



# City of Lansing

OFFICE OF THE CITY ATTORNEY

James D. Smiertka, City Attorney

TO: CHRIS SWOPE, CITY CLERK  
CHAIRPERSON, LANSING ELECTION COMMISSION

FROM: JAMES D. SMIERTKA, CITY ATTORNEY  
NICHOLAS TATE, ASSISTANT CITY ATTORNEY

DATE: JULY 25, 2017

RE: LANSING LOVES SAFE JOBS INITIATIVE/ REFERENDUM TO MODIFY  
THE LANSING CITY ORDINANCES ON MARIJUANA ESTABLISHMENTS

I have reviewed the petition and proposed ordinance amendment referenced above for compliance with the Lansing City Charter (hereinafter Charter) or any other requirements. This is not an exhaustive analysis of the initiative process; it is provided within the time available to assist you in performing your review.

## QUESTION

Is the proposed ordinance amendment "sufficient and proper," to present to Council at its next regular meeting within the meaning of Charter section 2-403.5, or is it "otherwise improper" such that the City Clerk must notify the person filing the petition of the deficiency and allow 10 days for filing supplemental petition papers within the meaning of Charter section 2-402.6?

## SHORT ANSWER

The proposed ordinance amendment is improper and deficient because it contains numerous and inseparable illegal provisions. Thus, it should be returned to the organization or person who filed the petition. The petitioner should be allowed 10 days for filing supplemental petition papers in accordance with the Charter.

## ANALYSIS

### 1. The Petition

The Petition proposes a change to Chapter 13 of the Lansing Code of Ordinances. It has been submitted to your office to determine whether it meets the requirements of Charter section 2-403. The petition must also comply with Michigan Election Law (MCL 168.482 and other provisions, hereinafter MEL). Although not required, the petition was not submitted to City Attorney's Office for approval as to form pursuant to section 2-403.2 of the Charter.

## 2. Analysis

The proposed ordinance amendment contains a number of legal flaws. It should not be adopted or placed on the ballot for adoption until these flaws are corrected.

### a. **The Petition improperly attempts to enact zoning amendments.**

The petition impermissibly attempts to legislate zoning matters. In *Korash v. Livonia*, 388 Mich 737; 202 N.W.2d. 803 (1972), the Michigan Supreme Court held the Zoning Enabling Act, when read in conjunction with the Home Rule Act, does not allow zoning decisions to be made by initiative when the subject municipality has set up a zoning authority. Under Charter Section 5-602, the Planning Board is an indispensable part of changes to zoning restrictions in the City of Lansing. The subject petition, through additions and deletions of Chapter 13 of the Charter, attempts to legislate zoning requirements through an initiative. In fact, the petition caption indicates one of the stated purposes is, “. . . to establish land use and zoning requirements attendant thereto. . . “. Therefore, the proposed initiative violates Michigan case law, statutory procedures, and the Charter.

### b. **The Petition contains confusing language making the proposals in the petition illusory**

The petition contains imprecise and illusory language which does not appraise the voters of the subject matter to be voted on. Section 2-206 of the Charter requires the general election law (MEL) of the state to be implemented in city elections. MEL requires initiatives to be clear enough to appraise voters of the matters at hand. MCL 168.145 states, “ 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 current initiative has multiple confusing and incomplete passages to the extent it does not allow the voting public to know what exactly they are voting on. For example, in the event the city does not approve renew a marihuana license the petition states that, “The renewal shall be deemed approved if the city has not issued formal notice of approval within 60 days of the application being filed.” This means that an application for a license or renewal must always be approved. (Similar language is found at four locations). The voters will not be able to ascertain what they are asked to consider. The petition has other similar errors not discussed here.

### c. **The petition does not follow Michigan state law as to format.**

The petition does follow Michigan state law as to the format of the submission As stated before, Section 2-206 of the Charter requires the city to follow the general election law of the state. The Michigan Board of Elections requires petition forms to be submitted on one large form; if the petitioner requires more for the complete statement, the form should be continued on a fold over

extension.<sup>1</sup> The present petition more simply staples additional pages to the original form. Since the petition does not follow Michigan state election law, it is deficient.

### 3. Conclusion

The above is not an exhaustive list of problems with the proposed ordinance amendment, rather, in totality they demonstrate that it would be improper, and a violation of the City Charter, Zoning Enabling Act to pass or place the question on the ballot. Matters that conflict with the Charter and are preempted by statute are not subject to correction by petition without prior Charter or statutory revisions. Nevertheless, in keeping with the Charter requirement, you must notify the person who filed the Petition of the deficiency and allow 10 days for filing of supplemental petition papers.

I trust this answers your inquiry.

A handwritten signature in blue ink, appearing to read "J. D. Smalls". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

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<sup>1</sup> Initiative and Referendum Petitions, Bureau of Elections – Department of State, March 2015.