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ANN ARBOR, MICHIGAN

MONDAY, AUGUST 9, 2010

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**Modified Moratorium on Marijuana Passed****Also: Zaragon Place 2 approved; Village Green option extended**

BY DAVE ASKINS

AUGUST 8, 2010

**Ann Arbor City Council meeting (Aug. 5, 2010):** Around 75 people packed into city council chambers on Thursday night to hear council deliberations on a marijuana-related moratorium. The item had been added to the council's agenda late the previous day – and the issue had received no discussion or mention by city officials at any previous open meeting.



Renee Wolf, who suffers from multiple sclerosis, spoke against the proposed medical marijuana moratorium: "Please don't take away my medicine – that's all I ask." (Photos by the writer.)

The measure as initially drafted by city attorney Stephen Postema would have halted all dispensing and growing of medical marijuana in the city. The moratorium came in response to the operation of some dispensaries and cultivation of marijuana in the city after the Michigan Medical Marijuana Act of 2008 was approved by Michigan voters.

In 2004, Postema had argued that the city's charter amendment, which allows medical uses of marijuana and was approved by voters that year, was not enforceable, and said that people would continue to be prosecuted as before.

Several of the attendees addressed the council during public commentary, all opposing the moratorium. During deliberations, councilmembers made significant amendments to Postema's proposal that took off some of its harsher edges. Amendments to Postema's moratorium included a specific exemption for patients and caregivers, a grandfathering-in of existing facilities in the city and a reduction in the length of moratorium from 180 to 120 days. The milder version of the measure, when unanimously approved, was met with applause from the audience.

In other significant business, the council: approved the site plan for a new downtown residential development, Zaragon Place 2; authorized an extension on

Village Green's purchase option agreement for the First and Washington parcel where the City Apartments PUD is planned; gave initial first-reading approval to a ban on placement of couches on porches and other outdoor environments; and approved a change to the site plan approval process that replaces definite deadlines with a standard of "reasonable time."

Mayor John Hieftje also placed recently-retired county administrator Bob Guenzel's name before the council as a nomination to the Ann Arbor Downtown Development Authority board. He clarified that Guenzel would be replacing Jennifer S. Hall, whose term expired on July 31.

Council typically meets on Mondays, but moved its meeting to Thursday to accommodate the Aug. 3 primary election. All council incumbents who were running for reelection won their races.

**Historical Reflection on Couches and Medical Marijuana**

As a prelude to this meeting report, we pause to reflect on what kind of business the Ann Arbor city council handled six years ago. The look back into recent history is prompted in part by the remarks of Bob Snyder during public commentary at Thursday's council meeting. Snyder spoke in favor of the "couch ban" ordinance considered by the council.

As Snyder pointed out, the council had considered a similar ordinance back in August 2004. But they'd tabled it, which meant that after six months, with no councilmember willing to take it up off the table for action, the measure died. Snyder had also spoken in favor of the ordinance at the city council's Aug. 16, 2004 meeting. At that meeting, he was joined in his support by Lou Glorie, who lost the Ward 5 Democratic primary last Tuesday to incumbent Carsten Hohnke.

The Aug. 16, 2004 tabling had come after a postponement of the measure from the July 19, 2004 meeting. At the earlier July meeting, when the council postponed the "couch ban" ordinance, the council had also considered and approved some language for the Nov. 2, 2004 ballot. That ballot language was for the city charter amendment on medical marijuana:

Shall Section 16.2 of the Charter be amended to require waiver of fines and costs upon proof that the defendant has a recommendation of a physician, practitioner or other qualified health professional to use or provide marijuana or cannabis for medical treatment; to prohibit Ann Arbor police officers from complaining, and the city attorney from referring any complaint, of the possession, use, giving away, sale or cultivation of marijuana upon proof of such recommendation; to prohibit other punitive or rehabilitative measures; to establish an affirmative defense; and to set the fine for third and

subsequent such offenses at \$100.00?

That ballot proposal amending the city charter to include the medical marijuana provision passed three months later with 74% of the vote.

On Thursday, the topics of porch couches and medical marijuana were juxtaposed in the same meeting just as they'd been six years earlier.

### Medical Marijuana Moratorium

Added on Aug. 4, 2010 to the council's Thursday, Aug. 5 agenda was a resolution drafted by city attorney Stephen Postema, which called for a citywide moratorium on the use of facilities in the city for growing or dispensing medical marijuana.

The council usually meets on Mondays, but due to the Tuesday primary, the meeting had been shifted to Thursday. The measure was sponsored by Marcia Higgins (Ward 4), Margie Teall (Ward 4), Stephen Rapundalo (Ward 2) and Christopher Taylor (Ward 3).

#### Marijuana: Brief Ann Arbor Overview

In September 1972, the Ann Arbor city council enacted an ordinance that reduced the penalty for possession of less than two ounces of marijuana to a \$5 fine. The ensuing controversy ultimately resulted in the repeal of the ordinance by the city council in June 1973.

But voters then passed a charter amendment in April 1974 that restored the \$5 fine. In addition, the new section 16.2 of the city charter stipulated that no city police officer "shall complain of the possession, control, use, giving away, or sale of marijuana or cannabis to any other authority except the Ann Arbor city attorney; and the city attorney shall not refer any said complaint to any other authority for prosecution."

In 1983, voters rejected an attempted repeal of the charter section. However, in 1990 voters approved an increase in the fine amount from \$5 to \$25 for a first offense, \$50 for a second offense, and \$100 for more offenses.

Then in 2004, a city charter amendment – added to section 16.2 – was approved by a 74% margin that allowed growing and use of marijuana for medical purposes.

In August 2010, the city's charter section 16.2 reads as follows:

#### Restrictions of Marijuana

##### SECTION 16.2.

(a) No person shall possess, control, use, give away, or sell marijuana or cannabis, which is defined as all parts of the plant *cannabis sativa* L., whether growing or not; its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of the above, unless such possession, control, use, or sale is pursuant to a license or prescription as provided in Public Act 196 of 1971, as amended. This definition does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compounds, manufacture, sale, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(b) Violations of this section shall be civil infractions. Persons convicted of violating this section shall be fined \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third or subsequent offense and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed. Fines and all other costs shall be waived upon proof that the defendant is recommended by a physician, practitioner or other qualified health professional to use or provide the marijuana or cannabis for medical treatment. The court may waive all or part of the fine upon proof that the defendant attended a substance abuse program. It is an affirmative defense to a prosecution under this section that the use or intended use of the marijuana or cannabis relieves, or has the potential to relieve, the pain, disability, discomfort or other adverse symptoms of illness or medical treatment, or restores, maintains or improves, or has the potential to restore, maintain or improve, the health or medical quality of life of the user or intended user or users of the marijuana or cannabis. Requirements of this subsection shall not be construed to exclude the assertion of other defenses. (Amended by election of April 2, 1990 and November 2, 2004)

(c) In all arrests and prosecutions for violations of this section, appearance tickets and the relevant procedures set forth in Public Act 147 of 1968, as amended, shall be used.

(d) No Ann Arbor police officer, or his or her agent, shall complain of the possession, control, use, giving away, or sale of marijuana or cannabis to any other authority except the Ann Arbor city attorney; and the city attorney shall not refer any said complaint to any other authority for prosecution.

(e) No Ann Arbor police officer, or his or her agent, shall complain and the city attorney shall not refer for prosecution any complaint, of the possession, control, use, giving away, sale or cultivation of marijuana or cannabis upon proof that the defendant is recommended by a physician, practitioner or other qualified health professional to use or provide the marijuana or cannabis for medical treatment. (Amended by election of November 2, 2004)

(f) Should the State of Michigan enact lesser penalties than that set forth in subsection (b) above, or entirely repeal penalties for the possession, control, use, giving away, or sale of marijuana or cannabis, then this section, or the relevant

portions thereof, shall be null and void. (Amended by election of November 2, 2004)

(g) The people of the City of Ann Arbor specifically determine that the provisions herein contained concerning marijuana or cannabis are necessary to serve the local purposes of providing just and equitable legal treatment of the citizens of this community, and in particular of the youth of this community present as university students or otherwise; and to provide for the public peace and safety by preserving the respect of such citizens for the law and law enforcement agencies of the City. (Amended by election of November 2, 2004)

(Section 16.2 added by election of April 2, 1974)

#### Marijuana: City Attorney Postema's Anti-Pot Stance (2004)

In 2004, when the city's voters approved the medical marijuana charter provision, Ann Arbor city attorney Stephen Postema was vocal about his view that the provision approved by the voters was not valid. In a Nov. 4 2004 Ann Arbor News article, Tracy Davis reported:

Although the initiative was legally and appropriately placed on the ballot after a petition drive, [Stephen] Postema said 27-year-old case law dictates that city officials can refer complaints for prosecution under state law even though it would be contrary to the city's new charter language.

In a 1977 decision involving a case in Ypsilanti, the state appeals court ruled that city officials weren't prohibited from referring marijuana cases for prosecution under state law, despite a city ordinance that said they couldn't refer such cases to the Washtenaw County prosecutor.

Based on that case, Postema said, his office and police can't be bound by charter amendment prohibitions that conflict with state and federal law. Those laws, he said, will continue to govern marijuana arrests in Ann Arbor.

Postema's stance resulted in a dispute with one of the initiators of the ballot measure, Chuck Ream, who was then also Scio Township trustee. The dispute was resolved when Postema acknowledged in writing that the attorney's office understood the compassionate concerns underlying the voter-approved charter amendment. Wrote Davis in a April 1, 2005 News article:

Chuck Ream, a Scio Township trustee, was angered by Postema's comments after the amendment to decriminalize marijuana use when recommended by a physician passed with 74 percent of the vote, but said he was happy with the outcome of a January meeting with Postema and other city officials.

"My quarrel with him is over," said Ream this week.

After the election, Postema said 27-year-old case law dictates that city officials can refer complaints for prosecution under state law even though it would be contrary to the city's new charter language. Police Chief Dan Oates also said in a written statement he had directed his officers to continue enforcement of all marijuana sale and possession offenses as they did before the vote.

Ream praised what he called compromise language written by Postema after the January meeting about the city's stance on medical marijuana.

The language, which was in a letter to a reporter for a local publication, said that city police and the city attorney's office retain some discretion in prosecuting marijuana cases.

"The very nature of this discretion is that each case is decided on its own facts," wrote Postema. "However, the compassionate concerns underlying the charter amendment are concerns that are certainly understood by the police and the city attorney's office as this discretion is exercised."

#### Marijuana: Michigan Medical Marijuana Act (2008)

In 2008, Michigan voters approved the Michigan Medical Marijuana Initiative with 63% of the vote. In Ann Arbor, support was significantly higher, at 71%. The Michigan Medical Marijuana Act (MMMA) provides for a registry system for patients and caregivers for the cultivation and possession of medical marijuana.

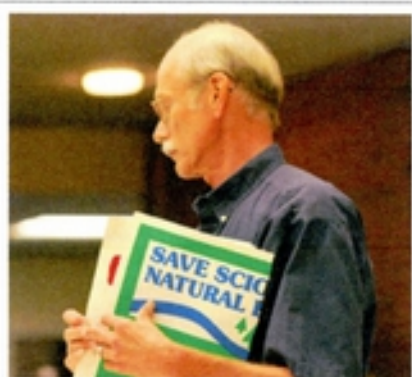
In February 2010, Chuck Ream - who'd disputed city attorney Stephen Postema's view of the 2004 city charter amendment - appeared before the city council to suggest that they take a proactive approach to regulating marijuana dispensaries in the city, which would emerge, he cautioned, as a consequence of the MMMA. From The Chronicle's report of the city council's Feb. 1, 2010 meeting:

**Chuck Ream:** Ream spoke to the council about therapeutic cannabis. He reminded them that in 2004, more than 74% of Ann Arbor voters had voted for medical marijuana. He described it not as a victory or a mandate but as "clear marching orders." He suggested that six centers be established as dispensaries and noted that the city charter already enabled it. He said that he had a formal legal opinion written by a lawyer that stated it was legal. He had a draft law that they could adopt, he said. Ream suggested that establishing six large centers that would be well run was a better alternative to dispensaries

showing up on every street corner.

### Marijuana: Public Commentary

The public commentary session at Thursday's meeting was one of the more animated in The Chronicle's memory. Speakers' remarks were met with long and enthusiastic applause – tolerated by the council during public commentary, but not during public hearings.



Just before The Chronicle clicked the shutter, Chuck Ream folded up his sign indicating in red the number 74, which is the percentage of Ann Arbor voters who supported the medical marijuana city charter amendment.

**Chuck Ream** was also on hand Thursday night to address the city council on Postema's proposed moratorium, which came after several facilities for growing and dispensing marijuana had appeared in the city. Ream alluded to his previous appearance before the council several months earlier, when he'd made a specific suggestion that would have regulated dispensaries. He characterized the proposed moratorium as a "direct assault on democracy."

**Gershom Avery** asked who the city attorney was, then said, "Do you get elected?" When the indication was no, city attorney Postema is not elected to his post, Avery told the council, "He's not your friend." Avery explained that Postema was setting the councilmembers up to be the "fall guys" – they would be the ones who would suffer the consequences of voter discontent with their actions. He called the decision to consider the moratorium a violation of the Michigan Open Meetings Act and said that the measure violated the Right to Farm Act. The only way a moratorium could exist, he said, was in a context of fraud. He alluded to a possible lawsuit against the federal government by Americans for Safe Access.

**Kirk Reid** declared that he wished he could say it was an honor to address the council, but it was not. He ticked through a number of different statistics on deaths attributable to alcohol, cigarettes and other pharmaceuticals. Marijuana, he contended, has not killed anyone. He noted that there are 102 bars in Ann

Arbor and 24 pharmacies – CVS, RiteAid, Kroger and the like. There are 24 places in Ann Arbor to buy OxyContin, he said, and he wants 24 places where he can buy medical marijuana. He stressed that they were patients: "We're not dirty hippies – we're the community that voted you in; we'll vote you out."

Reid also pointed out the positive economic impact of marijuana dispensaries, addressing his remarks to Stephen Rapundalo (Ward 2), and giving the Ward 2 councilmember's name a novel pronunciation – with apology: /rap-a-dun-dell/.

**Anthony Fried** began by alluding to the boisterous applause that had met the previous speaker's remarks, saying "Wow, I bet you guys feel like you opened a can of worms." He said he'd helped many people open dispensaries, and warned that lawsuits would come as a result of the moratorium. He told the council that they would all get sick sometime, too, and that he hoped they never had to see a sick child suffer. He concluded by saying, "Shame on every single one of you. This is not the way this country works, and it's not the way the city works."

**Renee Wolf**, who told the council she'd had multiple sclerosis for 32 years, was helped to the microphone by several others. But she stood unassisted at the podium. She said she'd been told she'd need to rely on a wheelchair, but she was not in a wheelchair – because she used medical marijuana. She said she'd had to fight for her life and said that life was too short to sweat the small stuff. "Please don't take away my medicine – that's all I ask. And god bless all of you."



At the podium is Brandy Zink, who spoke in opposition to the moratorium on medical marijuana growing and dispensing. Around 75 people filled the council chambers on Thursday.

**Brandy Zink** identified herself as a legal medical marijuana patient – she's an epilepsy patient and an ovarian cancer survivor. Her doctor recommends medical marijuana, she said, and that's the therapy that works for her. She suggested that instead of enacting a moratorium, the council should establish legislation to permit and license medical cannabis dispensing collectives. She also identified herself as an ambassador of Americans for Safe Access.

She noted Ann Arbor's long history of tolerance towards marijuana use and suggested that there was surely not some new threat to health, safety and welfare. It places undue burden on the sick, she said. She argued against enacting stricter legislation on medical marijuana than regulations on gun vendors, adult entertainment vendors, or pharmacies. She pointed to the economic benefit of marijuana dispensaries, and asked why the council would enact a moratorium in the midst of a recession.

Although **Matthew Abel** was signed up to speak, a colleague of his attempted to address the council in his place, but that is not permitted under the council's rules. The mayor then invited the first alternate on the list, who was **Michael McLeod**, a medical marijuana patient holding a master's degree from the University of Michigan School of Public Health. He said he is one of the founders of the Ann Arbor Medical Marijuana Patients Collective – they hold public meetings once a month. He said they had approached the city on numerous occasions, but the city had not responded or worked with them. He said he was embarrassed to be a resident of a city that would pass a moratorium that would deny patients their right to obtain or grow their medicine. On behalf of the collective, he asked that the council reject the moratorium as an attack against patients.