to be disposed of as any other public lands.

In Article 2, the government agreed to pay $538,400 to the Chippewa and Ottawa Tribes collectively to provide for various services and infrastructure including: $80,000 for educational purposes, $75,000 for agricultural and carpentry equipment, $306,000 in cash to be distributed per capita to members at a rate of $10,000 plus interest per year with the remainder due and payable at the end of the ten-year period, and $42,000 for four blacksmith shops.

In Article 3, the Ottawa and Chippewa Tribes agreed "release and discharge the United States from all liability . . . for the price and value of all such lands, heretofore sold, and the proceeds of which remain unpaid."

Shortly after the 1855 Treaty was agreed upon, an executive order ordered the lands described to be withdrawn from public sale. Exec. Order (Aug. 9, 1855).

According to the Tribe, the 1855 Treaty was motivated by the uncertainty caused by the sunset-clause in the 1836 Treaty, as the Odawa feared that the government could force them from their lands at any time. (ECF No. 1 at PageID.6.) And it says that by 1854, the government's Indian policy had shifted "to focus on the creation of reservations, with the intent of concentrating Indians on such reservations in order to protect them from the onslaught of non-Indian settlement while

simultaneously making the Indians easier for the government and missionary groups to 'civilize.'" (*Id.*) The Tribe notes that the Commissioner of Indian Affairs at the time, George Manypenny, was a proponent of this philosophy.[3]

The Tribe alleges that the 1855 Treaty of Detroit was intended as an exercise of this new policy; it asserts that the Treaty was "intended to secure permanent communities and homes for the bands and to insulate their communities from non-Indian settlers" and to "simplify" the planned "civilization" of the Tribes. As the Tribe reads them, the Executive Order and 1855 Treaty guaranteed that the predecessor bands of the Plaintiff Little Traverse Bay Bands of Odawa Indians would never have to leave a small portion of their ancestral homelands reserved to them and their future generations, and that they would have the power to exercise their sovereign powers within the boundaries of their reservation, which stretches 32 miles north-to-south from the northern tip of Michigan's lower peninsula along the eastern shore of Little Traverse Bay.

The Establishment of the Indian Claims Commission

Historically, the only way for Indian tribes to resolve grievances against the United States was through Congress. *Oglala Sioux Tribe of Pine Ridge Indian Reservation v. U.S. Army Corps of Engineers*, 570 F.3d 327, 331 (D.C. Cir. 2009). Prior to 1946, the Court of Claims was expressly prohibited from entertaining suits based on treaties, Act of Mar. 3, 1863, ch. 92, § 9, 12 Stat. 765,

[3] In the Annual Report of the Commission of Indian Affairs for the year 1853, the BIA superintendent responsible for Michigan suggested that in lieu of lands West of the Mississippi which the bands were entitled to under the Treaty of 1836, the United States could "grant" the Chippewa and Ottawa a reasonable amount of land within Michigan. The 1853 report suggested that "[t]he whole should be held for them in trust by the general government or the State of Michigan, and only conveyed to them in fee as they become sufficiently enlighten to be capable of taking charge of themselves."

The following year in the Annual Report, Manypenny noted that "[t]he peculiar and unfortunate situation of the Indians in Michigan . . . was fully stated last year, and the measure deemed best for their preservation and welfare suggested."

and courts were barred by sovereign immunity on non-treaty claims. But between 1836 and 1946, Indian tribes successfully lobbied Congress to enact special jurisdictional statutes to allow the Court of Claims to hear specific claims on 142 occasions.

However, by 1928, it was obvious that the case-by-case practice of granting jurisdiction was problematic and inefficient. *See The Problem of Indian Administration*, 48, 805–11 (John Miriam ed. 1928) ("The Miriam Report"). Congress responded to the problem by enacting "comprehensive legislation for the adjudication of both ancient and contemporary tribal claims against the federal government" with the Indian Claims Commission Act. *See* Indian Claims Commission Act of 1946, § 12 Pub. L. No. 79–726, 60 Stat. 1049 (later repealed but codified at 28 U.S.C. § 1505, 25 U.S.C. § 70 *et seq.*). The Act granted jurisdiction to the newly-created Indian Claims Commission to hear virtually all historic claims by Indian Tribes against the United States, including claims for "inequitable and fair treatment" and even claims "based upon fair and honorable dealings that are not recognized by any existing court of law or equity." ICCA, § 2(5).

Congress's intention was to "draw [ ] in all claims of ancient wrongs, respecting Indians, and to have them adjudicated once and for all." *Temoak Band of W. Shoshone Indians, Nev. v. United States*, 219 Ct.Cl. 346, 593 F.2d 994, 998 (1979). "Congress deliberately used broad terminology in the Act in order to permit tribes to bring all potential historical claims and to thereby prevent them from returning to Congress to lobby for further redress." *Oglala Sioux Tribe*, 570 F.3d at 331.

The Act also waived statute of limitations and laches as defenses, but provided that the ICC would only have jurisdiction to hear claims filed on or before August 13, 1951. *Id.* (citing 60 Stat. 1049, 1052 (1946)). The Act also anticipated that the ICC would cease operations after ten years, but given the enormous caseload, subsequent acts of Congress extended its lifespan to September 30, 1978, at which point, 102 pending claims were transferred to the Court of Claims for completion.

Relevant Claims before the ICC

The Tribe's predecessor filed several claims with the ICC that are relevant to this proceeding. First, in ICC Docket No. 58, it asserted that the United States had given consideration that was grossly inadequate and unconscionable for the land ceded in the Treaty of 1836. (ECF No. 429-1.) Specifically, the Ottawa and Chippewa Indians asserted that they had ceded 13,737,000 acres of land—including the land for which the Tribe now asserts a reservation—and was paid only 16.8 cents per acre. (PageID.5116.) The petition sought compensation for the reasonable value of the land ceded in the 1836 Treaty, costs, and attorney fees. (*Id.*)

Another petition, filed in 1949 as Docket Number 18E, also implicated the Treaty of 1836. (ECF No. 429-2.) There, several bands of the Chippewa Tribe asserted that they had been given inadequate consideration based on the same treaty. (PageID.5127.) They asserted that the consideration for the cession was $2,300,000, which "amounted to a fraction of the value of the lands ceded and constituted and was an unconscionable consideration." This petition also sought compensation for the lands ceded under the Treaty of 1820.

The ICC consolidated Dockets 18E and 58 into a single action. And on May 20, 1959, the ICC issued its first Findings of Fact, addressing standing and title to the land in question. *See* 7 Ind. Cl. Comm. 576 (available in the record at ECF No. 429-3.) In ¶ 5, the ICC concluded that Royce Area 205 was ceded to the United States by the Chippewa and Ottawa nations of Indians on March 28, 1836, but that the Tribes had retained Reservations on 401,971 acres of land in Articles Two and Three of the Treaty. (PageID.5141.) This included "one tract of fifty-thousand acres to be located on Little Traverse Bay." (*Id.*) The ICC further found that the reservations were limited in duration, based on the modifications in Article Four of the Treaty, which recited that the United States would pay $200,000 "in consideration of changing the permanent reservations in article two and article three to reservations for five years only, to be paid whenever their reservations shall be

surrendered, and until that time, the interest on said two hundred thousand dollars shall be annually paid to the Indians." (PageID.5143.)

Nine years later, the ICC issued an opinion on the valuation of the land ceded in the 1836 Treaty, finding that it had a valuation of ninety cents per acre. *See* 20 Ind. Cl. Comm. 137 (Dec. 23, 1968) (available in the record at ECF No. 429-4.) Based on this finding, the Commission found that the fair market value of the land ceded by the Tribe was $10,800,000. (PageID.5178.)

Then, in the final stage of the case, the Commission determined what consideration the Tribe had received, and whether the United States was entitled to any offsets under the ICCA. The government had argued that it was entitled to an offset for the 121,450 acres that was allotted to individual members of the Tribes in the 1860s and 1870s, per Article I of the 1855 Treaty. The government argued that the individual allotments should be deemed consideration for the land cession memorialized in the 1836 Treaty.

The Commission rejected the argument in an opinion on January 14, 1970, concluding that individual allotments were made up of land "collectively ceded in 1836, but on which [the Tribal members] had continued to reside," as they were allowed to do until they were needed for settlement. *See* 22 Ind. Cl. Comm. 372 (available on the record at ECF No. 429-5.) The Commission viewed the allotments as "a viable alternative to the unworkable plan" created by the 1836 Treaty, which called for the Tribe to be relocated into Northeast Minnesota ("the lands between Lake Superior and the Mississippi"). (PageID.5220.) Since the United States "saved itself the effort and expense of relocation, as well as the cost of lands" which it had obligated itself to purchase, the Commission ruled that the allotments were not part of the consideration for the 1836 Treaty. (*Id.*)

In spite of this ruling, the Commission held that the United States did not owe the tribe additional compensation for the 121,450 acres that it had allotted to the individual members of the

Tribe, reasoning that the Indians could not recover additional compensation for lands that were given to them. (PageID.5222.) Thus, the Commission deducted $109,305.67 from the total compensation owed to the Tribe. (*Id.*)

Eventually, after reconsideration of several issues, the Commission issued a final award in favor of the plaintiffs for $10,300,247 and an amended judgment was later entered in the amount of $10,109,003.55 (which reflected one payment by the government in the amount of $191,243.48). (*See* ECF Nos. 429-7; 429-8; 429-9.)

Finally, the Tribe's predecessors filed a third pertinent petition with the ICC on August 13, 1951, which was assigned Docket Number 364. In this petition, the Tribe raised four claims relating to the Treaty of 1855. Most importantly, the Tribe sought compensation for the value of lands which members of the tribes should have had allotted to them but were not. The government moved to dismiss that particular claim, and the Commission agreed. 35 Ind. Cl. Comm. 385 (available in the record at ECF No. 429-10.) The ICC explained its understanding of the 1855 Treaty:

> The 1855 Treaty marked the government's abandonment of the removal scheme. Article I partially restored the land ceded in 1836, but this time in the form of individual allotments. (citing Dockets 18-5 and 58, 22 Ind. Cl. Comm. 372, 375 (1970)).

(PageID.5261.) In light of that understanding, the Commission held that Tribe had already been compensated for any unallotted lands by virtue of the prior ICC petition before it. In that earlier proceeding, it had "asked no questions about whether some of the rest of the land should have been allotted[,]" and had instead "awarded compensation for all of it." (PageID.5263.) Thus, the Commission found that the claim for the value of allegedly unallotted land was barred by the resolution of the petition filed in Docket 18E. (*Id.*)

II.

"For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *Southern Ohio Bank v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 479 F.2d 478, 480 (6th Cir.1973). But the Court "need not accept as true legal conclusions or unwarranted factual inferences." *Mixon v. Ohio,* 193 F.3d 389, 400 (6th Cir.1999). A Rule 12(c) motion "is granted when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law." *Paskvan v. City of Cleveland Civil Serv. Comm'n,* 946 F.2d 1233, 1235 (6th Cir.1991).

In reviewing a motion to dismiss, the Court "may consider the complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein." *Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir.2008). Here, the Defendants lean heavily on public records relating to the ICC, but the Court may resolve the motion without converting it to a motion for summary judgment. *Kreipke v. Wayne State Univ.*, 807 F.3d 768 (6th Cir. 2015).

However, the Tribe points to another procedural irregularity in the motion: The Cities and Counties are relying on in large part on estoppel, which they did not plead as an affirmative defense. The Tribe asserts that, had the Cities and Counties pleaded such an affirmative defense, it may have filed a motion to strike under Rule 12(f), but by the time the instant motion was filed, the deadline for a motion to strike had long passed. The Tribe thus urges the Court to convert the motion to one for summary judgment. The Cities and Counties do not respond to this argument in their reply brief. Ultimately, since the motion relies on purely legal defenses, it makes little difference whether the

motions are construed under Rule 12 or Rule 56, but because neither party has cited matters outside of the pleadings or public records, the Court considers it a motion under Rule 12.

III.

The Cities and Counties seek judgment on the pleadings and offer three arguments for the Court to do so: judicial estoppel, issue preclusion, and lack of jurisdiction/statute of limitations under ICCA.

Judicial Estoppel. First, the Cities and Counties allege that before the ICC, the Tribe's predecessor took positions that are materially inconsistent with the position it now advances, so they advocate for the Court to invoke judicial estoppel to prevent the Tribe claiming that it retains an interest in the alleged reservation. Specifically, the Cities and Counties point towards the ICC proceedings in which the Chippewa and Ottawa alleged that they had been totally divested of 13 million acres of land for unconscionable consideration, which led to a final judgment of more than ten million dollars.

The Cities and Counties argue that Tribe's position in the ICC litigation is clearly inconsistent with the instant case, because the Tribe had previously demanded compensation for all of the lands they had ceded, and they prevailed on those claims. And now, their position is that the Treaty of 1855 created a permanent reservation on Little Traverse Bay. The Cities and Counties assert that, had the Tribe retained such a reservation, the government would have been entitled to a set-off to deduct the value of the reservation from the ultimate award, but it did not pursue such an offset because no one believed that a reservation had been created.

In response, the Tribe asserts that the right to title is not the same as jurisdiction. In other words, they do not contest that their predecessors ceded 13 million acres of land under the Treaty of 1836, and that they fully litigated their claims against the United States for the compensation they

were entitled to under ICCA. However, the Tribe argues because jurisdiction and title are distinct concepts, their position in this litigation is perfectly consistent with its claims before the ICC.

"Judicial estoppel is an equitable doctrine that preserves the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposite to suit an exigency of the moment." *Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1217–18 (6th Cir. 1990); *see also New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). "The doctrine of judicial estoppel bars a party from (1) asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding, where (2) the prior court adopted the contrary position 'either as a preliminary matter or as part of a final disposition.'" *Browning v. Levy*, 283 F.3d 761, 775 (6th Cir. 2002) (quoting *Teledyne*, 911 F.2d at 1218). The doctrine of judicial estoppel, however, "is applied with caution to avoid impinging on the truth-seeking function of the court because the doctrine precludes a contradictory position without examining the truth of either statement." *Teledyne*, 911 F.2d at 1218 (footnote omitted). Moreover, a court should consider whether a party has gained an unfair advantage from the court's adoption of its earlier inconsistent statement. *New Hampshire*, 532 U.S. at 751.

The Cities and Counties' argument bears great resemblance to the argument made and rejected before the Seventh Circuit in *Menominee Indian Tribe of Wisconsin v. Thompson*, 161 F.3d 449 (7th Cir. 1998). There, the Menominee Indian Tribe sought declaratory and injunctive relief from Wisconsin state officials, claiming it had retained off-reservation usufructuary rights on lands within the State. The defendants moved to dismiss, arguing, *inter alia*, judicial estoppel. As the Seventh Circuit summarized:

> The defendants contend that the Menominee Tribe may not assert usufructuary rights off-reservation because in prior cases it took the position that the various treaties at issue in this case resulted in the cession of all "right, title, and interest in and to" their Wisconsin land.

> **Specifically, the defendants point to several claims filed in the Indian Claims Commission in which the Tribe sought compensation for the cessation of "right, title, and interest" to off-reservation lands embodied in the 1848 and 1854 Treaties. These claims were later consolidated and settled for $8,500,000.**
>
> Additionally, the defendants maintain that, in a case decided by the Supreme Court in 1968, the Menominee alleged that in exchange for on-reservation usufructuary rights immune to state regulation the Tribe relinquished all right, title and interest to lands ceded in the 1831, 1836 and 1848 Treaties.

Id. at 455 (emphasis added) (citations omitted). Although the court ultimately affirmed the district court's dismissal of the complaint, it concluded that judicial estoppel did not bar the tribe from asserting its continued right to usufructuary rights on certain lands off of its reservations. *Id.*

As to the claims presented to the ICC, the court held that judicial estoppel was unwarranted because the only claims raised in those proceedings were that the United States had underpaid the Menominee Tribe for the *title* to their Wisconsin lands, and thus, the court reasoned that it could not "be said with certainty that the parties to the Claims Commission litigation understood the Tribe's claims to encompass use rights, as opposed to occupancy rights or title to the ceded lands." *Id.*

Here, like in *Menominee Tribe*, the Tribe's proceedings before the ICC are raised as potential grounds for judicial estoppel. But as the Seventh Circuit explained, "it cannot be said with certainty" that the parties to the ICC proceedings understood that the claims at issue encompassed the Tribes' right to exercise *jurisdiction* over the land in question. The claims presented to the ICC by the Tribe's predecessor arose from the cession of title to land for inadequate compensation; the claims did not address whether or not a reservation had been created in 1855 or whether a reservation continued to exist between 1855 and the time of that litigation. Accordingly, the Court does not find that the Tribe's current litigation position is contrary to its position in the ICC proceedings, which resulted in their predecessor's successful claim for inadequate compensation based on the cession of lands in 1836. Thus, judicial estoppel is inapplicable to the current claims.

Issue Preclusion.

The Cities and Counties also pursue a parallel theory for issue preclusion. It fails for largely the same reason as the judicial estoppel argument.

Issue preclusion "refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided." *Rawe v. Liberty Mut. Fire Ins. Co*, 462 F.3d 521, 528 n.5 (6th Cir. 2006). It "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (internal quotation marks and citation omitted).

Issue preclusion applies where: (1) the identical issue was raised and actually litigated in a prior proceeding; (2) the determination of the issue was necessary to the outcome of the prior proceeding; (3) the prior proceeding resulted in a final judgment on the merits; and (4) the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior proceeding. *Aircraft Braking Sys. Corp. v. Local 856, Int'l Union, United Auto., Aerospace & Agric. Implement Workers, UAW*, 97 F.3d 155, 161 (6th Cir. 1996). More specifically, when a litigant asserts issue preclusion based on ICC proceedings, the Court must examine the record and pleadings of an ICC proceeding "to determine whether an issue was actually litigated and necessary to the outcome of a case." *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 853 F. Supp. 1118, 1137 (D. Minn. 1994), *aff'd* 124 F.3d 925 (8th Cir. 1995), *aff'd* 526 U.S. 172 (1999).

The Cities and Counties take the position that the Tribe's asserted right to a reservation was actually litigated in the ICC proceedings. However, it does not appear to the Court that the ICC ever litigated whether the 1855 Treaty created a permanent reservation. In Dockets 18E and 58, the ICC considered only whether the government had given inadequate consideration for the land ceded by

the Tribe by the Treaty of 1836. That litigation cannot have any issue preclusive effect on the Tribe's current claims, because the current claims were not "actually litigated."

While the Cities and Counties argue that the United States could have asserted a set-off for the value of the continued existence of the reservation,[4] there is no indication that it attempted to do so or that the eventual judgment in favor of the Tribe incorporated a decision that the reservation had been disestablished. This is insufficient for application of issue preckusion. *See, e.g.*, *Mille Lacs Bands of Chippewa Indians v. Minnesota*, 853 F. Supp. 1118 (D. Minn. 1994) ("The ICC's award of compensation for the lands ceded under the 1837 Treaty based upon their highest and best valuation does not indicate that the ICC concluded that the usufructuary rights had been extinguished."); *id.* ("If the ICC had been awarding compensation for the reserved rights, it would have had to make a finding that they were extinguished."); *Mille Lacs Cir. Ct.*, 124 F.3d at 925 ("We cannot accept the conclusion that [the ICC] extinguished an important body of rights bargained for and explicitly reserved in a treaty without any mention of those rights."), *aff'd*, 526 U.S. 172 (1999); *see also Ottawa Tribe of Oklahoma v. Speck*, 447 F. Supp. 2d 835, 843 (N.D. Ohio 2006) ("Absent specific language addressing the reserved hunting and fishing rights, the decisions of the ICC do not reflect actual litigation of that issue.").

Accordingly, the ICC's consideration of the individual allotments cannot bear on the issue here as "allotment in severalty to individual Indians . . . is entirely consistent with continued reservation status." *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1475 (10th Cir. 1987).

[4] (*See* e.g., ECF No. 530 at PageID.6203 ("If a reservation existed, either as a result of the 1836 Treaty, or as plaintiff now argues as a result of the 1855 Treaty without regard to the 1836 Treaty, the United States would obviously have raised that as a defense to the claim for additional compensation for the original cession or in response to the demand for an accounting under the 1855 Treaty.").)

Nor can the litigation that occurred under Docket 364 support issue preclusion. There, the Tribe's predecessor did invoke the Treaty of 1855 as the basis for the action, but the only claim pertaining to land focused on the value of allegedly unallotted land. The ICC determined that the previous ICC litigation had compensated the tribe for the full value of the land without regard to whether or not it had actually been allotted, such that the Tribe could not later seek additional compensation for land that had gone unallotted.

The Tribe did not argue before the ICC that the Treaty of 1855 created a reservation or that the Treaty of 1855 authorized it to assert its jurisdiction over any of the lands, despite ceding title. Therefore, the ICC opinion of January 27, 1975, which described the 1855 Treaty as "mark[ing] the Government's abandonment of the removal scheme" imposed by the Treaty of 1836 and restoring some of the lands ceded in 1836 "in the form of individual allotments" will not provide a basis for issue preclusion. While the ICC wrote of its understanding of the purpose and effect of the two pertinent treaties, the effect of the 1855 Treaty as to jurisdiction—as opposed to title—was not litigated. Accordingly, the Court cannot grant the Cities and Counties' motion on this ground. *See supra Mille Lacs; Speck.*

Statute of Limitations & the Jurisdictional Bar of the Indian Claims Commission Act.

Finally, the Cities and Counties argue that the Indian Claims Commission Act itself bars the Tribe's claim.

Congress enacted the Indian Claims Commission Act in 1946 to hear and determine all tribal claims against the United States that accrued before August 13, 1946. The ICCA confined the Commission's jurisdiction to tribal claims that accrued before its 1946 enactment, while it conferred jurisdiction on the Court of Claims to adjudicate any tribal claim accruing after 1946 that would be cognizable in the Court of Claims if the claimant were not an Indian tribe. ICCA § 24, 28 U.S.C. § 1505 (1982). Congress also limited the period for filing tribal claims with the Indian Claims

Commission to five years. Any claim that accrued before August 13, 1946, and which was not filed with the Commission by August 13, 1951, could not "thereafter be submitted to any court or administrative agency for consideration," nor could such a claim "thereafter be entertained by the Congress." ICCA § 12, 25 U.S.C. § 70k (1976). In addition, the Act provided that "payment of any claim . . . shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy. *Id.* § 70u.

Here, the Cities and Counties argue that the Tribe is barred from bringing this action because the claim arose prior to 1946. When taking the Tribe's complaint to be true, this argument is unpersuasive for several reasons.

First, the ICC lacked authority to litigate the jurisdictional claim now brought by Tribe. The ICC did not have "jurisdiction to extinguish title on its own authority; it simply had jurisdiction to award damages for takings or other wrongs that occurred on or before August 13, 1946." *United States v. Dann*, 873 F.2d 1189, 1198 (9th Cir. 1989). "The [Tribe's] claims in this action are based on its position that its [right to a reservation] w[as] never extinguished. The ICC would have dismissed any claim relying on existing rights for lack of jurisdiction." *Mille Lacs Dist. Ct.*, 853 F. Supp. at 1139. In other words, while the ICC could have adjudicated a claim that prior to 1946, the reservation had been disestablished by the Federal Government, it could not adjudicate a suit based on the Tribe's claim that it maintains a reservation and that the State of Michigan has interfered with its ability to exercise its authority on the reservation. *Id.*

Second, the ICC could not hear the Tribe's claim as it seeks only relief from the State of Michigan, and the ICC was limited to adjudicating claims against the United States. *Id.* (citing *Sokaogon Chippewa Community v. Wisconsin*, 879 F.2d 300, 302 (7th Cir. 1989); *Speck* 447 F. Supp. at 841–42.

Third, despite the broad scope of the ICCA, the Tribe's claim does not fall under any of the five categories that the ICC was authorized to adjudicate. The Tribe asserts that the Treaty of 1855 created a reservation. And if the cause of action the Tribe flowed from the Treaty of 1855, perhaps there would be an argument that ICCA bars the claim under ICCA § 2(1) as a claim arising under a treaty of the United States.

However, the Tribe's claim, taken as pleaded, does not arise from the Treaty itself. Like the claim in *Mille Lacs*, the Tribe alleges that its cause of action arises from *current* violations of its treaty rights by the State in which it is located, which could not have been brought before the ICC because they had not yet occurred. *See* 853 F. Supp. at 1139–40.

In sum, the Tribe has pleaded a claim that is not barred by the Indian Claims Commission Act.[5]

The caselaw cited by the Cities and Counties does not alter this conclusion. First, in *Navajo Tribe*, the case began with a claim before the ICC, filed by the Navajo Tribe, seeking compensation for the cession of its lands to the United States under the Treaty of June 1, 1868. *See Navajo Trive of Indians v. State of New* Mexico, 809 F.2d 1455, 1458–60 (10th Cir. 1987). The core contention was that the Navajo Tribe held aboriginal title to 40 million acres of land at the time of the Treaty, and that the government had paid an unconscionably low sum for the land. *Id.* The ICC agreed,

[5] "A tribe cannot avoid the Indian Claims Commission Act through 'artful pleading.'" *Oglala Sioux Tribe v. U.S. Army Corp. of Engs.*, 570 F.3d 327, 332 (D.C. Cir. 2009). Nor can a tribe "obtain review of a historical land claim otherwise barred by the Act by challenging present-day actions involving the land." *Id.*

If it later appears that the Tribe has artfully pleaded its claims against the State of Michigan to litigate-by-proxy a claim against the United States, the Court will revisit the statutory bar imposed by the ICCA.

finding that the tribe held title, and that it was entitled to additional compensation. The ICC findings led to a final judgment of $14.8 million, entered in 1981. *Id.* at 1461–62.

The next year, the Navajo Tribe filed suit in federal district court against the United States and the State of New Mexico seeking a declaratory judgment that it had equitable title to other, unallotted lands that had been added to the Navajo Reservation by two executive orders, but which had been restored to the public domain in two subsequent executive orders. *Id.* The tribe reasoned that the government had breached its fiduciary duty to the tribe, and so it urged the court to declare the latter two executive orders void. *Id.*

The district court dismissed the complaint for lack of subject-matter jurisdiction:

> The Tribe's claims against the United States accrued prior to 1946 and fell within the exclusive jurisdiction of the Indian Claims Commission. Having failed to pursue the exclusive remedy available under the ICCA within the time prescribed in § 70k of the Act, the Tribe may not now seek relief in this Court.

On appeal, the Tribe contended that the district court erred by concluding that the claim raised in the complaint was a "claim" within the exclusive jurisdiction of the Indian Claims Commission. *Id.* at 1463. It reasoned that because the Commission "was only authorized to award money damages for the extinguishment of title to Indian lands," its suit to establish the Tribe's existing title to land, could not have been entertained before the Commission. *Id.*

The Tenth Circuit affirmed the dismissal by the district court in a lengthy opinion. It first rejected the Tribe's attempt to narrowly define "claim" for purposes of the ICC:

> The Tribe's assertion that the ICC was only empowered to hear controversies involving a 'taking' of land, where Indian title was concededly extinguished, entails far too restrictive an interpretation of the word "claim" under the ICCA.

The court explained that the purpose of the ICCA was to "dispose of the Indian Claims problem with finality." *Id.* at 1464 (quoting *United States v. Dann*, 470 U.S. 39, 45 (1985)). Congress had recognized that Indian claims were "varied in their nature and origin," so it had granted the ICC

jurisdiction that was "as broad as possible." *Id.* And the legislative history also supported that understanding: The House Committee responsible for drafting the ICCA was of the unanimous opinion that "the jurisdiction ought to be broad enough so that no tribe could come back to Congress ten years [later] and say that it had a meritorious claim which the Claims Commission was not authorized to consider." *Id.* (quoting 92 Cong. Rec. 5312 (1946)). The ICCA thus explicitly authorized five types of claims, which enveloped "all possible accrued claims":

> The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claim in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

ICCA § 2, 25 U.S.C. § 70a (1976). The court thus explained that while perhaps a taking of land by the government for less-than-adequate compensation may have been the most frequent claim adjudicated by the ICC, "in no means . . . was [this type of action] the sole land-interest claim within the Commission's jurisdiction." *Id.*

The *Navajo Tribe* court then analogized to *Yankton Sioux Tribe of Indians v. United States*, a Supreme Court case which predated the enactment of the ICCA. *Id.* at 1466 (citing *Yankton*, 272 U.S. 351 (1926)). There, the *Yankton Sioux Tribe* successfully lobbied Congress to pass an act authorizing jurisdiction for the Court of Claims to "hear, and report a finding of fact" to establish what interest, title, ownership, or right of possession the tribe may have possessed to a certain tract of land. *Id.* The case eventually went to the Supreme Court, which concluded that the *Yankton*

Sioux Tribe did possess title to the land and ordered just compensation for the land as a taking under the power of eminent domain. The *Navajo Tribe* court found the relief granted by the Supreme Court in *Yankton* highly relevant to the case before it:

> It is significant that the Court ordered monetary compensation "as for" a taking because of non-Indian settlement of the lands, even though it recognized the Indians' fee title. That decision, like the early decision that the Indian Claims Commission was only empowered to award money damages, goes to the heart of the Tribe's argument in this case.
>
> The Tribe, even if it had timely filed its claim under the ICCA, could not have quieted title in these lands or maintained an action in ejectment. However, its assertion of present title could have been heard before the Commission, just as the Yankton Sioux Tribe's claim was heard under an ICCA-precursor jurisdictional act. The Tribe simply would have had to accept just monetary compensation if the Commission found their claim to title valid.
>
> This restriction as to remedy represents a fundamental policy choice made by Congress out of the sheer, pragmatic necessity that, although any and all accrued claims could be heard before the Commission, land title in 1946 could not be disturbed because of the sorry injustices suffered by native Americans in the eighteenth, nineteenth, and early twentieth centuries.

Id. at 1466–67.

The Court then further faulted the tribe for conflating concepts of claims and remedies and collapsing the distinct concepts into a single, jurisdictional question. *Id.* at 1467. The Court explained that "the underlying substantive claim" established the Commission's jurisdiction because under the Tribe's remedy-based theory, artful pleading would allow litigants to circumvent the Act. *Id.* In sum, the *Navajo Tribe* court held that since the tribe's claim arose under executive orders of the President and had accrued prior to 1946, the tribe was required to present it to the Commission within the five-year statute of limitations. *Id.* at 1468–69.

Here, as indicated earlier, the Tribe's claim does not emanate from an action of the federal government that occurred prior to 1946, like the executive orders at issue in *Navajo Tribe*. Instead,

the claim arises from the State of Michigan's alleged failure to recognize the Tribe's reservation. Moreover, as the *Navajo Tribe* court explained, "adjudicating reservation boundaries is conceptually quite distinct from adjudicating title to the same lands." *Id.* at 1475. In fact, the two inquiries are so distinct that they do not "necessarily have anything in common with the other" because "title and reservation statutes [were] not congruent concepts" in Indian law. *Id.* (quoting *Ute Indian Tribe v. Utah*, 773 F.2d 1087, 1097 (10th Cir. 1985) (en banc) (Seymour, J., concurring), *cert denied*, 479 U.S. 994 (1986).

The *Navajo Tribe* panel further noted that "allotment in severalty to individual Indians and subsequent entry by Non-Indians is entirely consistent with continued reservation status." *Id.* (quoting *Ute Indian Tribe*). As pleaded, the Tribe has brought a boundary adjudication case. *Navajo Tribe* was a cession of title case. Thus, *Navajo Tribe* is also factually distinguishable because the injury alleged emanated from an executive order, and the tribe sought relief from the federal government.

The Cities and Counties also rely on *Western Shoshone National Council v. Molini*. 951 F.2d 200 (9th Cir. 1991). There, the Shoshone Tribe sought to enjoin Nevada Department of Wildlife regulations because the regulations allegedly interfered with the tribe's right to hunt and fish. *Id.* at 201. However, the district court granted summary judgment, accepting the state's argument that prior litigation before the ICC had conclusively established that the tribe no longer held any title to the lands in question. *Id.* Specifically, the ICC had held that Shoshone title to the land in question had been extinguished "by the gradual encroachment by whites, settlers, and others, and the acquisition, disposition or taking of their lands by the United States" and ordered the United States to pay $26 million in compensation for "full title extinguishment." *Id.*

On appeal, the Shoshone argued that the ICC litigation had involved only an adjudication of rights between the United States and the tribe, so it could not have raised its claim against the State

of Nevada in the prior litigation. *Id.* at 202. Thus, it asserted that the statutory bar of § 12, 25 U.S.C. §70u, was not applicable. *Id.* The Ninth Circuit disagreed, noting that in two prior decisions, it had held that a Commission award barred an Indian tribe from later asserting title in actions against states. The court found the argument presented to be indistinguishable from the earlier binding precedents and held "that the award in [the ICC litigation] constituted a general determination of title which bar[red] the Shoshone from asserting title against the State of Nevada." 951 F.2d at 202.

In large part, the *Shoshone* court relied on the Supreme Court's opinion in *Oregon Department of Fish and Wildlife v. Klamath*, in which the Supreme Court construed a 1901 agreement between the Klamath Tribe and United States giving up certain lands that had formerly been part of the Tribe's reservation. *Id.* at 202–03 (citing 473 U.S. 753, 760 (1985). The *Klamath* court interpreted language in the agreement that the Klamath would "cede, surrender, grant, and convey to the United States all their claim, right, title, and interest" in reservation lands to exterminate the tribe's special hunting and fishing rights that it had previously possessed. *Id.* Thus, the *Shoshone* Court reasoned that under *Klamath*, §70u barred the Shoshone Tribe from asserting their treaty rights in litigation against the State of Nevada because the ICC had ordered the government to pay compensation for "full title extinguishment." *Id.*

Accordingly, the Cities and Counties argue that the Court can follow *Shoshone*'s rationale, and find that § 70u bars the Tribe's claim, despite the federal government not being party to this suit. In other words, the Cities and Counties assert that if the Shoshone were barred from asserting their hunting and fishing rights against the State of Nevada because the ICC concluded that its title to the lands in question had been extinguished, the same should be true for the Tribe here.

However, key to the *Shoshone* panel's conclusion was a finding that there was no treaty granting the hunting and fishing rights asserted. Instead, the Shoshone Tribe was asserting aboriginal fishing and hunting rights. *See id.* at 203. Therefore, the court distinguished from several other circuit

opinions which had concluded that treaty-based rights could not be extinguished absent an express termination of those rights. *Id.*

Here, the Tribe asserts treaty rights stemming from the Treaty of 1855. Applying *Western Shoshone*'s exception to the ordinary rule—that treaty-based rights may only be extinguished by express termination—would be erroneous, especially in the case's current posture. *Cf. Mille Lacs Dist. Ct.* 853 F. Supp. at 1138 (denying summary judgment to the State-Defendant even though the ICC had adjudicated the tribe's treaty-based claim for inadequate compensation for lands ceded; the same treaty had also explicitly reserved usufructuary rights, and it remained unclear whether those rights had also been terminated).

In sum, the Indian Claims Commission Act only bars federal court litigation when the claims could have been brought prior to 1946 and are brought against the United States. While the Tribe's claim in this case relates to rights under a treaty with the United States, it has sued the State of Michigan for failing to recognize its alleged reservation. Such a claim meets neither of ICCA's prerequisites.

IV.

For the reasons just explained, the Court will **DENY** the Cities and Counties' motion for judgment on the pleadings.

ORDER

For the reasons given in the accompanying opinion, the Intervenor-Defendants' (Charlevoix County, Emmet County, Harbor Springs, and Petoskey) Motion for Judgment on the Pleadings (ECF No. 420) is **DENIED.**

Date: January 31, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge