

RECREATIONAL MARIHUANA BALLOT PETITIONS

Initiated ordinances under the MRTMA

October 17, 2019

MAMA FALL CONFERENCE

OCTOBER 17, 2019

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MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT (EXCERPT) INITIATED LAW 1 OF 2018

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

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.

AUGUST 6, 2019 ELECTION


- ▶ Highland Park (opt in) Failed
 - ▶ Crystal Lake (opt out) Passed
 - ▶ Vanderbilt (opt in) Failed
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NOVEMBER 5, 2019

- ▶ Allen Park (opt in)
- ▶ Hudson (opt in)
- ▶ South Haven (opt out)

- ▶ Romulus (received petitions for an opt in ordinance, which were rejected)
- ▶ Highland Park (received another petition for an opt in ordinance, which was rejected as untimely using application of Michigan Election Law in a ruling by Wayne County Circuit Court Chief Judge Timothy Kenny)

ISSUES

- ▶ **Section 6 provides “such ordinance shall be submitted to the electors of the municipality at the next regular election.”**
 - ▶ What is the “next regular election”?
 - ▶ What deadlines are applicable? Election Law? Home Rule Act?
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MICHIGAN ELECTION LAW (EXCERPT)

ACT 116 OF 1954

► MCL 168.3

(k) "Regular election" means an election held on a regular election date to elect an individual to, or nominate an individual for, elective office in the regular course of the terms of that elective office.

(l) "Regular election date" means 1 of the dates established as a regular election date in section 641.

MICHIGAN ELECTION LAW (EXCERPT)

ACT 116 OF 1954

► MCL 168.641

(1) Except as otherwise provided in this section, an election held under this act shall be held on 1 of the following regular election dates:

(a) The May regular election date, which is the first Tuesday after the first Monday in May.

(b) The August regular election date, which is the first Tuesday after the first Monday in August.

(c) The November regular election date, which is the first Tuesday after the first Monday in November.

(d) In each presidential election year when a statewide presidential primary election is held, the date of the statewide presidential primary election as provided in section 613a.

(2) If an elective office is listed by name in section 643, requiring the election for that office to be held at the general election, and if candidates for the office are nominated at a primary election, the primary election shall be held on the August regular election date.

(3) Except as otherwise provided in this subsection and subsection (4), a special election shall be held on a regular election date. A special election called by the governor under section 145, 178, 632, 633, or 634 to fill a vacancy or called by the legislature to submit a proposed constitutional amendment as authorized in section 1 of article XII of the state constitution of 1963 may, but is not required to be, held on a regular election date.

(4) A school district may call a special election to submit a ballot question to borrow money, increase a millage, or establish a bond if an initiative petition is filed with the county clerk. The petition shall be signed by a number of qualified and registered electors of the district equal to not less than 10% of the electors voting in the last gubernatorial election in that district or 3,000 signatures, whichever number is lesser. Section 488 applies to a petition to call a special election for a school district under this section. In addition to the requirements set forth in section 488, the proposed date of the special election shall appear beneath the petition heading, and the petition shall clearly state the amount of the millage increase or the amount of the loan or bond sought and the purpose for the millage increase or the purpose for the loan or bond. The petition shall be filed with the county clerk by 4 p.m. of the twelfth Tuesday before the proposed date of the special election. The petition signatures shall be obtained within 60 days before the filing of the petition. Any signatures obtained more than 60 days before the filing of the petition are not valid. If the special election called by the school district is not scheduled to be held on a regular election date as provided in subsection (1), the special election shall be held on a Tuesday. A special election called by a school district under this subsection shall not be held within 30 days before or 35 days after a regular election date as provided in subsection (1). A school district may only call 1 special election pursuant to this subsection in each calendar year.

(5) The secretary of state shall direct and supervise the consolidation of all elections held under this act.

(6) This section shall be known and may be cited as the "Hammerstrom election consolidation law".


MICHIGAN ELECTION LAW (EXCERPT)

ACT 116 OF 1954

► MCL 168.2

(g) "Election" means an election or primary election at which the electors of this state or of a subdivision of this state choose or nominate by ballot an individual for public office or decide a ballot question lawfully submitted to them.

ISSUES (CONTINUED)

- ▶ **Section 6 does not provide a process for approval of the petitions.**
 - ▶ Are the petitions subject to approval by the City Attorney?
 - ▶ Who prepares the ballot question?
 - ▶ How is the the ballot language approved?
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RECENT DEVELOPMENT

League of Women Voters et al v. Jocelyn Benson (Case No. 19-000084) Michigan Court of Claims – Decided September 27, 2019

► Held the following sections of 2018 PA 608 are unconstitutional:

(1) the 15% geographic requirement in MCL 168.471 and corresponding sections at MCL 168.477(1), and MCL 168.482(4); and

(2) the check-box requirement in MCL 168.472(7).

ISSUES (CONTINUED)

- ▶ Section 6 provides *“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.”*
- ▶ What happens if the proposed ordinance goes beyond these parameters? (particularly in Villages and Townships)
- ▶ How does the statute relate to the City Charter?

ISSUES (CONTINUED)

▶ **After the Election**

- ▶ If an initiated ordinance is adopted, may it be amended?
Repealed?
- ▶ Would this require a simple majority or a supermajority?

QUESTIONS?

