



February 1, 2015

To: Office of Councilman James Tate  
DeAndree R. M. Watson  
Coleman A. Young Municipal Center  
2 Woodward Avenue, Suite 1340  
Detroit, MI 48226  
E: [watsond@detroitmi.gov](mailto:watsond@detroitmi.gov)

SENT VIA EMAIL ONLY

From: Benjamin Rosman, Esq.  
CEO, PSILabs

Re: Provisioning Center/Safety Compliance Facility regulations within the Detroit City Code

Dear Mr. Watson,

Thank you for sending the Legislative Policy Division's (LPD) preliminary review and draft language regarding the regulation of Provisioning Centers and Safety Compliance Facilities within the City of Detroit. I also greatly appreciate the opportunity to provide feedback. Please find below my notes, general commentary, attachments and suggested edits.

### **1. Cannabis as Medicine**

As the LPD noted in their review, cannabis has been found to help treat or alleviate a great number of medical ailments. Many peer-reviewed journal articles and other published research, including the National Academy of Sciences' Institute of Medicine, have examined these benefits. There is evidence to support many claims of varying medical treatments, but regardless of where one stands on the medical efficacy of cannabis, the truth remains – for better or for worse, a significant sector of the population is using cannabis as medicine.



## **2. Need for Testing**

The majority of medical cannabis is consumed by smoking or vaporizing the flower or concentrated product, or eating a cannabis-infused food or concentrated product. Because medical cannabis has created such a delicate State and Federal legal framework, we are left with food and medicine that is currently unregulated and largely untested.

Many of those fighting cancer, often too ill to smoke or vaporize cannabis, choose to use a highly concentrated oil instead. These oils are made using chemical solvents like butane, hexane, naphthalene and ether. If the extraction isn't performed correctly, dangerous residual solvents will remain in the oil, rendering it toxic to anyone, especially a patient with vulnerable health status (e.g., patients with cancer, HIV).

Even patients in good health can risk harm to their physical health as a result of consuming cannabis products containing pesticides at unacceptable levels. In addition, patients may experience potential dosage complications due to unpredictable and variable levels of potency. Safety, reliability and consistency in the marketplace simply cannot be assured in an unregulated industry. In a marketplace of patients, the results can potentially be serious.

The heart of House Bill 4271 was **mandatory testing**; that is, a provisioning center could not sell any product that had not been tested at a licensed safety compliance facility. The Detroit City Code must adopt a mandatory testing provision should it choose to implement appropriate regulatory measures on existing and new provisioning centers.

## **3. The Role of a Qualified Cannabis Testing Laboratory**



Unlike a provisioning center, whose function is to sell and/or provide medicine to patients and caregivers enrolled in Michigan’s Medical Marihuana Program (MMMP), a cannabis testing laboratory is a professional entity that carries out regulatory quality control and consulting services in the medical cannabis industry. Simply put, it helps bring legitimacy to the industry.

Specifically, a laboratory collects small samples of medical cannabis from clients, tests the samples for contaminants and potency using mass spectrometry and other methods of analysis, and then returns comprehensive data analysis to clients. If a client is unhappy with a result, or would like to create a better product, consulting services are offered to help bring the client into legal compliance while using advanced scientific methods. It is critical that a laboratory has the personnel capable of performing accurate analytical chemistry and data analysis.

Section 11(2)(c) of House Bill 4271 requires that “[t]he entity employs at least 1 individual who has earned a bachelor's degree or higher in the chemical or biological sciences and has a minimum of 1 year of postgraduate laboratory experience to oversee and be responsible for laboratory testing.”

A bachelor’s degree in sciences is insufficient to carry out services with high standards of safety, reliability, and consistency necessary in a professional laboratory. We submit that the Detroit City Code must adopt an enhanced version of this section, explained further below.

#### **4. Laboratory Licensing**



Because a Safety Compliance Facility plays such a critical role to the proper regulation of a functioning medical marihuana program, appropriate licensure is crucial. Following a parallel to the proposed legislation set forth in House Bill 4271, we submit that the Detroit City Code must set licensing guidelines. At a minimum, they should include a conflict of interest provision, a minimal scientific degree, a professional work history guideline and accreditation provision.

**a. Conflict of Interest**

- It would be grossly inappropriate for a safety compliance facility to have direct or indirect financial interests (aside from a client relationship) with a dispensary owner, caregiver, grower, cannabis-infused edible producer, etc. The laboratory must be an unbiased party.

**b. Education and Work History**

- The provision set forth in House Bill 4271 was inadequate. The degree of knowledge and expertise needed to operate a GC/MS and HPLC/MS and perhaps more importantly, to *understand* chromatography and mass spectrometry requires more than a Bachelor's of Science degree and 1 year of postgraduate training. We have suggested an alternative that is parallel to the requirements set forth in Washington State (ATTACHMENT 1).

**c. Accreditation**

- Accreditation is an important, necessary part of laboratory licensing. Third-party validation will ensure a certain level of professionalism and scientific accuracy in the industry. A concern is that the accreditation process itself can take anywhere from 6 – 12 months.<sup>1</sup> This could create a shortage of testing laboratories (and available medical cannabis) at a time when they are most needed, similar to the situation in Washington State, when they faced a

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<sup>1</sup> See [http://www.pjllabs.com/downloads/Steps\\_17025\\_Rev%207-09.pdf](http://www.pjllabs.com/downloads/Steps_17025_Rev%207-09.pdf)



bottleneck in licenses for growing<sup>2</sup>. To address this issue, we suggest that the City Code allow provisional licensure during the interim, while a laboratory is in the midst of accreditation review and assessment.

**Suggested Language – Medical Marihuana Safety Compliance Facility Licensure  
(Adapted from House Bill 4271, Section 11)**

Sec. 11. (1) A municipality shall not issue a license to a laboratory as a safety compliance facility unless the laboratory is able to accurately determine whether any of the following are present in marihuana, edible marihuana products, and marihuana-infused products that are sold or may be sold at medical marihuana provisioning centers in this state: (a) Mold, mildew, or fungi. (b) Pesticides.

(2) A laboratory shall not handle, test, or analyze marihuana after **December 31, 2015** unless the laboratory meets all of the following conditions: (a) The laboratory is licensed as a safety compliance facility by the **City of Detroit**; (b) A person with a direct or indirect interest in the laboratory does not have a direct or indirect financial interest in a provisioning center, marihuana producer, certifying physician, or any other entity that may financially benefit from the production, manufacture, dispensing, sale, purchase, or use of marihuana.

(3) As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority, a **doctorate** in the chemical or biological sciences and a minimum of **two years of** post-degree laboratory experience; or

(b) Has earned, from a college or university accredited by a national or regional certifying authority, a **master's degree** in the chemical or biological sciences and has a minimum of **four years** of post-degree laboratory experience; or

(c) Has earned, from a college or university accredited by a national or regional certifying authority, a **bachelor's degree** in the chemical or biological sciences and has a minimum of **six years** of post-degree laboratory experience.

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<sup>2</sup> See <http://bigstory.ap.org/article/pot-shortages-could-be-dire-washingtons-stores>



(4) The laboratory is accredited by a private laboratory accreditation service or is **undergoing such accreditation, is under review and/or assessment and has "pending" status** with a private laboratory accreditation service.

**5. Suggested Changes to Article XII – Division 3 - Provisions for Medical Marihuana Safety Compliance Facilities**

**a. 4,000 Foot Maximum**

**Sec. 6.** *“Such uses shall not have more than four thousand (4,000) square feet gross floor area.”*

Section 6 is unnecessarily restrictive for a Safety Compliance Facility. On a practical note, it can be difficult to find a space this size. In Detroit’s commercial and industrial real estate space, desirable leases suitable for professional laboratory space, less than 4,000 square feet, are in short supply.

More importantly, in the event of future expansion, the space restriction would be needlessly prohibitive. For a Safety Compliance Facility, expansion doesn’t mean additional liability due to more sales of cannabis, etc. Laboratories possess a very small amount of cannabis at any given time. An expansion would mean additional instrumentation, new additional research, compliance testing and new professional jobs in the City of Detroit. This would all demand more square footage.

**b. 2,000 Foot Zoning Restriction**

**Sec. 10.** *“No Medical Marihuana Safety Compliance Facility shall be located within 2,000 radial feet of a school, library, museum, child care center, out door recreational facility, or City of Detroit Recreational Facility.”*



The current draft zoning restrictions are overly prohibitive towards Safety Compliance Facilities. Such laboratories are professional quality control entities that don't buy, sell, grow or provision cannabis. House Bill 4271, however, requires a Safety Compliance Facility to be located 1,000 feet (property line to property line) from primary and secondary schools. Going beyond HB-4271, the current draft of the Detroit City Code has a 2,000 foot restriction from schools, libraries, museums, child care centers and recreational facilities which would essentially prohibit a laboratory from being located in a professional, desirable district.

Safety Compliance Facilities are professional, scientific laboratories containing powerful, high tech instrumentation. The facility demands trained scientists, a significant investment and considerable construction costs. A professional laboratory should be housed in a professional district, and not unnecessarily restricted.

### **c. Cultivation of Marihuana Prohibited**

**Sec. 11.** *“The cultivation of marihuana for medical use is expressly prohibited unless the Medical Marihuana Safety Compliance Facility is established as a second principal use in conjunction with an established medical Marihuana Provisioning Center.”*

This section contravenes House Bill 4271, Sec. 11(2)(b), cited above. The conflict of interest section specifically prohibits “[a] person with a direct or indirect interest in the laboratory” from having “a direct or indirect financial interest in a provisioning center...”

## **6. Additional Law for Consideration**



**a. “Cromnibus” Spending Bill**

The passage of the \$1.1 trillion dollar federal omnibus spending bill, known as the “Cromnibus” bill, effectively blocks the Department of Justice from interfering with individuals in Michigan engaging in lawful, state-level medical marijuana activities.

SEC. 538. None of the funds made available in this 21 Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

**b. Attorney General Eric Holder Order**

Attorney General Eric Holder issued an order (ATTACHMENT 2), severely limited federal civil asset forfeiture, barring state and local police from using the federal equitable sharing program to seize property and cash without a warrant.

**c. Detroit Proposal M - Sec. 38-11-50**

While we are in favor of licensees becoming caregivers under the MMMP, it should be noted that use or possession of less than one (1) ounce of marihuana is legal under Sec. 38-11-50. Same was upheld in *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich.App. 362, 367; 820 N.W.2d 208 (2012)

Division 1 – Controlled Substances

Sec. 38-11-50.Applicability.

None of the provisions of this article shall apply to the use or possession of less than 1 ounce of marihuana, on private property, by a person who has attained the age of 21 years.



## 7. Conclusion

With mandatory laboratory testing, House Bill 4271 provided Michigan the opportunity to be on the cutting edge of medical cannabis regulation. The Senate missed a great opportunity to bring this bill to pass, but where the Senate failed, Detroit has an opportunity to lead the way. Regulating provisioning centers in our city means ensuring that their products are safe for its consumers. If the City of Detroit is earnest in its desire to regulate provisioning centers, the Detroit City Code must adopt a mandatory testing provision.

Again, thank you for inviting our commentary on this matter. Should you have any follow-up questions or concerns, please do not hesitate to write or call to discuss this matter further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ben Rosman', with a long horizontal flourish extending to the right.

Benjamin J. Rosman, Esq.  
Chief Executive Officer, PSILabs  
Phone: 248.703.6463  
Fax: 855.251.1310  
Email: [ben@psilabs.org](mailto:ben@psilabs.org)  
Twitter: [@psilabs](https://twitter.com/psilabs)

Encl:



## ATTACHMENTS

1. **WAC 314-55-102, Quality Assurance Testing.**
2. **Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies, US Att’y Gen. (January 16, 2015).**



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[WACs](#) > [Title 314](#) > [Chapter 314-55](#) > [Section 314-55-102](#)

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## WAC 314-55-102

[Agency filings affecting this section](#)

### Quality assurance testing.

(1) A third-party testing lab must be certified by the board or their vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. Certified labs will receive a certification letter from the board and must conspicuously display this letter in the lab in plain sight of the customers. The board can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of WAC 314-55-102.

(2) A person with financial interest in a certified third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in a certified third-party testing lab must disclose to the board by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(5) As a condition of certification, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The board may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(6) The lab must allow the board or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(7) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(8) The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(9) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Lots of marijuana flowers	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Infused extract (solvent based) for inhalation made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract for inhalation made with a CO <sub>2</sub> extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed	Up to 2 grams

	initial test)	
Infused extract for inhalation made with ethanol or other approved food grade solvent	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract (nonsolvent) meant for inhalation infused with kief, hashish, or bubble hash	1. Potency analysis 2. Microbiological screening	Up to 2 grams
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis 2. Microbiological screening	1 unit

(10) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (9) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

(11) Labs certified as meeting the board's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(12) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (9) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(13) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(14) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

(15) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO<sub>2</sub> or solvent based extract. After processing, the CO<sub>2</sub> or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(16) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(17) Labs must report all required quality assurance test results directly into LCB's seed to sale traceability system within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee.

[Statutory Authority: RCW [69.50.342](#), 69.50.345. WSR 14-07-116, § 314-55-102, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW [69.50.325](#), 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-102, filed 10/21/13, effective 11/21/13.]



Office of the Attorney General  
Washington, D. C. 20530

ORDER NO.

PROHIBITION ON CERTAIN FEDERAL ADOPTIONS OF SEIZURES  
BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. §§ 509 and 510, 18 U.S.C. §§ 981 and 982, and the other civil and criminal forfeiture statutes enforced or administered by the Department of Justice, I hereby direct that the following policy be followed by all Department of Justice attorneys and components, and all participants in the Department of Justice Asset Forfeiture Program concerning the federal adoption of property seized by state or local law enforcement under state law in order for the property to be forfeited under federal law (“federal adoption”):

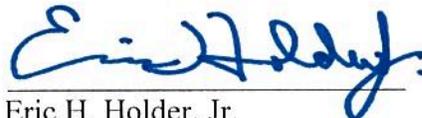
Federal adoption of property seized by state or local law enforcement under state law is prohibited, except for property that directly relates to public safety concerns, including firearms, ammunition, explosives, and property associated with child pornography. To the extent that seizures of property other than these four specified categories of property are being considered for federal adoption under this public safety exception, such seizures may not be adopted without the approval of the Assistant Attorney General for the Criminal Division. The prohibition on federal adoption includes, but is not limited to, seizures by state or local law enforcement of vehicles, valuables, and cash, which is defined as currency and currency equivalents, such as postal money orders, personal and cashier’s checks, stored value cards, certificates of deposit, travelers checks, and U.S. savings bonds.

This order does not apply to (1) seizures by state and local authorities working together with federal authorities in a joint task force; (2) seizures by state and local authorities that are the result of joint federal-state investigations or that are coordinated with federal authorities as part of ongoing federal investigations; or (3) seizures pursuant to federal seizure warrants, obtained from federal courts to take custody of assets originally seized under state law. This Order also does not affect the ability of state and local agencies to pursue the forfeiture of assets pursuant to their respective state laws.

This order is effective January 16, 2015, and applies prospectively to all federal adoptions. To the extent that prior Department of Justice orders, directives, and policies are inconsistent with this Order, those orders, directives, and policies are superseded.

January 16, 2015

Date



Eric H. Holder, Jr.  
Attorney General