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July 29, 2010

William P. Hampton, City Attorney  
City of Bloomfield Hills  
45 East Long Lake Rd.  
Bloomfield Hills, MI 48303

Re: Bloomfield Hills Ordinance No. 385 Regulating Medical Marijuana

Dear Mr. Hampton:

We are deeply concerned that an ordinance recently adopted by the City Commission of Bloomfield Hills severely and unlawfully burdens the rights of medical marijuana patients and caregivers under the Michigan Medical Marijuana Act. We ask that you clarify the meaning of the ordinance and provide us with assurances on behalf of the City that the ordinance will not be enforced in violation of state law. If you are unable to provide us with such assurances, we ask that the City Commission immediately rescind or amend the ordinance.

### Background

In 2008, Michigan voters overwhelmingly approved the Michigan Medical Marijuana Act (“MMMA”), MCL 333.26421 *et seq.* (attached as Exhibit A). A majority of voters in every county approved the MMMA, including 66 percent of the voters in Oakland County and 62 percent of the voters in the City of Bloomfield Hills. Recognizing that “[m]odern medical research . . . has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions,” MCL 333.26421(a), the MMMA legalizes the medical use of marijuana under state law.

The MMMA allows qualifying patients who register with the Michigan Department of Community Health to legally cultivate and possess up to 12 marijuana plants and 2.5 ounces of usable marijuana. MCL 333.26424. It also allows registered primary caregivers to assume up to five qualifying patients’ growth and storage capacity. *Id.* Significantly, the MMMA provides that qualifying patients and their caregivers “shall not be subject to arrest, prosecution, or penalty in any manner.” *Id.*

Last month, the Bloomfield Hills City Commission adopted Ordinance No. 385, which amends the City Code to provide as follows:

It shall be unlawful for any person or business to engage in any activity, conduct, use or venture in the City that is contrary to federal, state or local laws or ordinances, including violations of this Code or the City of Bloomfield Hills Zoning Ordinance, and any statutes and codes adopted or utilized by the City.

Although the ordinance contains no explicit reference to controlled substances, it is our understanding that its purpose is to regulate medical marijuana. See Bloomfield Hills City Commission Minutes from May 24, 2010, attached as Exhibit B (characterizing the proposed ordinance as a “medical marijuana ordinance”), and Greg Kowalski, *Hills Moves to Forbid Medical Marijuana*, May 30, 2010,<sup>1</sup> attached as Exhibit C (stating that “the Bloomfield Hills City Commission ruled out the sale of medical marijuana within the city”). The use of marijuana in any amount remains illegal under federal law. MCL 333.26421(c); 21 USC 844. Read literally, then, the ordinance – which makes it “unlawful . . . to engage in any activity . . . in the City that is contrary to *federal*, state *or* local laws or ordinances” (emphasis added) – operates as a complete ban on all medical marijuana within the City of Bloomfield Hills.

While the use or possession of marijuana is illegal under federal law, it is important to note that the U.S. Justice Department has announced that it will not prosecute residents of any of the 14 states with medical marijuana laws so long as the residents abide by state law. See David Stout & Solomon Moore, *U.S. Won't Prosecute in States That Allow Medical Marijuana*, N.Y. Times, Oct. 20, 2009,<sup>2</sup> attached as Exhibit D. Thus, while the federal government has given due deference to state law, if Birmingham enforces the new ordinance as written, it would be flouting state law.

### **Ordinance No. 385 Is Void Because It Is Preempted By State Law**

The Michigan Supreme Court has held that a municipality is precluded from enacting an ordinance if the ordinance is in direct conflict with the state statutory scheme. *People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977). Direct conflict exists when a city ordinance excludes what the state has permitted, thus rendering the ordinance void. *Nat'l Amusement Co v Johnson*, 270 Mich 613, 616; 259 NW 342 (1935). For example, in *National Amusement*, the Michigan Supreme Court found a city ordinance invalid because it prohibited “a contest to test the endurance of the participants,” in direct conflict with a state statute regulating (but permitting under certain conditions) “walkathons, and similar endurance contests.” Similarly, in *Builders Association v City of Detroit*, 295 Mich 272; 294 NW 677 (1940), the Michigan Supreme Court invalidated a city ordinance prohibiting all real estate transactions on Sundays because it conflicted with a statewide Sunday closing law that contained an exemption for those who conscientiously believe that the Sabbath should be observed on Saturday.

Bloomfield Hills Ordinance No. 385 is also in direct conflict with state law. The MMMA provides that registered patients and caregivers “shall not be subject to arrest, prosecution, or penalty in any manner,” MCL 333.26424, for the medical use of marijuana. The ordinance, by contrast, makes it unlawful to engage in any activity that is contrary to federal law, which currently includes the medical use of marijuana. It “attempts to prohibit that which the statute permits and is, therefore, void.” *Builders Ass'n*, 295 Mich at 276.

Two examples illustrate the potential problems with the ordinance. Under the MMMA, a long-time resident of Bloomfield Hills who is diagnosed with cancer may obtain the approval of

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<sup>1</sup> <http://www.hometownlife.com/article/20100530/NEWS02/5300381>.

<sup>2</sup> <http://www.nytimes.com/2009/10/20/us/20cannabis.html>.

her physician, and then register with the state, to cultivate up to 12 marijuana plants in an enclosed, locked facility inside her home for the purpose of treating the debilitating pain and nausea that are symptomatic of the disease. The Bloomfield Hills ordinance, however, appears to prohibit this. Although the MMMA provides that she “shall not be subject to arrest, prosecution, or penalty in any manner,” MCL 333.26424, the ordinance authorizes the city attorney to prosecute her for committing a misdemeanor. See Bloomfield Hills City Code § 1-11 (violation of ordinance deemed a misdemeanor). That prosecution would directly conflict with state law.

The MMMA also provides for primary caregivers to assist with qualifying patients’ medical use of marijuana, which includes delivery and transportation. MCL 333.26423(e). Accordingly, state law protects the right of a caregiver from Ferndale to drive through Bloomfield Hills on the way to deliver 2.5 ounces of medical marijuana to a patient in Pontiac. However, if the Bloomfield Hills Police stopped the caregiver on his way up Woodward Avenue, he would be subject to arrest for violating the city ordinance. See MCL 764.15(1)(a) (authorizing warrantless arrest for ordinance violation committed in a peace officer’s presence). That arrest would also directly conflict with state law.

### **Ordinance No. 385 Is Not Authorized by Federal Law**

Although Ordinance No. 385 prohibits activity which is already unlawful under *federal* law, the City Commission does not derive its powers from federal law and has no authority to enforce federal law. “Local governments have no general or inherent powers,” “only those expressly conferred upon them by the Constitution of the State of Michigan, by acts of the Legislature, or necessarily implied therefrom.” *Crain v Gibson*, 73 Mich App 192, 200; 250 NW2d 792 (1977). Neither the state constitution nor any state law authorizes the City of Bloomfield Hills to enforce federal drug laws. To the contrary, the use of marijuana for medical purposes – although subject to federal prosecution – is expressly permitted by the MMMA. In voting to enact the MMMA, the people of the State of Michigan specifically opted not to “enforce federal law or prosecute people for engaging in activities prohibited by federal law.” MCL 333.26421(c). The City of Bloomfield Hills must adhere to this policy.

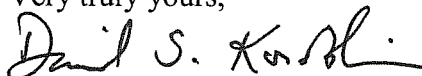
In California, where medical marijuana has been legal for nearly 15 years, courts have consistently rejected local municipalities’ attempts to circumvent the state law on grounds that marijuana is illegal under federal law. In *City of Garden Grove v Superior Court*, 157 Cal App 4th 355; 68 Cal Rptr 3d 656 (2007), the California Court of Appeal held that the city’s police department was required to return the marijuana it seized from a patient who possessed it lawfully under the state’s medical marijuana law. The court rejected the city’s claim that it was entitled to confiscate the marijuana as illegal contraband under federal law. See *id.* at 391 (noting that “it is not the job of the local police to enforce the federal drug laws”). Similarly, in *County of San Diego v San Diego NORML*, 165 Cal App 4th 798; 81 Cal Rptr 3d 461 (2008), the California Court of Appeal held that the counties could not refuse to issue medical marijuana identification cards under state law on grounds that medical marijuana is illegal under federal law. Because the state law did not require the counties to violate federal law, the state law controlled. See *id.* at 825.

Lastly, it bears repeating that it is the official policy of the United States government not to prosecute medical marijuana patients who are in compliance with their state's drug laws. Accordingly, if Bloomfield Hills applies its ordinance to medical marijuana patients, it will be taking enforcement action in an area repudiated at the state *and* federal levels – and by 62 percent of its own voters.

### **Request for Assurances**

In light of the apparent conflict between the city ordinance and state law, we ask that you promptly respond to this letter to clarify the meaning and scope of the ordinance and provide assurances that the ordinance will not be enforced against patients and caregivers who use medical marijuana in accordance with state law. If you are unable to provide us with such assurances, we ask that the City Commission immediately rescind or amend the ordinance. The ACLU of Michigan is following this important issue closely and stands ready to protect the rights of medical marijuana patients and caregivers in Bloomfield Hills and throughout the State of Michigan.

Very truly yours,



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Cc: Michael McCready, Mayor of Bloomfield Hills  
Patricia A. Hardy, Mayor Pro Tem  
Michael T. Zambricki, Commissioner  
Robert E. Toohey, Commissioner  
Sarah H. McClure, Commissioner  
Kirt Bowden, Chief of Police

# EXHIBIT A

**MICHIGAN MEDICAL MARIHUANA ACT**  
**Initiated Law 1 of 2008**

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

*The People of the State of Michigan enact:*

**333.26421 Short title.**

**1. Short Title.**

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26422 Findings, declaration.**

**2. Findings.**

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26423 Definitions.**

**3. Definitions.**

Sec. 3. As used in this act:

(a) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a).

(b) "Department" means the state department of community health.

(c) "Enclosed, locked facility" means 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.

(d) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL

333.7106.

(e) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(f) "Physician" means an individual licensed as a physician under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(g) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(i) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(j) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(k) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(l) "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity to medical use of marihuana; registry identification issued outside of department; sale of marihuana as felony; penalty.**

**4. Protections for the Medical Use of Marihuana.**

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

(b) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act, provided that the primary caregiver possesses an amount of marihuana that does not exceed:

(1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and

(2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and

(3) any incidental amount of seeds, stalks, and unusable roots.

(c) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly

articulated and substantiated.

(d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:

(1) is in possession of a registry identification card; and

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(g) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(h) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(i) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(j) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26425 Rules.**

#### **5. Department to Promulgate Rules.**

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department

action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:  
10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26426 Administration and enforcement of rules by department.**

#### **6. Administering the Department's Rules.**

Sec. 6. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

- (1) A written certification;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) Name, address, and telephone number of the qualifying patient's physician;
- (5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any; and
- (6) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian;
- (2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians; and
- (3) The qualifying patient's parent or legal guardian consents in writing to:
  - (A) Allow the qualifying patient's medical use of marihuana;
  - (B) Serve as the qualifying patient's primary caregiver; and
  - (C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.

(e) The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. Registry identification cards shall contain all of the following:

- (1) Name, address, and date of birth of the qualifying patient.
- (2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random identification number.
- (5) A photograph, if the department requires 1 by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.

(h) The following confidentiality rules shall apply:

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(i) The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:  
10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

In subsection (h)(4), the dollar amount "\$1, 000.00" contains a space between the comma and first zero, and evidently should read "\$1,000.00".

### **333.26427 Scope of act; limitations.**

#### **7. Scope of Act.**

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act shall not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school; or

(C) in any correctional facility.

(3) Smoke marihuana:

(A) on any form of public transportation; or

(B) in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(c) Nothing in this act shall be construed to require:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a

person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution shall be punishable by a fine of \$500.00, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.

**History:** 2008, Initiated Law I, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law I of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26428 Defenses.**

#### **8. Affirmative Defense and Dismissal for Medical Marihuana.**

Sec. 8. (a) Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

- (1) disciplinary action by a business or occupational or professional licensing board or bureau; or
- (2) forfeiture of any interest in or right to property.

**History:** 2008, Initiated Law I, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law I of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26429 Failure of department to adopt rules or issue valid registry identification card.**

#### **9. Enforcement of this Act.**

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to

section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:  
10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

### **333.26430 Severability.**

#### **10. Severability.**

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

**History:** 2008, Initiated Law 1, Eff. Dec. 4, 2008.

**Compiler's note:** MCL 333.26430 of Initiated Law 1 of 2008 provides:  
10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

# **EXHIBIT B**

**May 24, 2010** The special meeting of the City Commission was called to order at 4:30 p.m. by Mayor McCready, in the City Commission Room, 45 E. Long Lake Road, Bloomfield Hills, Michigan.

Commission Present: Mayor Michael D. McCready  
Mayor Pro Tem Patricia A. Hardy  
Commissioner Michael T. Zambricki  
Commissioner Robert E. Toohey  
Commissioner Sarah H. McClure

Staff Present: City Manager Jay Cravens  
City Clerk Amy Burton  
Finance Director / Treasurer Carolyn Lorenz  
Director of Public Safety Rick Matott  
City Attorney Derk Beckerleg

**Medical Marijuana Ordinance**

City Attorney Beckerleg described the three options the city commission has with regard to medical marijuana. He stated City Attorney Hampton supports adopting an ordinance to prohibit dispensaries in the City of Bloomfield Hills.

Director of Public Safety Matott also spoke in support of an ordinance to prohibit medical marijuana dispensaries in the city.

Motion by Commissioner McClure, supported by Commissioner Toohey the city commission direct Secret Wardle to draft an ordinance which would prohibit medical marijuana dispensaries in the City of Bloomfield Hills.

Ayes -4 (McCready, Zambricki, Toohey, McClure)

Nays -1 (Hardy)

Absent-0

Motion Adopted.

**PUBLIC HEARING 2010 – 2011 BUDGET**

Mayor McCready stated the public hearing for the 2010 – 2011 budget was open for comment from the audience.

The following residents spoke in support raising the millage and not changing staff levels:

Jeanne Larson

L. David Kellett

Michael Zuzenak

The following residents spoke in support of looking at all city operations to ensure efficiencies:

- Bill Putney
- Helen Benson
- Robert Rosen
- Kare Ball
- Don Klein
- Todd Crawford

Bill Froling, Sr., city resident spoke to the commission with regard to his litigation with the city.

Some of the resident suggestions and comments were as follows: (1) dedicated DPS millage (2) study cost savings of sharing dispatch services (3) reducing staff wages compared to their counterparts in other communities. (4) consider the recommendations of city administrative staff (5) public education of contract process and department costs.

Mayor McCready closed the public hearing at 5:40 p.m.

Commissioner Toohey stated the consultant services should be reviewed to find cost savings.

Commissioner McClure requested the Finance Director modify the budget reporting format.

Motion by Commissioner McClure, supported by Commissioner Zambricki the city commission move to increase the millage rate by .75 mills to 9.05, to prevent immediate layoffs, protect the AAA bond rating and maintain a fundbalance of 20% of expenditures and adopt the budget appropriations resolution as presented.

- Ayes – 4 (McCready, Zambricki, Toohey, McClure)
- Nays -1 (Hardy)
- Absent-0

Motion Adopted.

Commissioner Hardy stated she voted no for the millage increase because she doesn't feel .75 mills is adequate.

**2009 -2010 Budget Amendment**

Motion by Commissioner McClure, supported by Commissioner Toohey the city commission approve a budget transfer in the amount of \$195,833, reducing expenditures in the 2009-2010 fiscal year and moving it to the 2010-2011 fiscal year.

- Ayes – 5
- Nays -0
- Absent -0

Motion Adopted.

**ICMA Transfer for OPEB Funding**

Motion by Commissioner Zambricki, supported by Commissioner Toohey the city commission establish the trust account with ICMA and approve the transfer of \$200,000 in the 2009-2010 budget.

- Ayes -5
- Nays -0
- Absent -0

Motion Adopted.

**Other Business**

City Manager Cravens stated the June commission meeting is scheduled for the Radisson Kingsley Inn.

Commissioner Hardy suggested the city ask Congressman Gary Peters for assistance in saving the Bloomfield Hills Post Office from closing.

Commissioner Toohey suggested the review of the Master Plan ordinances be done in house to cut costs. He stated implementing community task forces would be helpful by using the residents' expertise in various areas.

There being no further business, the meeting was adjourned at 6:30 p.m.

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Michael D. McCreedy, Mayor

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Amy L. Burton, City Clerk

# EXHIBIT C

## Hills moves to forbid marijuana

By Greg Kowalski • ECCENTRIC STAFF WRITER • May 30, 2010

Following the path of Birmingham, the Bloomfield Hills City Commission ruled out the sale of medical marijuana within the city.

The action was taken at last Monday's city commission meeting in response to a measure approved by Michigan voters last year allowing the sale and use of marijuana for medical purposes.

Earlier this month, Birmingham adopted an ordinance prohibiting medical marijuana, although it doesn't specifically mention the drug. Bloomfield Township is weighing an ordinance to allow marijuana, but in restricted areas specified by zoning.

Bloomfield Hills attorney Derk Beckerleg told the commission it had three options: Do nothing; prohibit it all together; or restrict distribution sites to certain areas of the city.

But, he said, to do nothing is "not a good option." By not taking any action, the sale could go on unregulated.

Prohibiting the sale completely could open the city up to a lawsuit, Beckerleg cautioned, noting that in Livonia, where a similar ordinance was passed, there are murmurings that the American Civil Liberties Union may file a lawsuit. "But nothing has happened yet," he said.

Opponents of the law are basing their bans on the fact that while the state now permits the sale and use of medical marijuana, it still is a banned substance under federal law. And federal law takes precedence over state law.

Still, the federal government has made it known it is not interested in prosecuting medical marijuana cases.

The commission considered the possibility of regulating it by zoning in order to keep distribution centers away from churches and schools, but opted to revise a zoning ordinance to preclude

distribution sites. The city currently has a moratorium on allowing distribution sites, but should have the ordinance in effect by August, before the moratorium expires.

But Public Safety Director Richard Matott said, "I'm not in favor of it at all."

City Commissioner Sarah McClure moved to prohibit marijuana, and the measure passed 4-1. Commissioner Patricia Hardy cast the lone no vote.

"I think there are cases in our community where people ... really need it," she said. "It should be allowed."

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# EXHIBIT D

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October 20, 2009

## U.S. Won't Prosecute in States That Allow Medical Marijuana

By DAVID STOUT and SOLOMON MOORE

WASHINGTON — People who use marijuana for medical purposes and those who distribute it to them should not face federal prosecution, provided they act according to state law, the Justice Department said Monday in a directive with far-reaching political and legal implications.

In a memorandum to federal prosecutors in the 14 states that make some allowance for the use of marijuana for medical purposes, the department said that it was committed to the “efficient and rational use” of its resources and that prosecuting patients and distributors who are in “clear and unambiguous compliance” with state laws did not meet that standard.

The new stance was hardly an enthusiastic embrace of medical marijuana, or the laws that allow it in some states, but signaled clearly that the administration thought there were more important priorities for prosecutors.

“It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana,” Attorney General Eric H. Holder Jr. said in a statement accompanying the memo, “but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal.”

Emphasizing that it would continue to pursue those who use the concept of medical marijuana as a ruse, the department said, “Marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels,” and pursuing the makers and sellers of illegal drugs, including marijuana, will remain a “core priority.”

The new policy was the laszThe politics swirling around marijuana cross ideological lines. For instance, in effectively deferring to the states on some issues involving marijuana, the Obama administration is taking what could be seen as a states’ rights stance, more commonly associated with conservatives. That was a theme that echoed on many conservative and libertarian Internet sites in the wake of Monday’s announcement.

But one prominent conservative, Representative Lamar Smith of Texas, criticized the Justice Department’s position, saying it would weaken federal enforcement of drug laws.

“By directing federal law enforcement officers to ignore federal drug laws, the administration is tacitly condoning the use of marijuana in the United States,” said Mr. Smith, the senior Republican on the House Judiciary Committee. “If we want to win the war on drugs, federal prosecutors have a responsibility to investigate and prosecute all medical marijuana dispensaries and not just those that are merely fronts for illegal marijuana distribution.”

Polls have shown for years that there is widespread public support for making marijuana available to relieve

the suffering of people who are very ill. But repeated efforts in Congress to block federal prosecution of medical marijuana have fallen short, and the new policy was a sharp departure from that of the Bush administration, in which the Drug Enforcement Administration raided medical marijuana distributors even if the distributors appeared to be complying with state laws.

The new policy, which reflects positions that Mr. Obama took as a presidential candidate and that Mr. Holder laid out in March, came in a memo from David W. Ogden, the deputy attorney general, to the United States attorneys in the affected states, most notably California.

The White House sought to turn aside any impression that Mr. Obama would like other states to follow the example of the 14 that make some allowance for medical marijuana.

"I'm not going to get into what states should do," said the president's chief spokesman, Robert Gibbs.

Mr. Gibbs said the memo to federal prosecutors "simply adds guidelines to a decision that Attorney General Holder talked about in mid-March and has been administration policy since the beginning of this administration in January."

The guidelines give specific examples of conduct that would causes prosecutors to look at a case involving marijuana even if a user or distributor said it was for medical use. The examples include unlawful possession or use of a firearm, sales to minors and evidence of money laundering activity.

Graham Boyd, director of the Drug Law Reform Project at the American Civil Liberties Union, called the Justice Department's move "an enormous step in the right direction and, no doubt, a great relief to the thousands of Americans who benefit from the medical use of marijuana."

Mr. Boyd predicted that states and cities "will have a strong incentive to create regulated, safe and sensible means of getting marijuana to patients who need it."

The new policy follows a series of changes, including the appointment of Richard Gil Kerlikowske, a former police chief of Seattle, to be Mr. Obama's top drug policy adviser.

Medical marijuana thrived in Seattle on Mr. Kerlikowske's watch, and advocates of more liberal marijuana laws hoped that his appointment to the office, which he assumed in May, signaled the administration's willingness to decriminalize medical marijuana.

Some federal law enforcement officials are opposed to the administration's position.

Privately, some federal law enforcement officials complained that medical marijuana and marijuana being smuggled in from Mexico are one and the same, and that the Obama administration has backed away from necessary enforcement of drug laws. Agents from the D.E.A. often work alongside local police officers.

As Mr. Ogden's memo was being made public, the Web site of the Drug Enforcement Administration outlined its position on medical marijuana: "Smoked marijuana has not withstood the rigors of science — it is not medicine and it is not safe. D.E.A. targets criminals engaged in cultivation and trafficking, not the sick and dying."

Advocates of medical marijuana say it can reduce chronic pain, nausea and additional symptoms associated

with cancer and other serious illnesses. In 1996, California became the first state to make it legal to sell marijuana to people with doctors' prescriptions. The other states that allow some use of marijuana for medical purposes are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington.

*Solomon Moore contributed reporting from Los Angeles.*

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