



**MEMORANDUM**

**To:** Village President Steve Wetherbee, Community Liaison Cindy Edmondson, & Clerk Joni Scott  
**File:** 6295.00 | VILLAGE OF NORTHPORT  
**From:** Ross A. Hammersley | OLSON, BZDOK & HOWARD, PC  
**Date:** February 6, 2020  
**Re:** Review of Proposed Ballot Language for Repeal of Village Ordinances

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The Village Council approved Ordinance Nos. 124 (allowing medical marihuana facilities) and 125 (allowing recreational marihuana establishments) at its special meeting on October 17, 2019. Subsequently, two sets of petitions proposing the repeal of Ordinance Nos. 124 and 125 were submitted to the Village Clerk’s office under Section 6 of the 2018 state-wide initiated law, the Michigan Regulation and Taxation of Marihuana Act or “MRTMA”; MCL §333.27956). The proponents of the two petitions submitted to the Village have proposed specific language for use on the ballot of this November’s regular election in conjunction with those petitions. This memo provides a brief summary of the applicable statutory and legal requirements, reviews the two sets of proposed language for each of the two petitions as originally circulated on their petitions and then as later proposed to the Village, and provides options to the Village for its consideration with respect to the proposed ballot language related to recreational marijuana facilities.

**Election Law Requirements**

The MRTMA includes a statement that petitions submitted under Section 6 are also subject to the requirements of Section 488 of the Michigan Election Law (MCL §168.488; Public Act 116 of 1954), which governs the format, size, and other requirements for the petitions themselves. However, prior to placing such a question on the ballot for voters’ consideration, other requirements of the Election Law must also be met.

Under Section 646a of the Michigan Election Law (MCL §168.646a), “if a ballot question of a political subdivision of this state including ... a ... village ... is to be voted on at a regular election date ... the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election.”<sup>1</sup> Since the MRTMA requires such petitions to be voted upon at the “next regular election” (the November 3<sup>rd</sup> general election date), the “twelfth Tuesday” deadline for the certification of the ballot language for such petitions is August 11, 2020.

Under the Election Law, both Chapter XXII (Initiative and Referendum) and Chapter XXVIII (Holding of Elections) include the same requirements for questions that are submitted to electors, which are set forth in Sections 485 and 643a, respectively, and which read as follows:

A question submitted to the electors of this state or the electors of a subdivision of this state shall, to the extent that it will not confuse the electorate, be worded so that a “yes” vote will be a vote in favor of the subject matter of the proposal or issue and a “no” vote will be a vote against the subject matter of the proposal or issue. The question shall be worded so as to apprise the voters of the subject matter of the proposal or issue, but need not be legally precise. The question shall be clearly written using words that have a common everyday meaning to the general public. The language used shall not create prejudice for or against the issue or proposal.<sup>2</sup>

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<sup>1</sup> MCL §168.646a(2). In this instance, the language must be certified by the Village clerk to the County Clerk at least 82 days before the November 3<sup>rd</sup> general election date, or by August 13, 2020, per the language of Section 646a(2).

<sup>2</sup> MCL §168.485; MCL §168.643a.

Therefore, in order for the Village Clerk to certify the ballot language for any questions that will be placed before the voters in November in conformity with these requirements, there must be a determination of the subject matter of each respective proposal, and the language for each of the two questions must not be confusing, must be written so that the subject matter is easily understood by the general public without complicated wording or “legalese,” and must not create prejudice for or against the proposal. Since the proponents of these petitions have submitted two different versions of language related their petitions, this memo will now examine both sets of proposed language

### **Petitions’ Language**

As originally submitted in November of last year, the two sets of petitions proposing the repeal of Ordinance Nos. 124 and 125 under Section 6 of the MRTMA read as follows:

1. “To repeal the Village of Northport Ord. No. 125 (Recreational Marijuana Establishments Ordinance) and to completely prohibit any Marijuana Establishment, related public signs, and the production, manufacture, sale, or display of Marijuana Accessories in the Village of Northport; to define related items; to impose a civil penalty for violation(s).”
2. “To repeal the Village of Northport Ord. No. 124 (Medical Marijuana Facilities Ordinance) which now permits medical marijuana facilities in Northport. If this proposed repeal is adopted, then Ord. No. 124 will be repealed and NO medical marijuana facilities would be permitted or licensed to operate within Northport [per MCL §333.27205].” *[sic]*

### **Subsequently Proposed Language**

Following the submission of the petitions described above, the attorney for the proponents of these petitions, Mr. Thomas Oehmke, has written to counsel for the Village requesting the use of alternative language to that which was included on the petitions themselves; this newly proposed language reads as follows:

1. “Shall the Village of Northport completely prohibit within its boundaries any recreational marijuana establishment; related public signs; the production, manufacture, sale, or display of marijuana accessories; and repeal Village Ordinance No. 125 (which now permits recreational marijuana establishments)?” and
2. “Shall the Village of Northport completely prohibit within its boundaries any medical marijuana facility and repeal Village Ordinance No. 124 (which now permits medical marijuana facilities)?”

### **Distinction Between Medical and Recreational Issues**

As an initial matter, it is critically important to note that Village Ordinance No. 124 relates to medical marijuana facilities, rather than recreational facilities. While recreational facilities were authorized and are governed by the MRTMA, medical marijuana and associated facilities are not - they are instead governed by the Medical Marijuana Facilities Licensing Act, Public Act 281 of 2016, MCL §333.27102 *et seq.* (MMFLA), as well as the 2008 Initiated Law, the Michigan Medical Marijuana Act (MCL 333.26421 *et seq.*; “MMA”).

The reason this distinction is so important is that the MMFLA does not provide for nor allow a citizen-initiated petition that would have the effect of banning or prohibiting medical marijuana facilities within a municipal jurisdiction. The MMFLA is an “opt in” statute, such that no state operating license may be issued by the state to an applicant “unless the municipality in which the applicant’s proposed marijuana facility will operate has adopted an ordinance that authorizes that type of facility.”<sup>3</sup> By passing Ordinance No. 124, the Village of Northport “opted in,” authorizing specific types of medical marijuana facilities under Section III of that Ordinance.

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<sup>3</sup> MCL §333.27205(1).

Furthermore, as I initially advised the Council in October, the MRTMA includes clear and specific language in at least two separate sections that expressly disclaim and prohibit the use of the MRTMA to impose any restrictions or limitations on activities related to medical marijuana. First, after authorizing the petition process that was used by the proponents of these two ballot measures in Section 6 of the MRTMA (MCL §333.27956), subparagraph (5) of that same Section 6 goes on to state 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.”<sup>4</sup> Second, 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.”<sup>5</sup>

In short, the petition proponents may not utilize the petition authorization of Section 6 of the MRTMA to rescind or repeal Ordinance No. 124 pertaining to medical marihuana because the MRTMA precludes the use of Section 6 to adopt such an ordinance restricting privileges, rights, immunities, or defenses of persons under the medical marijuana statutes. As a result, the proposed ordinance and ballot language suggested above under both the petitions’ original language and the subsequently proposed language from Mr. Oehmke (both medical proposals are marked #2 above) is substantively invalid because it violates Michigan law pertaining to medical marihuana. I therefore do not recommend that the Village Clerk certify such language to the County Clerk. If the petition proponents wish to propose the repeal of Ordinance No. 124 through alternative means other than the use of the petition process set forth in Section 6 of the MRTMA I would be happy to review any such submission and advise the Council accordingly.

### **Ballot Language Regarding Recreational Marijuana Facilities**

With regard to the two sets of ballot language above that relate to the petitions to repeal Ordinance No. 125 and to further ban or prohibit recreational marijuana facilities from the Village of Northport (both of which are marked with the #1 above), the question as to which set of ballot language to approve brings us back to the requirements of Section 485 as stated above.

In my opinion, the second, subsequently proposed ballot language is unclear and may confuse the electorate. As stated on the original petition, the goal of the proposal related to recreational marijuana is, first, to repeal Ordinance No. 125, so my opinion is that in order to comply with Section 485 the repeal of Ordinance No. 125 should be the first statement in the proposed ballot language. The rest of the language should reference the fact that a new ordinance is proposed to replace what is now Ordinance No. 125, and should then clearly describe the primary elements of the proposed replacement ordinance. To save time, I have excerpted portions of the two proposals and have made further edits which, in my opinion, comport with the requirements of Section 485 as well as the authority granted in Section 6 of the MRTMA; that alternative language reads as follows:

- Shall the Village of Northport repeal Village Ordinance No. 125 (the Recreational Marijuana Establishments Ordinance) and replace it with a new ordinance that would completely prohibit recreational marijuana establishments in the Village of Northport as those establishments are defined in the Michigan Regulation and Taxation of Marihuana Act (Initiated Law 1 of 2018)?

### **Conclusion**

It is my opinion that the Village should not certify the language of the ballot petition proposal(s) related to medical marijuana facilities, and that the Village should certify the proposed alternative language above related to recreational marijuana facilities so as to comply with the requirements of Section 485 (MCL §168.485) of the Michigan Election Law as well as the authority granted to petitioners under Section 6 of the MRTMA.

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<sup>4</sup> MCL §333.27956(5) (emphasis added).

<sup>5</sup> MCL §333.27956(5).