



City of Ann Arbor
PLANNING & DEVELOPMENT SERVICES — PLANNING DIVISION
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September 30, 2011

Subject: Notice Regarding Medical Marijuana Dispensary Licenses

Dear Dispensary Owner:

The City's zoning and licensing ordinances concerning medical marijuana dispensaries require, among other things, that dispensaries comply with the Michigan Medical Marijuana Act (MMMA).

Any application for a dispensary license requires a zoning compliance permit, which requires that the dispensary be in compliance with the MMMA. **The Michigan Court of Appeals has recently clarified in *State v McQueen* (as set forth in more detail below) that the sale of marijuana from a dispensary does not comply with the MMMA** (see enclosed summary and press release from the County Prosecutor).

Defining "sale," the Court of Appeals stated "[a] 'sale' is '[t]he transfer of property or title for a price'" and "the 'sale' of marihuana consists of the 'delivery' or 'transfer' plus the receipt of compensation."

Therefore, the City will consider applications for zoning compliance permits only if they are accompanied by a written statement as to the applicant's rationale for how the proposed dispensary will comply with the MMMA as interpreted by the Michigan Court of Appeals in *McQueen*. Further, such written statement needs to be accompanied by relevant proof of compliance. Please note, however, that if the applicant's rationale for operating within the MMMA is that the dispensary is a non-profit entity, this fact alone will not be sufficient to demonstrate compliance.

If the City determines that a zoning compliance permit may be issued and the applicant fulfills all other application requirements for a medical marijuana business license, then the City will accept and review a completed license application.

Note regarding medical marijuana cultivation facilities: the City's ordinances do not require a license for a cultivation facility and the contents of this notice to prospective dispensaries does not apply to medical marijuana cultivation facilities at this time.

Sincerely,

A handwritten signature in cursive script that reads "Wendy L. Rampson".

Wendy L. Rampson
Planning Manager

Enclosures

COURT OF APPEALS DECISION IN STATE V MCQUEEN

On August 23, 2011, the Michigan Court of Appeals issued a ruling in the case of *State v McQueen*, that the transfer or delivery of marijuana at the dispensary in that case constituted a sale of marijuana, which is a criminal activity under the Public Health Code that the MMMA does not shield from criminal prosecution. The Court's decision turned on its finding that the "sale" of marijuana was taking place in the transfers from a patient who owned the marijuana to another patient). The Court explicitly did not rule on the legality of "patient-to-patient" transfers of marijuana where no sale occurs.

You may obtain a copy of the Court of Appeals decision in *State v McQueen* on-line at http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20110823_C301951_67_30_1951.OPN.PDF.

Pertinent statements by the Court and the relevant page numbers include the following:

"This case requires us to decide whether the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, permits the selling of marihuana." Page 1.

"Specifically, the 'medical use' of marihuana, as defined by the MMMA, does not include patient-to-patient 'sales' of marihuana, and no other provision of the MMMA can be read to permit such sales." Page 1.

"Specifically, in regard to this case, the MMMA does not authorize marihuana dispensaries." Page 10.

"The question becomes whether the 'medical use' of marihuana permits the 'sale' of marihuana. We hold that it does not because the 'sale' of marihuana is not the equivalent to [sic] the 'delivery' or 'transfer' of marihuana. The 'delivery' or 'transfer' of marihuana is only one component of the 'sale' of marihuana—the 'sale' of marihuana consists of the 'delivery' or 'transfer' *plus* the receipt of compensation. The 'medical use' of marihuana, as defined by the MMMA, allows for the 'delivery' and 'transfer' of marihuana, but not the 'sale' of marihuana. MCL 333.26423(e)." Page 13 (emphasis in original).

"Because defendants' operation of CA involves the selling of marihuana, and because the selling of marihuana is not permitted by the MMMA, we need not, and do not, reach the issue whether the MMMA permits uncompensated patient-to-patient conveyances of marihuana." Page 14, footnote 17.

"In conclusion, the "medical use" of marihuana does not include patient-to-patient "sales" of marihuana, and neither § 4(e) nor § 4(k) permits the sale of marihuana." Page 14.

PRESS RELEASE FROM WASHTENAW COUNTY PROSECUTOR BRIAN MACKIE

A press release issued by Washtenaw County Prosecutor Brian Mackie, a copy of which is attached, includes the following statements that underscore the serious implications of running a dispensary that does not comply with the MMMA:

“The protections afforded by the MMMA to “qualified patients” and “caregivers” are limited and subject to the conditions set forth in the MMMA. Adherence to those conditions must be strict in order for the protections to apply.

People acting in violation of the Public Health Code risk being subjected to injunctions for maintaining a public nuisance, criminal prosecution for violations of the public health code and possible forfeiture of assets acquired through illegal business practices.”

**OFFICE OF THE PROSECUTING ATTORNEY
WASHTENAW COUNTY**

PRESS RELEASE-FOR IMMEDIATE RELEASE

Last week a unanimous panel of the Michigan Court of Appeals released an opinion¹ interpreting the Michigan Medical Marihuana Act (MMMA). The court interpreted the plain meaning of the MMMA in conjunction with the Public Health Code (PHC) provisions regarding the possession, use and distribution of marihuana.²

In the *McQueen* decision the Court of Appeals, citing earlier court rulings, stated:

The MMMA did not legalize the possession, use, or delivery of marihuana....Rather, the MMMA sets forth very limited circumstances in which persons involved with the use of marihuana, and who are thereby violating the PHC, may avoid criminal liability.³

Specifically...the MMMA does not authorize marihuana dispensaries. In addition, the MMMA does not expressly state that patients may sell their marihuana to other patients.

[T]he "medical use" of marihuana does not include patient-to-patient "sales" of marihuana, and neither § 4(e) nor 4(k) [of the MMMA] permits the sale of marihuana.

The court also ordered that the *McQueen* opinion was to have immediate effect.

In addition, a recent formal opinion by the Michigan Attorney General addressed the question of whether the MMMA allowed for

¹ *State of Michigan v Brandon McQueen, et al.*, _____ Mich. App. _____ (2011), Docket Number 301951.

² The portion of the Public Health Code specifically dealing with controlled substances is found in the Michigan Compiled Laws section 333.7101, *et seq.*

³ Case citations contained in the original are omitted here.

the joint cooperative cultivation or sharing of marihuana plants.⁴
The opinion stated that the MMMA:

prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver.

The protections afforded by the MMMA to “qualified patients” and “caregivers” are limited and subject to the conditions set forth in the MMMA. Adherence to those conditions must be strict in order for the protections to apply.

People acting in violation of the Public Health Code risk being subjected to injunctions for maintaining a public nuisance, criminal prosecution for violations of the public health code and possible forfeiture of assets acquired through illegal business practices.

As illustrated by the many phone calls to our office in recent days, it is clear that some people are upset by the McQueen decision. The Court of Appeals did not write the law, but interpreted it, as it is obligated to do. Those who believe that the law should be broadened can petition the legislature for changes they seek. The Washtenaw County Prosecutor’s Office will continue to follow the law, and will make determinations on criminal violations on a case-by-case basis, as is done with all potential crimes.

Contact persons:

Steven Hiller, Deputy Chief Assistant Prosecutor (734) 222-6620

Brian L. Mackie, Prosecuting Attorney (734) 222-6620

⁴ Michigan Attorney General’s Formal Opinion Number 7259, June 28, 2011. A formal opinion of the Attorney General has the force of law, unless it is overturned through later judicial or legislative action.