
Municipal Law Update Court of Appeals Strikes Zoning Ordinance Prohibiting Medical Marihuana

Aug 03, 2012

By [Travis W. Weber](#)

Clark Hill PLC

A Michigan Court of Appeals opinion released on Tuesday July 31, 2012, *Ter Beek v City of Wyoming*, ___ Mich App ___ (2012), held the City of Wyoming's zoning ordinance provisions related to growing, possession and use of marihuana pursuant to the Michigan Medical Marihuana Act (MMMA) void and unenforceable because they are contrary to the provisions of the MMMA.

The plaintiff filed a declaratory action claiming the ordinance provisions were preempted by the MMMA. The court agreed, and rejected the City's argument that the ordinance was valid because it complied with the federal Controlled Substances Act, and the federal act preempts the MMMA.

Instead, the court rejected the City's argument that the MMMA was preempted by the federal Controlled Substances Act, ruling that the MMMA only granted patients immunity from state prosecution, and therefore did not conflict with federal law. The court noted nearly all marihuana prosecutions are under state law so the prohibitions against state prosecutions can occur without conflicting with the federal statute.

Unless reversed by a further appeal, the court's decision makes clear that zoning ordinances relying on the Controlled Substances Act to prohibit medical marihuana are likely invalid. Please contact your Clark Hill municipal attorney if you have any questions regarding this case, or any other zoning matter.