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## Council Votes 4-1 to Change City's Marijuana Ordinance <sup>[1]</sup>

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**By:**

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At Tuesday night's regular meeting (October 11, 2016), East Lansing's City Council voted 4-1 in favor of an ordinance <sup>[2]</sup> formally decriminalizing small amounts of marijuana for adults on private property. This is not the same as making it "legal."

"It is somewhat complicated," City Attorney Tom Yeadon told ELi in response to questions, "but the ordinance does not make the use or possession of marijuana legal in East Lansing, it simply changed our current ordinance so it would not apply to the possession or use of marijuana to persons over 21 on private property."

Yeadon said that "This was to bring our code into compliance with the Charter provision that was approved by the voters. It would still be illegal under State law for persons over 21 to possess or use marijuana in the City."

He went on to explain that in circumstances involving someone on public property and/or under the age of 21, "this ordinance does make that offense a civil infraction if prosecuted under the City Code." A civil infraction is punishable by a \$25 fine, 45 days of community service and/or referral to substance abuse counselling.

As we've previously reported [3], the City Council's decision to legalize possession of a small amount of marijuana conflicts with not only Michigan and federal law, but is not recognized by other jurisdictions, including the Michigan State Police, MSU police and the Ingham County Sheriff's office, who will continue to follow State law and arrest and prosecute criminally as they see fit.

What does this mean in practical terms? If you are over 21 and smoking a joint in your own or someone else's home, you're legally safe unless the State Police or Ingham County Sheriff deputies come calling, in which case you may be charged with a criminal misdemeanor under State law.

If you are under 21, and you are *anywhere* (including private property) using or in possession of an ounce or less, you may be charged with a civil infraction by an ELPD officer. If you are stopped by MSUPD, the State Police or the Ingham County Sheriff you may be charged criminally for that same ounce or less.

If you are anybody, anywhere with more than an ounce of marijuana, there is no applicable City ordinance, and State criminal law applies.

It was concerns about this conflict with state and federal law, and the possible difficulty in communicating the risk of arrest and prosecution to East Lansing residents, that led Councilmember Shanna Draheim to cast the sole "no" vote on Tuesday night in this matter. She also expressed concern about putting East Lansing Police officers in the difficult position of having to follow a law that was at odds with the law of the State.

Draheim stated that she is categorically in favor of legalizing marijuana and "totally supports" the existing Charter amendment, but that she is "risk averse" by nature and worries that changing the law might set residents up for legal trouble if they don't fully understand that the new law only protects them from criminal charges if they are stopped by East Lansing Police officers.

In advance of the vote, Draheim had several questions for Yeadon, the first of which was what kind of legal action could be initiated by the State of Michigan against the City for instituting and enforcing a marijuana ordinance in direct conflict with the State's own law. Yeadon responded that one possibility was that the State Attorney General's office could issue a declaratory judgment saying that the East Lansing ordinance was null and void.

Draheim asked whether the City would be obligated to legally defend against such an action and Yeadon said it would be possible at any point to enter a consent judgment in a given case, which would end any legal conflict.

Mayor Mark Meadows told Draheim that it was unlikely that the Attorney General or the Ingham County Prosecutor's Office would pursue legal action against the City because of the marijuana law. He also said that continuing to rely on the previous Charter amendment gave ELPD officers "nothing to hang their hat on" if they did not want to rely on the more serious State law in a possession case involving an ounce or less.

The change in the City's law means that an East Lansing Police officer may now choose to write

a ticket for a civil infraction, which involves relatively minor consequences and does not result in a criminal record.

Meadows added that voting to decriminalize marijuana promoted change and made a statement about the will of the people of East Lansing. He acknowledged Draheim's concerns about people's ability to understand under what circumstances marijuana is and is not legal, saying that it would be critical to educate the public.

Councilmembers Erik Altmann and Ruth Beier agreed with Draheim and Meadows that communication is essential. (Councilmember Susan Woods was present but had no remarks on this matter.)

Altmann also noted that other important social change, such as marriage equality, began with local decisions to disobey state and federal law.

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