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Medical Marijuana Plan Amended, Delayed Also: Final approval for zoning revisions, traffic code adoption

BY DAVE ASKINS

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Ann Arbor City Council meeting (Jan. 3, 2011): The council's meeting was held in the Washtenaw County board of commissioners boardroom to accommodate current renovations to city hall. Before the meeting, advocates for medical marijuana demonstrated with signs and chants on the sidewalk outside the Washtenaw County administration building on North Main.

Inside at the meeting, the council ultimately delayed their vote on an initial approval of a licensing scheme for medical marijuana dispensaries, cultivation facilities and home occupations. That initial vote is now scheduled for Jan. 18, with final approval expected in early February, along with zoning regulations affecting medical marijuana-related businesses. The licensing proposal to be considered by the council at its next meeting will be significantly different from the one that they started with Monday night, due to various amendments councilmembers approved, before voting to postpone the measure.

Amendments included: eliminating home occupations from the licensing scheme; increasing the number of licenses to 20 for dispensaries and 10 for cultivation facilities; creating a licensing board; removing reference to "misdemeanor involving a controlled substance"; and revising the language of required internal signage.

The council also dispatched with several other pieces of major business, with scant deliberation. Those included: final approval of revisions to the city's area, height and placement regulations in the zoning code; final approval for adoption of the Michigan Vehicle Code and the Uniform Traffic Code; appropriation of funds for footing drain disconnection; approval of new fire inspection fees; and a

I made all these signs



Signs held by advocates for medical marijuana before the start of the Jan. 3 Ann Arbor city council meeting. Stephen Postema is the city attorney for Ann Arbor, and also president of the Michigan Association of Municipal Attorneys, a section of the Michigan Municipal League. Postema has pushed for a licensing scheme that some medical marijuana advocates say violates the state statute. (Photos by the writer.)

contract for weapons screening services at the new municipal center.

Medical Marijuana Licensing

At Monday's meeting, the council considered initial approval of a licensing scheme for medical marijuana dispensaries and home occupations.

Key elements of the original draft licensing scheme included: no more than 15 licenses would be made available citywide for cultivation facilities and dispensaries; preference for applications would be given to facilities operating before Aug. 5, when the city council passed a moratorium on the use of facilities for dispensing and cultivation; provision of names and addresses of various individuals associated with a facility; installation of security measures; posting of signs advising that use of marijuana is against federal law; consent to inspections of unspecified frequency. [[pdf of original draft licensing ordinance](#)]

After considerable public commentary, the council contemplated a series of seven amendments to the licensing proposal, most of which were approved – most significantly the exclusion of home occupations from the proposal. The postponement of the initial vote on the licensing until the council's Jan. 18 meeting means that a final vote on licensing will not come until February. That also resulted in a rescheduling until February of the final approval of zoning regulations on medical marijuana, to which the council has already given its initial approval.

Medical Marijuana Licensing: Public Commentary

Tony Keene had distributed a yellow two-side sheet to the audience that described an alternative strategy to the city's proposed licensing scheme. During his public commentary turn, Keene highlighted some of main points of the alternative. Key among them is the idea that "dispensaries" are in concept not lawful under the Michigan Medical Marijuana Act, but that business models developed along the lines of "compassion clubs" and "co-ops" are. So the proposal would be to close down all dispensaries and start from scratch – with compassion clubs and co-ops and individual caregivers making up "caregiver centers." The caregiver centers could include, among other amenities, lockbox storage for members. Dispensaries would be recast as surplus management shops that would purchase surplus medical marijuana from registered caregiver centers. The proposal also called for a non-partisan impartial commission to provide oversight.

Keene cautioned against fear and greed as two words that could destroy the conversation.

[With respect to lockbox storage for members, this appears to be part of the business model for a facility in the Mt. Pleasant area, that successfully defended against a recently attempted shut-down of the facility. The trial court opinion in State of Michigan v.



Before the council's Jan. 3 meeting started, Sabra Briere (Ward 1) talked with city attorney Stephen Postema.

Compassionate Apothecary found that the facility is operated in conformance with the state statute and does not pose a public nuisance. The inclusion of storage for members, who all have state-issued registry cards, is relevant to any proposed licensing scheme that includes regular search and inspection of facilities, because the state statute prohibits searches based on possession of a registry card.

City attorney Stephen Postema has defended regular searches and inspections of facilities as part of licensing on the grounds that seeking to operate a business is a different proposition from seeking to be a patient or a caregiver by obtaining a registry card. But the consequence of using a registry card to obtain marijuana – through membership in a co-op or compassion club – is that one's possessions could be subject to search due to licensing requirements. The contrast between searches based on possession of a registry card and searches based on separate licensing requirements for businesses could be seen as a distinction without a difference.]

Dennis Hayes told the council that he'd sent them letters expressing his view. He recalled from his days in law school, he said, how the Bill of Rights provides citizens with protection when the government possesses broad overreaching power that is unequal with respect to citizens. He reminded the council of the city's charter amendment on medical marijuana, which also gives priority to individual rights. Hayes said that the proposed licensing scheme overlooks these individual rights. He asked the council to defer passage of the licensing scheme on its first reading and to form a committee to study the issue further.

Robin Schneider introduced herself as an advocate for medical marijuana from the Lansing area. She expressed concerns about the licensing requirements for home occupations, which would require those who are cultivating marijuana in their homes to place their names on a list. She expressed concern about what might happen if the wrong person got hold of the list. She said she did not believe that such a list would be enforceable under the state act.

Rhory Gould spoke against the stigma associated with use of marijuana to provide comfort and relief from pain. People should not have to suffer, as his grandmother had, because of their refusal to ingest marijuana due to the stigma associated with it. He said when the city council passed its moratorium, he had been in the process of setting up a business to help give patients access to marijuana. He suggested that a limit on licenses of 15 is too low, given that there could be an influx of patients who live in more conservative neighboring communities. He spoke against the idea that caregivers should have to be licensed as home occupations. He also raised the possibility that some of the information required of licensees could violate HIPPA regulations.

Charmie Gholson noted that despite the memo issued by U.S. Attorney General Eric Holder, people in Michigan have been raided by federal authorities in the last two months. [.pdf of Holder Memo, authored by David W. Ogden] Patients fear having their information placed in yet another database, she said. Gholson addressed the idea that licensing would help prevent confusion on the part of law enforcement by saying that the Michigan Medical Marijuana Act did not change the responsibilities of a police officer – an insight she attributed to attorney Mark Matt Newburg. She drew an analogy to a driver's license – when an officer stops a motorist, the first step is to ask the driver to produce a driver's license.

Matthew Abel echoed the sentiment that a working committee should be formed. He noted that federal search warrants had been served in June 2010 on the Michigan Department of Community Health regarding registry information. He called the limit of 15 licenses unnecessary and anti-competitive.

Rick Thompson introduced himself as the editor of Michigan Medical Marijuana Magazine. He ticked through some of the approaches to medical marijuana that other communities in Michigan had taken. He noted that in some communities, regulations had been enacted so that no facility could meet the requirements of the regulations, citing Macomb County as an example. Inspection requirements had resulted in people declining to apply for permits in Ferndale. In Livonia, an ordinance had been passed declaring the primacy of federal law and as a result, a lawsuit has been filed, he said. He noted that the litigants are patients – voters. He asked that the council strike the parts of the licensing that require registration of names and addresses of business owners, as well as the licensing requirement on home occupations.

Chuck Ream criticized the characterization by city attorney Stephen Postema of parts of the Michigan Marijuana Act as “nonsensical.” Ream said the demonstration outside the building before the meeting started was to encourage the city of Ann Arbor to give up its membership in the Michigan Municipal League. [Postema and Ream have a contentious history on medical marijuana. Postema is president of the Michigan Association of Municipal Attorneys (MAMA), which is a section of the Michigan Municipal League. The MML has issued a statement indicating that it has no position on medical marijuana. However, MAMA has commissioned a study on the issue from Gerald Fisher, professor of law at the Thomas M. Cooley Law School.]

Ream criticized the approach that has been taken to the Michigan Medical Marijuana Act in some communities – trying to block it by appeal to the supremacy of federal law, having the state legislature “mess with” it, and creating ordinances that will spur endless litigation. That approach, Ream said, would force activist judges to change the law. He criticized the inclusion of marijuana as a Schedule I drug, which he said was for drugs with no medicinal value and that are extremely dangerous. He compared the situation with Germany in the 1940s or the Middle Ages, when governments went along with the “repression of the day.”

Brandy Zink spoke on behalf of Americans for Safe Access. She thanked the council for engaging in the conversation. She described herself as a cancer survivor and an epilepsy patient, who visits Ann Arbor dispensaries. She said she would not be inclined to move to Ann Arbor if the licensing ordinance results in list-keeping. She stressed the importance of confidentiality. She said the state law is clear about prohibiting searches. She suggested that the council consult other sources of information besides the U.S. Drug Enforcement Administration and the MML.

Medical Marijuana Licenses: Council Deliberations

The council deliberations were structured by a series of seven amendments that Sandi Smith (Ward 1) and Sabra Briere (Ward 1) had



Chuck Ream demonstrating outside the Washtenaw County administration building before the Jan. 3 Ann Arbor city council meeting.