



## CITY COUNCIL AGENDA ITEM

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Date: September 7, 2010

To: Troy City Council

From: A. John Szerlag, City Manager  
Lori Grigg Bluhm, City Attorney  
Gary Mayer, Police Chief  
Mark F. Miller, Acting Assistant City Manager/Economic Development Services  
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Subject: Medical Marihuana

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### Background

Michigan voters approved an initiative legislative proposal in November 2008, permitting the use and cultivation of marihuana for specified medical conditions. As an initiative petition, there was no requirement or opportunity to scrutinize the proposed new law for potential conflicts with other laws. The ballot proposal only highlighted the proposed changes, and deferred to the Department of Community Health for the implementation of this new law, which was designed to:

- Permit physician approved use of marihuana by registered patients with debilitating medical conditions....
- Permit registered individuals to grow limited amounts of marihuana for qualifying patients in an enclosed, locked facility.
- Require ... an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana. . . . (Excerpts from ballot proposal)

Under the Michigan Constitution, once an initiative proposal is approved by a majority of the electorate, the provisions are effective 10 days after certification. In addition, any amendments to laws enacted by initiative petition must be approved by a 3/4 vote of each house of the Michigan legislature, which presents a significant hurdle to any subsequent legislative clarifications. (Michigan Constitution, Article 2, Section 9). Many people believe that through litigation, some of the ambiguities in the statute will be resolved. Unfortunately, the litigation process takes months to finalize, and it hasn't even been started yet. In the interim, municipalities are taking different approaches to address medical marihuana:

- Many Michigan communities are enacting moratoriums on any medical marihuana legislation, which provides them with additional time to study the issues.
- Other communities rely on federal law, which arguably pre-empts the new state law. Under federal law, the possession, use, and cultivation of marihuana is prohibited. Many of these communities have taken affirmative action by passing an ordinance



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expressly prohibiting any violation of local, state, or federal laws. The ACLU has sent letters to at least some of these communities, threatening to challenge this position. According to the ACLU, the state medical marihuana statute pre-empts local ordinances.

- Some communities are embracing the medical marihuana industry, and are expressly allowing for compassion care clinics or cooperative grow operations in certain areas. Some of these communities have passed regulations to limit marihuana to one concentrated area, instead of dispersed throughout the municipality (similar to adult use restrictions).
- Some communities limit medical marihuana to residential areas. Many of these communities have imposed licensing requirements, to insure that any additional lighting and electrical modifications required by a marihuana grow operation meet safety requirements.

To date, City Administration has received limited inquiries about potential medical marihuana grow or distribution businesses in the City. In each case, the proposed operation was prohibited by state statute or local ordinances. In addition, there was a tenant who temporarily used an industrial building in the City to grow marihuana, but this was in violation of existing City ordinances, and the tenant has now moved his business out of the City. After some recent zoning cases, the City amended many of its zoning ordinances, which places the City in a different regulatory position than many other municipalities who are struggling with state or federal law pre-emption issues.

The City of Troy has not taken any affirmative action on the state medical marihuana law, especially since our zoning ordinances, combined with state statutory provisions, provides additional protections against medical marihuana dispensaries and large scale grow operations. The federal government also has the ability to enforce its laws prohibiting the possession, use and growth of marihuana as a Schedule I controlled substance. Although U.S. Attorney General Eric H. Holder, Jr., has declared that he will not prioritize the prosecution of those persons who are compliant with state medical marihuana laws (in 14 states), he also states “we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal.” (October 2009)

The City of Troy is protected by federal law enforcement against the criminal marihuana enterprises. Although some persons have expressed concerns about the presence of physicians in the City that advertise and cater to prospective medical marihuana patients, the City cannot prohibit this limited activity. City employees are otherwise limited to the enforcement of its existing laws. However, if City Council desires to take some type of affirmative action on this issue, then City Administration is happy to provide some alternatives for your consideration, after detailing the possible pre-emption issues. Please let us know if there are any questions concerning this matter.

A summary of the medical marihuana law is attached for your review.

## Summary of Michigan Medical Marihuana Act (MCL 333.26421 et. seq.)

### Qualification of patients:

- Persons with chronic or “debilitating medical conditions” obtain a certification from a physician that the individual is likely to receive some benefit from a medical use of marihuana.
- Physicians do not prescribe medical marihuana, and pharmacies do not distribute medical marihuana.
- Persons under 18 years old may qualify with parent/guardian consent and certification from two physicians. The parents/ guardians must serve as a primary caregiver.

### Registration of qualifying patients and primary caregivers:

- Prospective patients submit a yearly application, with the physician’s certification, to the Michigan Department of Community Health (MDCH). The patients must also specifically designate and identify all care-givers who are authorized to possess marihuana for the patient.
- MDCH has 15 days to approve the application, or deny based on the failure to include the required documentation or falsification of the documentation.
- MDCH must issue registry identification cards to the qualifying patient. Renewals can be obtained yearly thereafter.
- MDCH must also issue a registry identification card to the designated primary care giver, if requested. The registry identification card shall identify the qualified patient(s) served. Primary care givers can serve a maximum of five qualified patients, and must not have any prior drug convictions.
- The application, supporting documentation, identification of the patient and also the primary care giver is confidential, and it is a criminal violation to disclose this information to anyone (\$1,000 fine and up to 6 months jail time).
- Disclosure of the above confidential information is also limited for local law enforcement. With probable cause of a violation of law, police officers can request a copy of a registry card, and can then verify its status with the MDCH.
- Non-specific information, such as the number of applications; qualifying patients; certifying physicians; revoked registrations; and the types of debilitating medical conditions shall be annually reported.
- Registry cards from other states will also be recognized in Michigan.

### Possession and Use Limitations:

- Can’t possess or use marihuana on a school bus or on any pre-school, primary or secondary school.
- Can’t possess or use marihuana in any correctional facility.
- Can’t smoke marihuana in any public place or public transportation (but can possess it)

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- Can't perform job responsibilities under the influence of marihuana that constitute negligence or professional malpractice.
- Can't operate cars, aircraft or boats while under the influence of marihuana (other state laws prohibit driving with any presence of marihuana).
- Can't use marihuana if you don't have a serious or debilitating medical condition.

### Rules Regarding Acquisition and Cultivation of Marihuana

- Patients and primary care givers can possess up to 2.5 ounces of usable marihuana for each designating qualified patient (up to 5 additional persons)
- Designated care givers can also cultivate up to 12 marihuana plants for each qualifying patient (up to 5). The size of the plants is not limited, and this also includes the seeds, stalks, and unusable roots of the plants.
- All marihuana plants must be kept in an enclosed, locked facility, which is defined as a "closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient." (MCL 333.26423)

### Protections for Registered Patients and Care givers and Physicians

- Patients with the registration card can't be arrested or prosecuted under state law, as long as they are compliant.
- If the patient or care giver has a registration card, then it is presumed that they are compliant with the state statute.
- Patients, care givers, and physicians cannot be civilly penalized or disciplined or face any other civil penalty (forfeiture, seizure of narcotic paraphernalia, etc.) as long as there is compliance with the state statute. This includes occupational and professional discipline.
- Qualified patients and care givers shall not be denied visitation with their children, unless there is an articulated and substantiated unreasonable danger to the minor(s).
- Registered care givers can be compensated for the costs associated with their work.

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