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ANN ARBOR, MICHIGAN

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Medical Pot Amendments May Yield Vote

Ann Arbor council to continue work on licensing

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Ann Arbor city council meeting (March 7, 2011) Part 2: At its first meeting in March, the city council undertook extensive amendments to a licensing proposal for medical marijuana businesses that it began considering for the first time at its Dec. 6, 2010 meeting. However, at the early March meeting, the council ultimately decided to postpone again its initial vote on the licensing proposal, which will eventually require two votes by the council, if it is to be enacted.

The city council will again take up the issue of licenses for medical marijuana businesses at its Monday, March 21 meeting.



Councilmember Sabra Briere (Ward 1) raised her hand and waited to be acknowledged by the mayor before speaking at the March 7, 2011 council meeting. (Photos by the writer.)

The council had previously heavily amended the licensing proposal at its Jan. 3, 2011 meeting as well as at its Feb. 7 meeting. The amendments made on March 7 put the council possibly in a position to make any final amendments, and to take its initial vote on the licensing proposal at its March 21 meeting. [.pdf of medical marijuana licensing proposal after March 7 amendments - "clean" version] [.pdf showing amendments undertaken at the March 7 meeting - "marked up" version]

Also at the March 21 meeting, the council is expected to extend the moratorium on use of property within the city for medical marijuana businesses - first enacted at the council's Aug. 5, 2010 meeting. The initial moratorium was supposed to last only 120 days, but was subsequently extended at the council's Nov. 15, 2010 meeting for another 60 days, and again at its Feb. 7, 2011 meeting an additional 60 days, until March 31, 2011. The council wants to coordinate the second and final vote on a medical marijuana zoning ordinance, which it passed initially on Oct. 18, 2010, with the vote on the licensing ordinance.

An additional medical-marijuana-related item, postponed from the March 7 meeting until March 21, is a proposal to enact a clear non-disclosure policy for information that the city might gather from people who have registered with the state of Michigan as medical marijuana patients and caregivers under Michigan's voter-approved Michigan Medical Marijuana Act.

Part 1 of the March 7, 2011 city council meeting report - which deals with the non-medical marijuana issues on the agenda - was previously published as a separate article.

Medical Marijuana: Public Commentary

While the council has now heard extensive public commentary on medical marijuana from multiple people at more than half a dozen meetings, that commentary does not constitute a formal

public hearing, which is required before the council takes a second and final vote on any ordinance. The council took its initial vote on a medical marijuana zoning ordinance in October 2010, but has yet to take its first vote on a licensing ordinance.

Ray Gould identified himself as a local resident, and a registered medical marijuana patient. He said that he was in the process of opening a medical marijuana dispensary when the council passed its moratorium. He reminded the council of the high percentage of Ann Arbor residents who had voted in favor of the Michigan Medical Marijuana Act. He told the council that currently 15 states allow use of medical marijuana in some form, and that 12 more states are considering similar legislation.

Gould cautioned that if the licensing rules require dispensaries to keep a list of suppliers, it would put a damper on suppliers. He suggested that a limit of 15 on the total number of licenses to be granted by the city is not enough, given the number of patients from outlying areas who might travel to Ann Arbor to get access to medical marijuana. He suggested that 25-30 licenses would be a better number. He pointed out that the moratorium was originally supposed to be in place for just 120 days [4 months], and now it's been in place for nearly 8 months.

Dennis Hayes remarked that he was back for the fourth or fifth time. He pointed to the legislative intent of the MMMA, which is to enhance the ability of patients to get access to medical marijuana. He told the council that there have been several new developments. Gov. Rick Snyder had signed an executive order that transfers the Bureau of Health Professions from the Department of Community Health to the new Department of Licensing and Regulatory Affairs. This would transfer responsibility for processing applications for registered caregivers and patients, Hayes said, and the state is already 40,000 applications behind, so he didn't think that this would improve things. It would likely not take just four months but rather six months for applications to be approved, he feared.

Hayes went on to describe a recent Michigan Court of Appeals ruling where the dissenting judge in the 2-1 ruling had argued that the MMMA should be used as a "shield" and not as a "sword." [The case involved a man who was growing medical marijuana in a dog kennel, surrounded by a locked six-foot fence. The two judges in the majority ruled that this did not meet the MMMA requirement that medical marijuana be kept in "a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by registered primary caregiver or registered qualifying patient."]

Hayes said that while the licensing requirements being considered by the Ann Arbor city council did not constitute a single large sword, they were a set of smaller swords.

Chuck Ream - who addressed the council over a year ago on the topic of medical marijuana, and has frequently addressed the council over the last four months - told them there was not much more to say. It's time to "gitter done," he said. He asked how cultivation facilities actually helped patients - he feared they would contribute to getting Ann Arbor's whole program busted. As far as record-keeping goes, he said there can't be a permanent list of all suppliers kept by dispensaries. If they keep it for 30 days, he said, that is sufficient.

Ream said that in addressing the city council, encouraging them to do the right thing with respect to the licensing ordinance, he felt a bit like the birds in the story of Peter Rabbit who exhorted Peter to exert himself, and when he did, he set himself free.

Mike McLeod introduced himself on behalf of the Green Planet Patient Collective. He asked the council to reconsider the definition of "cultivation facility" - he was concerned that the current definition would apply to just a single plant grown outside someone's home. He said that the

collective believes the state law gives rights to patients and caregivers to grow plants without the requirement that they be put on a list. The city's zoning ordinance would be sufficient, he said.

Matthew Abel introduced himself as an attorney with Cannabis Counsel in Detroit. He echoed what Hayes and Ream had to say about privacy and record-keeping. He said there's concern due to the fact that the federal government has subpoenaed records and may continue to do so. He advises his medical marijuana clients to keep the minimum amount of records needed to maintain the business. With respect to cultivation facilities, he said that if they're operated properly, they're unlikely to draw interest from police.

Abel said he was mostly concerned about the number of licenses that would be available. He reported that he had a number of clients who were interested in doing business in Ann Arbor, but who were not doing so, because they had waited – they were being cautious to make sure they would have city approval before going forward. Now, he said, with the city council's apparent intent to grant licenses to existing businesses on a priority basis, those who were cautious are being punished. He suggested doubling the number of dispensaries allowed. He also noted that existing businesses are concentrated mostly on the west side and suggested a system that allocates a certain number to each of the city's five wards might work to spread things out geographically.

Medical Marijuana Non-Disclosure Policy

Before the council was a resolution that would articulate specifically that the city has a non-disclosure policy about information that might be collected in the course of processing medical marijuana licensing applications or enforcing zoning regulations. The resolution was brought forward by Sabra Briere (Ward 1). Its "Resolved" clauses read:

RESOLVED, That the following information, if provided to the City as part of the zoning and/or licensing process for medical marijuana caregivers, dispensaries or other providers, shall be protected against public disclosure in the course of the zoning and licensing process: the name, address and date of birth of any qualifying patient; the name, address and date of birth of a qualifying patient's primary caregiver; the name, address and telephone number of a qualifying patient's physician; any designation as to whether a qualifying patient or primary caregiver will be allowed under state law to possess marijuana plants for a qualifying patient's medical use; and the names or other identifying information of persons to whom the Department of Community Health has issued registry identification cards; and

RESOLVED, That the foregoing information shall be exempted from disclosure in response to Freedom of Information Act requests on privacy grounds and/or based on the provisions of Michigan Medical Marihuana Act, unless those grounds for exemption are ruled invalid by a court.

The relatively brief council discussion – which came after more than two hours of deliberations on the medical marijuana licensing scheme – included Briere, city attorney Stephen Postema, Christopher Taylor (Ward 3) and Tony Derezinski (Ward 2). Background for their conversation are privacy clauses in two different statutes: (1) the Michigan Freedom of Information Act (FOIA), and (2) the Michigan Medical Marijuana Act (MMMA).

In broad strokes, the FOIA says that public bodies must produce information upon request. But certain exemptions apply. The two FOIA exemptions relevant to the council's discussion include one