MEMORANDUM

TO: East Lansing City Council
FROM: Thomas M. Yeadon, City Attorney

RE: PROPOSED CHARTER AMENDMENT BY INITIATIVE PETITION
RESTRICTING LOCAL ORDINANCES CONCERNING THE POSSESSION
OF MARIJUANA

DATE: January 9, 2015

Council has asked that I clarify the current status of the proposed Charter amendment to restrict the City from having ordinances concerning the possession of small amounts of marijuana. There are two manners under state law in which a city charter can be amended. One, with a 3/5 vote of its members, Council can propose a Charter amendment. The alternate manner is by initiatory petition.

In this case, an initiatory petition containing a sufficient number of valid signatures was filed with the City Clerk on July 29, 2014. The City Clerk certified the sufficiency of the petitions on September 12, 2014.

THE BALLOT PROPOSAL

The ballot proposal as presented to the Clerk seeks to prohibit the City from regulating the use, possession, or transfer of less than 1 ounce of marijuana. It reads:

Shall Chapter 6 of the Charter of the City of East Lansing be amended to add a new Section 6.12, entitled “Marijuana”, to state that: “Nothing in the Code of Ordinances shall apply to the use, possession or transfer of less than 1 ounce of marijuana, on private property, or transportation of less than 1 ounce of marijuana, by a person who has attained the age of 21 years”?

THE EXPLANATORY CAPTION

Pursuant to MCL 117.21(2), where the form in which a proposed Charter amendment or question is determined by the initiatory petition, such as it was here, the legislative body may add an explanatory caption. At its October 21, 2014, regular meeting, an explanatory caption to the ballot question was approved in an effort to clarify that the proposed Charter amendment would not actually legalize marijuana within the city of East Lansing. The approved explanatory caption advises the voters that the Charter amendment, if approved, would not change current federal and/or state laws regarding marijuana in the city of East Lansing or on the campus of Michigan State University, and that the state and federal laws may still be enforced by the East Lansing Police
Department or any other law enforcement agency. The explanatory caption, as approved by Council reads:

The proposed charter amendment below, which was initiated by petition, would limit the City of East Lansing from having or enforcing certain local ordinances regulating marijuana. The charter amendment, if approved, would not change current federal and/or state prohibitions regarding the possession, use, transfer, or transportation of marijuana in East Lansing or on the campus of Michigan State University that may be enforced by the East Lansing Police Department or any other law enforcement agency.

**REVIEW BY GOVERNOR AND ATTORNEY GENERAL**

By law, the text of any proposed charter amendment, no matter how it is initiated, is to be submitted to the Attorney General to ensure that the ballot question consists of a true and impartial statement of the purpose of the amendment and is in language that does not create prejudice for or against the amendment in question. See MCL 117.21(2). Likewise, every Charter amendment must also be submitted to the Governor before its submission to the electors. MCL 117.22.

In this case, by correspondence dated December 18, 2014 (attached), the Chief Legal Counsel for the Attorney General’s office, Matthew Schneider, recommended to Governor Snyder that he not approve the Charter amendment for the same reason Council placed an explanatory caption on the proposal. The Chief Legal Counsel for the Attorney General stated that the ballot language as proposed on the initiative petitions is inaccurate because it purports to carve out an exception to Section 26-52 of the East Lansing City Code and any other marijuana-related city ordinances that is not found in state or federal law. The Chief Legal Counsel for the Attorney General specifically stated that under Section 36 of the Home Rule Cities Act, no city charter provision “shall conflict with or contravene the provisions of any general law of the state.” The Chief Legal Counsel for the Attorney General noted that the explanatory caption which the City Council added is accurate but found a conflict with the caption and the ballot language because the ballot language itself is “inaccurate” as purporting to carve out an exception to existing laws. As a result, the Attorney General’s office recommended that the Governor not approve the Charter amendment.

However, there is one portion of the correspondence from the Attorney General’s office that is confusing. It states that “currently, MCL 750.479 and the East Lansing Code of Ordinances §26-52 prohibit any person from obstructing or resisting law enforcement officials performing their law enforcement duties.” The correspondence goes on to conclude that “if adopted, the proposed amendment to the City Charter seeks to carve out an exception of §26-52 and any other marijuana-related city ordinance, that is not found in MCL 750.479.”

Personally, I do not believe the proposed amendment would have any effect on the obstructing or resisting provisions of our City Code or the state law. I do not share the opinion that
a Charter amendment that precludes a city ordinance on a particular topic constitutes obstructing officers in the discharge of their duties, if that is the implication of this paragraph. Nothing in the proposed amendment would preclude officers from enforcing state and federal marijuana laws. Rather, the provision would require the City to either repeal or amend §26-56 of the City Code, which prohibits the use and possession of any amount of marijuana.

By letter dated December 23, 2014 (attached), Governor Snyder adopted the position of the Attorney General’s Office and declined to approve the Charter amendment. Focusing on the ballot language itself and not the explanatory caption, Governor Snyder noted that the ballot language is inaccurate because it does not inform the voters that the proposed amendment conflicts with state law or that state law will control regardless of whether the proposed amendment is adopted. Based on those concerns and the recommendation from the Attorney General’s Office, Governor Snyder advised the City Clerk that he did not approve the proposed revised Charter.

• BALLOT QUESTION WITH EXPLANATORY CAPTION SUBMITTED TO VOTERS DESPITE DISAPPROVALS

If a Charter amendment is proposed by initiatory petition, it must be submitted to the electors regardless of any objections that the Governor may have and regardless of his failure to approve it. The statute reads, in relevant part:

If it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding such objections. MCL 117.22.

Both the Governor and the Attorney General’s office clearly acknowledged in their correspondence that it was their understanding that the proposed amendment would still be placed on the ballot, as required by the Home Rule Cities Act, despite their disapprovals. Likewise neither the Governor nor the Attorney General’s office had any concerns with the explanatory caption approved by the City Council other than as it related to what they viewed as “inaccurate ballot language”. As such, the resolution adopted by the City Council placing both on the May 5th ballot is proper and lawful.

• IF APPROVED THE POSSESSION, USE AND TRANSFER OF MARIJUANA WOULD STILL BE ILLEGAL

As previously stated, if the ballot proposal is approved by the voters, the only change is the inability of the City of East Lansing to have certain ordinances. The use, possession and transfer of any amount of marijuana would remain illegal under state and federal laws and any police department, including the East Lansing Police Department, would be able to make arrests and have the cases prosecuted under those laws.

bks
Enclosures
Honorable Richard D. Snyder  
Governor, State of Michigan  
The George Romney Building  
Lansing, MI 48909

Attention: Michael F. Gadola  
Legal Counsel to the Governor

Re: City of East Lansing – Proposed Charter Amendment by Initiative Petition

Chapter 6, Section 6.12 – adds a new Section 6.12 to Chapter 6 of the city charter, which would provide “Nothing in the Code of Ordinances shall apply to the use, possession, or transfer of less than 1 ounce of marijuana, on private property, or transportation of less than 1 ounce of marijuana, by a person who has attained the age of 21 years”

Dear Governor Snyder:

You have referred to this office a charter amendment, proposed by initiative petition filed with the City of East Lansing City Clerk. The enclosed letter from the City Clerk indicates that the petitions were filed on July 29, 2014 and that City Clerk certified the sufficiency of the petitions on September 12, 2014. The City Council added an explanatory caption to the ballot language at its regular meeting on October 21, 2014. An accompanying letter states that the proposed amendment will be submitted to the voters at the November 3, 2015 election.

I have reviewed the proposed amendment to the Charter of the City of East Lansing in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 et seq. I conclude that the amendment is not consistent with the HRCA. Accordingly, I recommend that the Governor not approve the charter amendment for the reasons set forth below.
Honorable Richard D. Snyder
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The proposed amendment would add Chapter 6, Section 6.12, which would provide "Nothing in the Code of Ordinances shall apply to the use, possession, or transfer of less than 1 ounce of marijuana, on private property, or transportation of less than 1 ounce of marijuana, by a person who has attained the age of 21 years."

Nothing in this proposed amendment limits the responsibility of an East Lansing city police officer to enforce the state’s criminal laws, including those applicable to marijuana. To the contrary, “[p]olice are charged to enforce laws until and unless they are declared unconstitutional.” People v MacLeod, 254 Mich App 222, 230; 656 NW2d 844 (2002). Regardless of whether the proposed amendment is approved by the voters, marijuana will remain a controlled substance under state and federal law. City law enforcement will retain the authority to enforce criminal laws, without regard to any provision in the charter. Joslin v 14th District Judge, 76 Mich App 90; 255 NW2d 782 (1977). That same conclusion would apply to county, state, and federal law enforcement personnel who, in any event, would not be subject to any city charter provisions.

Currently, MCL 750.479 and the East Lansing Code of Ordinances §26-52 prohibit any person from obstructing or resisting law enforcement officials performing their law enforcement duties. If adopted, the proposed amendment to the city charter seeks to carve out an exception of §26-52 and any other marijuana-related city ordinance, that is not found in MCL 750.479. Under Section 36 of the HRCA, however, no city charter provision “shall conflict with or contravene the provisions of any general law of the state.”

The Attorney General has a separate responsibility to review proposed ballot language for compliance with the requirements of Section 21 of the HRCA. I have examined the ballot language for the proposed amendment as set forth in the City Clerk’s letter. The ballot language is inaccurate because it purports to carve out an exception to §26-52, and any other marijuana-related city ordinance, that is not found in state or federal law, as discussed above. Further, I have reviewed the explanatory caption, which was added by the City Council at its regular meeting on October 21, 2014, as permitted in Section 21(2) of the HRCA. The caption accurately informs the voters that the proposed amendment, if approved, would not change current state or federal prohibitions regarding marijuana. Although the caption is accurate, the ballot language, as a whole, is inaccurate because the ballot language and the explanatory caption conflict with each other. Therefore, I conclude that the ballot language does not conform to the requirements of Section 21 of the HRCA, which require the ballot language to consist of a true and impartial statement of the purpose of the amendment.
Honorable Richard D. Snyder  
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It should be noted that Section 22 of the HRCA requires that all proposed amendments submitted by initiative petition shall be submitted to the city’s voters for approval – even if the Governor has declined to approve the charter amendment.

Sincerely,

Matthew Schneider  
Chief Legal Counsel

MS/ijk  
Enclosures  
cc: Marie E. Wicks, City Clerk
Ms. Marie E. Wicks, Clerk
City of East Lansing
410 Abbott Road
East Lansing, MI 48823

Re: City of East Lansing Proposed Charter Amendment, Chapter 6, Section 6.12

Dear Ms. Wicks:

My office has received the proposed revised charter of the City of East Lansing, which you submitted by way of a letter dated October 24, 2014. The Attorney General’s Office reviewed the proposed amendment. I have reviewed the proposed amendment to the Charter of the City of East Lansing in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 et seq. I conclude that the amendment is not consistent with the HRCA. Accordingly, after reviewing the Attorney General’s letter (attached), I decline to approve the charter amendment for the reasons set forth below.

Nothing in this proposed amendment limits the responsibility of an East Lansing city police officer to enforce the state’s criminal laws, including those applicable to marijuana. Whether or not the proposed amendment is approved by the voters, marijuana will remain a controlled substance under state and federal law. City, county, state, and federal law will retain the authority and duty to enforce those criminal laws, without regard to any provision in the charter.

Currently, MCL 750.479 prohibits any person from obstructing or resisting law enforcement officials performing their law enforcement duties. The proposed amendment to the city charter seeks to carve out an exception in any current or future city ordinance, and any other marijuana-related city ordinance, that is not found in MCL 750.479. Under Section 36 of the HRCA, however, no city charter provision “shall conflict with or contravene the provisions of any general law of the state.”

Furthermore, the ballot language does not conform to the requirements of Section 21 of the HRCA, which require the ballot language to consist of a true and impartial statement of the purpose of the amendment. The language is inaccurate because it does not inform the voters that the proposed amendment conflicts with state law or that state law will control regardless of whether the proposed amendment is adopted.
Because of these concerns, which are more fully explained in the attached letter from the Attorney General’s Office, I do not approve the proposed revised charter. However, it is my understanding that the amendment will be placed on the ballot November 3, 2015.

Sincerely,

Rick Snyder
Governor

Attachment

c: Attorney General’s Office, State Operations Division