



PLANNING AND ECONOMIC DEVELOPMENT

Ed Anzek

From: Ed Anzek
To: Planning Commission
Date: June 2, 2011
Re: Regulation of Medical Marihuana

Members of the Planning Commission:

In December of last year the Planning Commission recommended a second moratorium be approved to enable the State Legislature to engage in some means to establish standards for implementation at the local level. This moratorium recommendation was further supported by letters to each sitting and newly elected members of the Governor's office, our State Senator and Representative. The City Council supported this approach as well.

As we have since learned the State Legislature is not intending to take up this issue anytime soon. First rumors was that it "might" be taken up in the fall of 2011 but we understand that time frame is unlikely.

John Staran and I met and researched the question of local regulation of medical marihuana as an on-going task. Some other matters have developed in the past few months, including court proceedings and an apparent reversal of federal policy regarding enforcement. Attached are a series of letters that we have secured from numerous states that have authorized by referendum the use of medical marihuana. Staff has taken the liberty to underline what we believe are key statements. Should these key statements be extracted to local officials, it seems there may be a possibility of prosecution of local officials that permit the sale, cultivation, and distribution of medical marihuana.

John will be present Tuesday evening to provide the Commission an overview of what he has learned in regards to local court proceedings. Those court matters involved the legal challenges filed against four communities that adopted a prohibition.

On a more general note, staff has prepared the following as a summary of what we have learned regarding other communities' actions.

Approaches to regulating medical marihuana in Michigan vary widely. This is not surprising given the ambiguity of the State Act as it relates to land use issues. In reviewing a range of ordinances made available by the Michigan Municipal League, it is apparent that ordinances are either prohibitive and prohibit such uses altogether or regulatory where they permit and regulate aspects of the use. Regulatory ordinances typically address one or more of the following four aspects of the Medical Marihuana business:

1. Growing and consumption by patients. No ordinance attempts to prohibit growing for personal use by a registered patient. In some instances, ordinances will establish regulations for how patients can grow, and where they may use.
2. Growing operations by caregivers. This is the aspect where there is the widest variation in approach among the various ordinances. In some cases, caregiver operations are permitted only as a home occupation. Some ordinances allow caregivers to grow only in commercial or industrial districts, but limit the number of plants that can be grown to 60 or 120, which effectively limits the grow operation to the equivalent of 1 or 2 caregivers. Finally, some ordinances allow grow operations only in industrial districts, but place no restriction on the number of caregivers that can band together at these locations or the number of plants they can grow.

3. Distribution by caregivers. There are a few basic methods by which distribution is regulated. In the case of the example ordinances we examined, any ordinance that regulated distribution was based on the presumption that a patient would come to a location outside of their home to purchase or acquire marihuana. No ordinance prohibited delivery operations to a patient's home by caregivers.

A summary of distribution approaches: home occupation approaches where patients can pick-up from the caregivers' residences, grow site approaches where patients can pick-up from the caregivers' grow sites in a commercial or industrial district, and dispensary approaches where patients can pick up from dispensaries that are not necessarily the same location or site as a grow operation.

4. Operational issues. Ordinances can regulate a number of operational aspects, depending on how a community regulates the other aspects of the use. Operational aspects that are commonly regulated include hours of operation, the number of dispensaries that can be operated in the community, separation requirements, compliance with Federal Drug Free School Zone Act requirements, and special land use or licensing approval requirements (which may run afoul of the privacy provisions in the Act).

Conclusion

Given the pending ACLU cases against communities who have adopted prohibitions on medical marihuana uses (i.e. the "Livonia" approach); the recent spate of U.S. Attorney letters to states that have adopted medical marihuana laws; the great variety and untested nature of regulatory ordinances; and the current lack of "best practices" for regulating medical marihuana uses, Staff recommends that the Planning Commission recommend that Council approve an additional extension of the moratorium.

Thank you.

Attached ordinances: Ferndale, Tawas City, Niles, Huntington Woods, Livonia, Roseville, Lake Isabella, Sturgis.