



**CITY OF MILAN
CITY COUNCIL AGENDA**

**August 26, 2019
6:30 P.M.**

**WORK SESSION
MUNICIPAL BUILDING**

CALL TO ORDER:

ROLL CALL OF COUNCIL MEMBERS: Mayor Dominic Hamden ____, Councilpersons Martha Churchill ____, Ann Gee ____, Douglas Gilson ____, Mary Kerkes ____, Edward Kolar ____, Christian Thompson ____.

OTHER OFFICERS PRESENT: City Administrator Interim/Treasurer Karen Samborski ____, City Clerk Lavonna Wenzel ____, City Attorney Steven Mann ____, Police Chief Donald Tillery ____, Building/Zoning Craig Strong/Steve Bredernitz ____, MIS & Communications Director John Koehler ____, Parks & Recreation Director Ellen Bell ____, Main Street Director Jill Tewsley ____, DPW Director Stan Kirton ____, Fire Chief Stevens ____.

AGENDA

- 1. Further discussion of Medical and Recreational Marijuana**
- 2. Any matters that may legally come before council.**

CITIZENS MATTERS FROM THE FLOOR: (5-minute time limit per person)

- A. Residents:**
- B. Non-Residents:**

ADJOURNMENT: Motion by Councilperson _____, seconded by Councilperson _____, to adjourn meeting at _____ P.M.

All matters to be presented to Milan City Council for their review, consideration and/or action, must be submitted in writing no later than 4:00 p.m., the Wednesday preceding the date of the meeting (normally the second and fourth Mondays of each month).

Special Notes:

The City of Milan will provide reasonable auxiliary aids and services, such as signers for the hearing impaired, and audiotapes of printed materials being considered at the meeting to individuals with disabilities upon one week's notice to the City of Milan. Individuals with disabilities requiring auxiliary aids or services should contact the City of Milan by writing or calling the following:

Lavonna Wenzel, City Clerk
147 Wabash, Milan, Michigan 48160
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117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

TO: Milan City Council
FROM: John L. Enos, AICP, City Planner
DATE: August 21, 2019
RE: Regulation of Recreational Marihuana Establishments

The following memo describes to the extent possible various items that the City should consider if it is faced with the need to regulate recreational marihuana. The City has currently opted out of allowing recreational marihuana establishments. The body of literature and, knowledge on the subject is growing. However, there remain many open issues that every community must carefully consider.

On November 6, 2018, Michigan voters approved a ballot initiative to legalize the recreational use of marihuana. The initiated statutes, known as the Michigan Regulation and Taxation of Marihuana Act (MRTMA), authorizes individuals age 21 and over 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. The MRTMA also provides for a means to control the commercial production and distribution of marihuana under a system that licenses and regulates and taxes the businesses involved in these activities.

On July 3, 2019, the State issued emergency administration rules to allow MRTMA to be implemented. These rules will stay in effect for six (6) months. The Act and Rules establish licensing for eight types of marihuana establishments, described more fully in the next section.

Characteristics of Each Use

To the extent that information can be found in the Act and Rules and in the literature, the following describes the characteristics of each. Each of the eight activities come under the overall definitions of marihuana establishment, defined as follows:

Marihuana establishment - 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.

- **Marihuana Grower**

Definitions:

Marihuana grow operation - A facility operated by a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana grow operation/excess – A facility operated by a person licensed to hold five (5) class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

Description: Plant cultivation or grow facilities are typically climate-controlled enclosed buildings which may resemble either a warehouse or a highly sophisticated greenhouse. Warehouse construction provides the grower with maximum control resulting in reliable production. However, without natural light, a warehouse operation relies on grow lights which replicate sunlight. Greenhouses take advantage of natural light, but still need supplemental lighting. In both cases, proper heating, cooling and ventilation are critical. Many grow operations use CO₂ enrichment systems, which can pose asphyxiation hazard.

The size of either a warehouse or greenhouse will be based on the licenses issued. Review of the literature also notes that grow operations are labor intensive and can operate 24/7.

The City will want to consider making a distinction between regular and excess marihuana grow operations. Excess operations will be large-scale grow operations and, thus, will have greater community impacts than regular grow operations.

Issues to consider:

- Occupant loads
- Hours of operation
- Energy consumption
- Heating, cooling, ventilation and potential asphyxiation hazards
- Waste and waste disposal
- Odor and emission

- **Marihuana processor**

Definition:

Marihuana processor - A facility operated by a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

Description: While the sale of marihuana leaves in a cut form makes up the majority of product that is sold, the scale of concentrates is increasing. Concentrates can take the form of oils, vapes and edibles. Concentrates are exactly that – a concentrated form of THC.

In the preparation of concentrates, the use of butane is the more cost effective, but dangerous, method. Therefore, many jurisdictions prohibit the open release of butane.

There are manufacturers who provide a closed loop system using butane in a pressurized form. Closed loop systems allow the butane to be captured and recycled. Essentially, butane becomes a solvent and will likely need to be treated as an explosive and a hazardous substance.

CO₂ extraction is another method of producing concentrates. CO₂ does not run the same explosive risk as butane but does operate under a highly pressurized process.

A final extraction process is an alcohol distillation or heated evaporation process. The marijuana is first soaked in alcohol and the liquid is boiled and evaporates, leaving the concentrate.

Issues to consider:

- Use of hazardous substances
- Fire
- Explosion
- Worker safety
- Odor and emission

- **Marihuana retailer**

Definition:

Marihuana retailer - A facility operated by a person licensed to obtain marijuana from marijuana establishments in order to transport marijuana to marijuana establishments.

Description: A marijuana retail operation is restricted to the sale of marijuana products from a grower, microbusiness, and/or processor. Retail operations do not pose the same risk as other marijuana establishments because growing and processing is not conducted on the premises.

The most significant problem that retail operations face is that they are cash businesses that cannot make deposits in any FDIC insured bank. The accumulation of cash on premises makes them potential targets for robberies.

Issues to consider:

- Potential crime targets due to accumulation of cash on premises
- Effect on neighboring businesses

- **Designated consumption establishment**

Definition:

Designated Marijuana consumption establishment – A commercial space that is licensed to permit adults 21 years of age and older to consume marijuana products at the location indicated on the state license.

Description: A designated consumption establishment is a commercial operation where marihuana in various forms can be consumed. Commonly referred to as a cannabis lounge, it is the marihuana equivalent of a bar or tavern. Smoking lounges may also be in marihuana establishments which conduct retail sales (marihuana retailer and microbusiness). A designated consumption establishment does not allow for sales or distribution of marihuana unless the license holder also possesses a retail or microbusiness license. However, such establishments are not permitted to serve food or alcohol.

Issues to consider:

- Offers location where recreational marihuana can be used in a social setting.
- As with retail establishments, could be targets of crime.

- **Marihuana microbusiness**

Definition:

Marihuana microbusiness - A facility operated by 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.

Description: A marihuana microbusiness is the marihuana equivalent of a microbrewery. A microbusiness is a facility licensed to grow not more than 150 plants; process and package marihuana; and sell or transfer marihuana to individuals 21 years or older to a safety compliance facility. In short, a microbusiness can be a growing, processing and packaging, and supply operation.

Therefore, as a growing, processing and supply operation, the same issues that are applicable to each one of these activities that are conducted separately would apply to a facility that is under one roof.

Issues to consider: See marihuana grower, processor, designated consumption establishment and retail operation.

- **Temporary marihuana event**

Definitions:

Temporary marihuana event – An event conducted by a licensed marihuana event organizer where the on-site sale or consumption of marihuana products or both, are authorized at the location indicated on the license during the dates indicated on the license.

Marihuana event organizer – A person licensed to apply for a temporary marihuana event license.

Description: A temporary event where onsite sales and/or consumption of marihuana may occur. The event may only be conducted by a licensed Marihuana Event Organizer who is required to hire security and ensure that all rules and requirements for sales and consumption are met.

Issues to consider:

- Possible attraction of large crowds
- Impact on neighboring uses depending on size of event
- Need for parking
- Potential police service burden on City

- **Marihuana Safety Compliance Facility**

Definition:

Marihuana safety compliance facility - A facility operated by a person licensed to test marihuana, including certification for potency and the presence of contaminants.

Description: Safety compliance facilities typically test marihuana for residual solvents, physical and microbial contamination, potency and fragranc y and flavor. Because the federal government does not conduct safety testing even on medical marihuana, the responsibility rests on the State.

Issues to consider: TBD

Considerations for Local Regulation

The State intends on issuing licenses for eight types of marihuana establishments. Licenses will not be issued within any area zoned exclusively for residential use and is not within 1,000 feet of an existing public or private school, including kindergarten. The MRTMA allows municipalities to limit the number of marihuana establishments within their boundaries or prohibit them altogether. The Act also contains provisions that allows a petition and referendum process either to allow or prohibit marihuana establishments. In the most recent election, there were ballot initiatives in three Michigan communities, all of which were voted down. However, ballot initiatives are contemplated in several communities for the November election.

If the municipality chooses to allow one or more of the types of marihuana establishments, it may adopt regulations subject to the limitations set forth in the Act. The Emergency Rules require that an application for a State license must confirm compliance with local ordinances, if such ordinances exist. Such confirmation is submitted on an attestation form.

In its regulation, the City may regulate marihuana establishments in the following manner:

- (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.

The Emergency Rules reflect a requirement that local ordinances need to be followed. Therefore, a safe assumption would be that all eight types of marihuana establishments/activities can be locally regulated either through zoning, a general Ordinance, or both.

A clear limitation on local authority is that the community may not prohibit a grower, processor and retailer from operating from the same facility. Therefore, if the City were inclined to permit any one of the above operations, it could not prevent a facility which contains all three. Finally, the City cannot prohibit the transport of marihuana through the City.

Conclusion/Observations

There is both a limited amount of both available area and non-residential zoning in the City which would eliminate consideration of a number of categories of recreational marihuana establishments.

From a zoning perspective, all marihuana establishments, except for retail operations and designated consumption establishments, employ processes that are similar to many industrial and warehousing operations. In addition, excess grow and processing operations will likely occupy large buildings which are like warehousing. Therefore, we are advising various communities to restrict them to Industrial Districts.

The City may be more vulnerable for retail sales and designated consumption establishments. The only area that would suggest at least at this early stage is along Dexter Street and not downtown Milan.

In the case of temporary marihuana events, this is the type of activity best regulated through a general licensing ordinance. It is possible that a request for a special event could occur at a downtown business. It is also possible that a request could be made to hold an event at Wilson Park. It is unclear whether the City's current special events regulations or City policies would be applicable.

The entire issue of regulating recreational marihuana is evolving. As new information becomes available, this narrative will be updated.

Attachment I – Marihuana Establishment Definitions

The Act provides a series of definitions that are important for a clear understanding of potential regulatory measures. For purposes of this paper, the following key definitions are provided:

“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.

“Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

“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.

“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.

“Marihuana retailer” means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

“Marihuana safety compliance facility” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

“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.

The Emergency Rules add several other categories of activity which will be licensed:

“Designated consumption establishment” means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license.

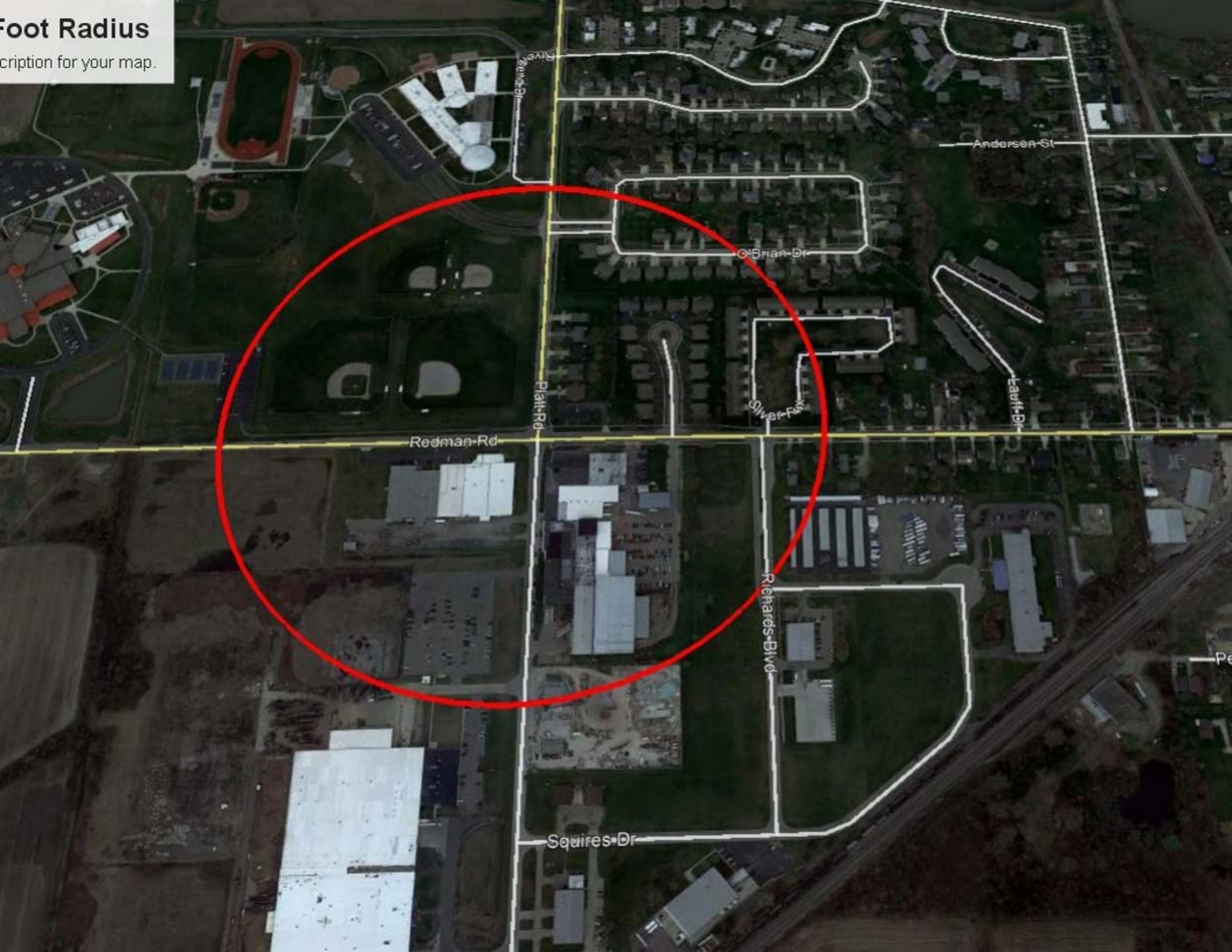
“Excess marihuana grower” means a license issued to a person holding 5 class C marihuana grower licenses and licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.

“Marihuana event organizer” means a person licensed to apply for a temporary marihuana event license under these rules.

“Temporary marihuana event license” means a state license held by a marihuana event organizer for an event where the onsite sale or consumption of marihuana products, or both, are authorized at the location indicated on the state license during the dates indicated on the state license.

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