



MEMORANDUM

To: Village Community Liaison Cindy Edmondson, Village Clerk Joni Scott, Village President Steve Wetherbee, and Village Councilmember Will Harper
File: 6295.00 | VILLAGE OF NORTHPORT
From: Ross A. Hammersley | OLSON, BZDOK & HOWARD, PC
Date: October 31, 2019
Re: Review of Marijuana Petition for Ballot Initiative from T. Oehmke

This brief memo provides a summary of my analysis of the correspondence, election law excerpt, and petition signatures provided to the Village on or about October 23rd by attorney Thomas H. Oehmke. While set out in more detail below, based on my review of these materials, as well as Michigan’s election law and laws pertaining to marijuana (both medical and recreational), my conclusions are as follows: (1) based on the formatting requirements of Michigan election law, the petition forms are deficient in multiple respects, and are therefore invalid; (2) Mr. Oehmke’s proposed ordinance language is inconsistent with the substantive portions of Michigan law relating to medical and recreational marijuana.

My recommendation at this point would be to have this office prepare a letter to Mr. Oehmke to inform him of these deficiencies.

Background Information

As a preliminary matter, Mr. Oehmke is correct in that Section 6 of the Michigan Regulation and Taxation of Marihuana Act (MCL §333.27956; MRTMA; Initiated Law 1 of 2018) does provide for qualified electors within a municipality to petition their unit of government to prohibit marihuana establishments, as those establishments are defined in the MRTMA.

In order to properly initiate such a process, the petition(s) must: (1) comply with Section 488 of the Michigan Election Law (MCL §168.488; Public Act 116 of 1954); and (2) must contain a number of signatures of qualified electors within the municipality “greater than 5% of the votes cast for governor” in the most recent gubernatorial election. If a petition meets those two thresholds, it would be able to be placed before the voters as a means “to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality.”¹

Election Law Petition Requirements

Section 488 falls under Chapter XXII of the Michigan Election Law, which is subtitled “Initiative and Referendum.” However, this section merely serves as a cross-reference to other portions of the election law dealing primarily with petition formatting requirements. Under Section 488(2), any petition of this type must comply with the requirements of “Section 482(1), (4), (5), and (6),” as well as subparagraphs (7) and (8) of Section 482 and Section 544c(1) (all of which are directly referenced by and incorporated within Section 482(6)) in order to “place a question on the ballot before the electorate of a political subdivision” such as the Village of Northport.²

This memo will not go into detail on all of these requirements, but these petitions do not include the information required by Section 482(7) and (8) and therefore violate the provisions of those sections. The effect

¹ MCL §333.27956(1).

² MCL §168.488(2).

of this failure is to invalidate the petition signatures themselves. First, Section 482(7) requires that each petition “must provide at the top of the page check boxes and statements printed in 12-point type to clearly indicate whether the circulator of the petition is a paid signature gatherer or a volunteer signature gatherer.”³ No such language is included on these petitions. Second, under Section 482(8) any such petition “must clearly indicate below the statement required under subsection (7) and be printed in 12-point type that if the petition circulator does not comply with all of the requirements of this act for petition circulators, *any signature obtained by that petition circulator on that petition is invalid and will not be counted.*”⁴

As a result of the operation of these portions of the Michigan Election Law, the failure of these petitions to include the check boxes and statements indicating whether the circulator was paid or a volunteer signature gatherer means that “any signature obtained by that petition circulator on that petition is invalid and will not be counted.”⁵

Proposed Ordinance Would Violate Michigan Law

As to the substantive aspects of the proposed ordinance proffered by Mr. Oehmke on the petitions themselves, the proposed prohibition on “recreational marijuana establishments, medical marijuana facilities, related public signs and marijuana accessories” goes beyond the allowable prohibitions set forth in Section 6 of the MRTMA. Therefore, if enacted, the ordinance as proposed would violate specific provisions within Michigan law as described below.

First, the MRTMA defines a “marihuana establishment” as “a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the department.”⁶ The term “marihuana establishment” is not defined or used within the Medical Marihuana Facilities Licensing Act (MMFLA). Second, and more importantly, the MRTMA includes two sections that expressly disclaim any restrictions or limitations on activities related to medical marijuana. For example, after authorizing the petition process set forth above, subparagraph (5) of Section 6 states that “[a] municipality *may not adopt an ordinance that restricts* the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.”⁷ Section 4(2) of the MRTMA similarly states that “[t]his act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.”⁸

As a result, even if the petitions were properly formatted and could be considered valid, the proposed ordinance is substantively invalid as it violates Michigan law pertaining to medical marihuana.

Conclusion

It is my opinion that the petitions presented to the Village do not comply with the formatting requirements of MCL §168.488, and that the proposed ordinance language on those petitions would violate the express limitations of such citizen-initiated petition drives under the MRTMA.

³ MCL §168.482(7).

⁴ MCL §168.482(8) (emphasis added).

⁵ In addition, the petition language fails to completely comply with the requirements of Section 482(4).

⁶ MCL §333.27953(h).

⁷ MCL §333.27956(5).

⁸ MCL §333.27954(2).