

What does Marijuana have to do with Lake Living?

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In November of 2008, Michigan voters approved the possession, use, sale and growing of medical marijuana with certain limitations. This past November, Michigan voters approved the use of marijuana for recreational purposes subject to certain regulations. Undoubtedly, the use of both medical and recreational marijuana will affect all aspects of Michigan society, including lake neighborhoods.

This issue's column examines several different aspects of how legalized marijuana can affect lake communities – zoning and planning laws; where marijuana can be smoked or consumed, properties owned by lake associations and operating boats and vehicles while under the influence of marijuana.

Michigan law now allows the growing and sales of both medical and recreational marijuana. Local municipalities (cities, villages and townships) do, however, have the legal authority to regulate and limit commercial uses via zoning and licensing ordinances. If officials in your municipality do not want to allow the commercial growing, warehousing, or sales of medical or recreational marijuana, the municipality should amend its zoning ordinance accordingly. There may be other police power ordinances that may also be appropriate. Local municipalities should also determine whether to allow the smoking or consuming of marijuana in government buildings, public parks, municipal marinas, government arenas and other municipal facilities.

What about driving vehicles, operating watercraft and using snowmobiles while under the influence of marijuana? In Michigan, it is not illegal to consume alcoholic beverages before operating an automobile, truck, snowmobile or boat; it is illegal to so operate a motor vehicle or boat where a person's blood alcohol level reaches a certain point or impaired behavior renders the operation of such vehicle or boat unsafe. It is also unlawful to consume an alcoholic beverage while actually operating a motor vehicle, boat or snowmobile. All of that is also true with marijuana use. It is illegal in Michigan to operate an automobile, truck, snowmobile or watercraft on a public road, on a lake or in any other public place while actually smoking or consuming marijuana or "while under the influence" of

marijuana. With regard to vehicles and trucks on public roads, there are generally two marijuana-related offenses. Those offenses include Operating While Intoxicated and Operating While Visibly Impaired (the lesser offense). The same offenses apply to people who operate watercraft. The legal limit for marijuana impairment is .08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine for operating a watercraft, just the same as it is for a motor vehicle. Unfortunately, to date, there is no easily administered on-site test for determining such amounts, although law enforcement agencies nationwide are attempting to develop easy to administer and reliable tests for determining marijuana impairment.

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The use of marijuana can also increase a person's liability potential. If someone injures or kills another person or destroys property while under the influence of marijuana, the perpetrator can potentially not only be found guilty of a criminal offense, but can also be liable to the person injured or the deceased person's estate. Such liability could potentially occur even if the perpetrator's blood contains only trace amounts of tetrahydrocannabinol (THC). THC is the psychoactive compound that creates the high sensation after using marijuana.

Under the laws governing both medical marijuana and recreational marijuana, a person cannot smoke or consume

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marijuana in a “public place.” What constitutes a public place? Unfortunately, Michigan law does not fully define what constitutes a “public place” for purposes of not being able to smoke or consume marijuana. Is smoking or consuming marijuana while a boat is anchored (and the engine turned off) on a public lake deemed a “public place?” Likely. Others can view the act from afar. What about on a private lake? Probably. What if a guest desires to smoke marijuana on the open front porch of your cottage facing the lake? That would likely also be deemed a public place. What if the porch did not face a lake and was entirely fenced in so that no one else outside the porch area could see the porch? In that case, it would likely not be a public place. As you can see, enforcement of Michigan law regarding marijuana use will prove difficult with regard to what constitutes a public place.

If a lake or property owners association has employees, the association can and should address marijuana use in

its employee manual. Private employers can ban the use of marijuana (whether medical or recreational) for employees, even when the employees are off duty.

A lake association can also forbid the consumption or use of marijuana on any association owned property such as a clubhouse, boat ramp or park.

For more information regarding the impacts of marijuana on communities throughout Michigan, please visit www.bloomsluggett.com. 

