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Az Dispensaries
struggle
We told them
They were legal
- Bunch of
Dispensaries
Started.

January 7, 2010

To whom it may concern:

You have asked me to write an opinion letter addressing the following issue: May a medical marijuana dispensary legally operate in the City of Ann Arbor without an enabling ordinance, considering chapter 16 of the Ann Arbor City Charter?

The short answer to your question is yes. No such enabling ordinance is necessary. A medical marijuana dispensary may legally operate in the City of Ann Arbor in the same way that any store selling general merchandise may operate.

The state's Michigan Medical Marijuana Act, adopted directly by the people in November, 2008, legalizes the use of marijuana for medical purposes. It also provides for a system to register qualifying patients and primary caregivers. Therefore, as long as a proposed medical marijuana dispensary operates according to this Act and the rules issued by the state's Department of Community Health on April 4 of this year, no agent of the state (including the Michigan State Police) may take any action against such a dispensary, registered patients, or registered caregivers.

Similarly, the amendment to chapter 16 of the Ann Arbor City Charter, adopted by the voters in November, 2004, takes the City out of the business of prosecuting medical marijuana patients and those who sell to them. Section 16.2(a) does state that "No person shall possess, control, use, give, away, or sell marijuana or cannabis," and section 16.2(b) begins by setting a schedule of civil infraction fines. However, section 16.2(b) then sets forth the language of the amendment enacted by the voters:

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...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 users of the marijuana or cannabis....

The fact that the use of marijuana for medical purposes is an “affirmative defense” means that if the defense is established, no offense at all has been committed. Thus, the Ann Arbor Police Department cannot take any successful action against registered patients and caregivers, or those who sell to them, under the City Charter.

In addition, Ann Arbor does not license the business of operating a medical marijuana dispensary. I have reviewed chapters 76 and 77 of the City Code, which governs licenses and fees. While the City licenses activities ranging from alarm systems to truck rentals, the City Code is silent on medical marijuana dispensaries.

So, since the City does not regulate the business of selling medical marijuana to registered patients or caregivers, a dispensary serving only this clientele can operate legally anywhere in the City zoned for general business.

Please let me know if there are any further questions.

Sincerely,

A handwritten signature in cursive script that reads "David Cahill".

David Cahill

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