Proposed Cannabis Ordinance

Mimbres P <ruinrat@gmail.com>
Mon 11/15/2021 12:13 PM
To: Kristina Ortiz <cityclerk@cityofbayardnm.com>

1 attachments (24 KB)
Bayard Cannabis Ordinance Letter.doc;

Here is my letter of explanation for my request to be placed on the agenda of the November 22 meeting of the Bayard City Council. This contains most of my presentation for their review. I request that you and the city attorney review this letter in advance to determine if the draft warrants revision and to prepare additional language should the Council decide to make the suggested change.

Will I be reading this letter to the Council? I am hoping to have a discussion about their concerns during my allotted time.

I might also suggest that the section listing the types of businesses covered by this ordinance include the specific assigned zone after each listing. The current blanket statement that it will be in commercial or industrial zones may still leave some confusion as to whether you want micro-growers (200 plants) or processing facilities in the general commercial zones.

I have included an attachment as a word doc.
As there can often be problems with such inclusions I have also copied my letter at the end of this email.

Thank you
Linda Pafford
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Mr. Mayor and Councilors:

There is no doubt that the community needs to establish an ordinance to regulate the businesses of growers, processing, and selling of cannabis products. Unfortunately, there is also one sentence in this and most of the other ordinances being enacted around our state that makes it illegal to smoke the now legal cannabis anywhere that the public might have access. Not just where the public gathers, or in public parks, or at events but everywhere not private property. No sidewalks, no alleys, no parking lots, no open areas, and not even 30 feet from another human being. I am requesting this sentence be changed to simply make smoking of cannabis subject to the same rules in place for tobacco smokers.

Discriminatory.

As there are no regulations for the other variety of methods to ingest THC or to control any of them after the point of sale, the offense is not about THC or intoxication, only the presence of smoke. This is a civil rights violation against both medical users and the eventual recreational users when that becomes available next April. Bayard does not currently have a motel, but this also makes it illegal for

a smoker to step outside of his designated smoking room to smoke. If a property owner wishes to make their rental (long or short term) non-smoking, then the renter cannot simply step outside.

It is discriminatory against the poor who may not be able to purchase the more refined edible versions, and the homeless who don't have a house to revert to. We are allowed to grow our own plants, carry those flowers and any paraphernalia to use it, but is not legal to smoke it in those same places. The effects of the smoked version are different from those of ingestion through the digestive system so those who prefer the quicker method and often smaller dosage via smoke are singled out.

I suggest that this is especially grievous against our homeless citizens, who often suffer from mental health or PTSD issues, and are the most likely to face random enforcement for use of a life changing medicine. So, someone is given a citation which carries a $500 fine and the possibility of 90 days in jail. What happens if they don't pay it? The next time they come in contact with a police officer there will be a warrant pending. So they are arrested and we are back in a cycle of recriminalizing pot smoke which this Cannabis Act was trying to eliminate.

The requirement of only smoking in a licensed consumption building with a stand alone HVAC is not a solution because those will be businesses who want their customers to purchase their products. Like any alcohol bar, they will not want random people coming in with previously purchased or home grown product. The idea that not smoking "in public" is the same as not drinking on the public street is a false equivalency. Those laws were created to deal with a problem of public drunkennes, but as no other form of THC use is restricted, intoxication is not the issue. I am being told that I must leave the restaurant to drive to a building that currently does not even exist, to take a few puffs of my anti-nausea medicine which I will likely not be allowed to take inside. That is simply bad for business.

The State Act does allow for permanent or temporary outdoor consumption areas (like at special events), but this ordinance and the other ordinances do not make that allowance as all air exposed to this smoke must be filtered by an enclosed, stand alone, HVAC system.

Unenforceable:

The police are being asked to distinguish a puff of smoke as tobacco, hemp/CBD, or cannabis. It is legal to have that "joint" so they will have to see it burning and being smoked. They may have to deal with complaints of the smell and then be chasing an odor long after the smoker has moved on. They certainly have better things to do with their time. Such enforcement will be random at best and likely fall upon our most fragile citizens. It has been suggested they are not likely to arrest some old lady taking a couple of puffs outside the M&A, so they will not be enforcing this ordinance.

By the way, if a Bayard Officer does arrest someone under this ordinance and takes them to the County Jail, Bayard will be paying $100 per night for the offence of inhaling smoke, possibly for 90 days. It was suggested that the Police need the option of writing a citation on the State Code (Magistrate Court) or the Civil Code (Municipal Court). I am suggesting that this Council by means of this ordinance can direct your officers that cannabis smoking is not a crime in the City of Bayard and does not require enforcement. This is much the same as the State of New Mexico not enforcing the Federal prohibition on marijuana. The State Police could still take this action, but how often are they policing your sidewalks, and, again, this will be very difficult to identify. Should the need arise, at least for now, the State Code will be there though I am hoping the State will change that language with the February "clean up" action. It is true that the State Code carries a heavier record and court process. By passing this wording you are suggesting this offence ought to be in your local courts with "less severe" consequences. As many offenders are likely to be tourists unfamiliar with this restriction in a town where they can purchase this product, I suppose this could be a money maker, like targeting out of state license plates. Also bad for business and Bayard's reputation..

It is also a problem that included in the definition of our private property is our autos. It is legal to smoke inside my car, but not with the windows open. Firstly it complicates an Officer's task of determining whether someone has just smoked and is driving impaired or whether that smell is from multiple past uses, which is completely legal. We are trying to get people to not drive during the unstable "buzzed" period after drinking, smoking, or just taking a prescription. I submit we should not be encouraging smoking in cars but that will be the only option left when I come to your community where I do not own private property..

Irrational:

As this one sentence is discriminatory and most likely unenforceable, why would you include it in your legal code. We have had medical cannabis users walking around our communities for a number of years now and it has been assumed that they would follow the smoking rules and keep it out of other people's faces. As we are used to these rules, most people will not have any problem understanding them. It is legal to smoke in a private yard but not on the sidewalk outside that yard. Just like tobacco, people can post their property as No Smoking and then the smoker must maintain a distance from that space. It was suggested that we have many unenforceable ordinances and laws, but that does not mean we must create another one when the solution is as simple as changing this one sentence.

Thank you for your attention

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