Marijuana Policy Questions in Sturgis, South Dakota

City of Sturgis representatives have been involved with SD Municipal League discussions regarding the implementation this year of the Medical Marijuana Citizens Initiative as well as the recreational Marijuana Initiative that is anticipated to be implemented next year (this is currently being challenged in court, we are not likely to know the outcome until this Fall at the earliest). There are numerous policy decision that will need to be considered by the Council in the upcoming months.

**Background**

Last Fall, Meade County voters followed statewide voters to pass both Medical Marijuana and Recreational Marijuana:

Constitutional Amendment A

Legalize Recreational Marijuana

Meade County Yes 6,999 (51.8%) No 6,525 (48.2%)

South Dakota Yes 225,260 (54.2%) No 190,477 (45.8%)

Initiated Measure 26 (IM 26)

Legalize Marijuana for Medical Use

Meade County Yes 8,952 (66.2%) No 4,571 (33.8%)

South Dakota Yes 291,754 (69.9%) No 125,488 (30.1%)

Constitutional Amendment A (Recreational Marijuana) is currently being challenged in state court regarding its constitutionality. At issue, is whether the ballot initiative contained more than “one” issue. The measure stated that it would go into effect by July 1, 2022. The rules will need to be established by the State Department of Revenue, after which the City will need to establish ordinances to effectuate the rules. The timing of the rules is highly questionable as it will necessarily follow the results of the court decision and will then likely follow legislative statutes that should be passed next session (January through March 2022), however the Legislature could not come to terms with State Legislation for the Medical Marijuana discussion earlier this year so there is some question that even following a court ruling, if the legislature would be able to pass enabling legislation. There is anticipated to be a very short window in the late winter/early Spring of 2022 when the city will likely need to determine how it will want to proceed with recreational Marijuana.

Initiated Measure 26 (Medical Marijuana) is a bit more straight forward. There are no known cases regarding this initiative and the Measure was to be enacted by July 1, 2021. As previously discussed, the state legislature was unable to pass legislation to regulate the sale, as such the State Department of Revenue is currently determining what the Administrative rules will be for Medical Marijuana Dispensaries. We do not know of a definitive timeline for the promulgation of these rules, but have been told that it is likely to occur in the later summer of 2021.

IM 26 requires a prescription for purchase of Medical Marijuana and the product must be sourced within the State of South Dakota. There has already been significant interest regarding opening dispensaries in Sturgis (mostly during the Rally but some year-round).

**Policy Question #1**

Should a Dispensary be Authorized?

A community does not have to allow a dispensary in their community. However, if one is not licensed, then individuals with prescriptions will be allowed to grow up to five plants. Based on the experience of municipalities in Colorado and Oregon this has been identified as one of the greatest risks in a community. The reason is that homes with plants become “known” in the community and often become targets for break-ins (often involving juveniles). This can create a significant and immediate growth in crime. However, if a Dispensary is authorized within a community, privately owned Marijuana plants would not be legal.

The staff highly recommends authorizing a dispensary.

**Policy Question #2**

Number of Dispensaries

Colorado has 2,917 licensed marijuana businesses in the state. This is one business for every 1,974 residents within the state. Due to the current federal standing of Marijuana, businesses are largely cash based. History in other states have shown, similar businesses become highly targeted by criminals for robbery. Using Colorado as a point of basis, the annual per capita sales in 2019 was $173.64. Though this number includes recreational sales, it should be anticipated that Sturgis’ per capita number would become comparable within a few years (especially once recreational sales are authorized). A significant argument could even be made that the per capita sales would be even larger given the significant tourism impact within our community. Given parity with the Colorado sales, our immediate 3-mile radius could be anticipated to generate approximately $1.7 million annually.

A fewer number of dispensaries would reduce the number potential sites that would require additional patrolling.

**Policy Question #3**

Zoning Questions

The City will need to determine what zones would be appropriate for cannabis businesses and cultivation areas. In order to reduce the potential impact on residents, it would be recommended that businesses be authorized to operate solely in commercial areas (Highway Business, Central Business) and cultivation in agriculture or industrial.

In addition, additional considerations could potentially be made regarding distances from potentially sensitive uses (i.e. schools, parks, hospitals, churches, etc.). While distances might be able to withstand a challenge, distances could not be large enough to prohibit a dispensary from opening in the community.

**Policy Question #4**

Option #1 – Municipal Ownership of Dispensary

There has been significant discussion in the SDML Marijuana Group regarding the issuance of a private license for a dispensary and the assurance that the license would not become “private property.” This is a similar situation to what has occurred since the growth of liquor licenses in communities. In most communities, once a liquor license has been issued its profit potential translates into an inherent market value. That then results in significant sales prices for the licenses when they are transferred. The businesses that pay those prices have significant interest in preserving that value and have at times caused significant difficulty with various municipalities when questions of alcohol regulation are discussed.

Several members have discussed the possibilities of municipally owned dispensaries. To date, only one municipality owned dispensary is known, North Bonneville, Washington. The group is continuing to look to find others and to discuss with North Bonneville the benefits and struggles.

Potential benefits:

1. Ability to implement changing community norms
   * As the community begins to adapt to the new reality of Marijuana, different forms of ingestion and potency will evolve. There will be significant challenges to require private businesses to pull certain items if they become problematic with children or other vulnerable groups in the community. A municipally owned dispensary could take immediate action
2. Elimination of negative private profit potential
   * Some private enterprises would have a desire to sell controlled substances to individuals not legally able to purchase them as each sale results in an immediate profit. This is especially true in a small operation where the owner would be an onsite manager. A municipally owned dispensary would eliminate this attraction as the individual’s pay would not be dependent on an individual sale. This has been shown over the course of several years in the City’s alcohol sting operations, where Sturgis Liquor has never been found to be in violation.
3. Public Benefit
   * In 2021, Sturgis Liquor will return approximately $380,000 to the residents of Sturgis. This represents approximately 15% of the property tax collections. This has allowed the public to benefit from the sales. In addition, the monopoly within the community has allowed there to be a greater selection and variety than can be found in other towns of similar size. This has allowed Sturgis Liquor to become one of Sturgis’ few destination retailers, with most months having nearly 20% of their customers coming from outside of Sturgis.

Potential adverse impacts:

1. Public Perception
   * America is a capitalistic country with many residents immediately opposed to any governmental involvement in commerce. This can be seen as an unnecessary intrusion and may even be seen as the government taking away a potential business opportunity from residents
2. Cash Basis
   * At this time, Marijuana is still a federally banned substance. As such, transactions are almost entirely in cash. This would result in additional work and loss control measures needing to be developed and rigorously implemented

Option #2 – Municipal Ownership of Dispensary – Lease of license to private businesses

This option would be similar to how several cities in South Dakota operate liquor stores. The City would maintain ownership of the Dispensary License but lease this license to independent private business.

Potential benefits:

1. Ability to implement changing community norms

* Similar to the municipally owned dispensary, as the community begins to adapt to the new reality of Marijuana, the ability to stop the sales of different forms of ingestion and potency will be able to be more quickly implemented if desired.

2. Public Benefit

* + The City would be able to set a lease price, this could likely be a percentage of the gross sales amount, similar to the City’s Malt Beverage Gross receipts fees. This could be used to offset some of the likely negative impacts that will arise overtime from the increased use of marijuana.

Potential adverse impacts:

1. Public Perception

* + The manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.

1. Capital Investment
   * Due to the significant capital investment to open a dispensary, there will likely be a market requirement for a longer term. As such, it would be challenging for the City to make changes in the operator if needed or desired.

Option #3 – Hybrid Option, Municipal Ownership of all licenses and Municipal operation of a dispensary and lease of at least two private dispensaries

Potential benefits:

1. Ability to implement changing community norms

* Similar to Options 1 and 2, as the community begins to adapt to the new reality of Marijuana, the ability to stop the sales of different forms of ingestion and potency will be able to be more quickly implemented if desired.

2. Public Benefit

* + The City would be able to set a lease price, this could likely be a percentage of the gross sales amount, similar to the City’s Malt Beverage Gross receipts fees. This could be used to offset some of the likely negative impacts that will arise overtime from the increased use of marijuana. In addition, any profit form the Municipally owned dispensary would be returned to the General Fund.

3. Allowance for a testing period to find best case scenario

* + No individual or group truly can see what the future holds in South Dakota once marijuana becomes legalized. A balanced approach allows the community to maintain its options to adapt its approach as the initial years pass. Once property ownership of licenses is conveyed it will be extremely difficult for the community to make other choices in years to come. If the City maintains ownership of licenses and operations it will have all options available in the immediate future, should the initial expectations prove incorrect and changes need to be made.

Potential adverse impacts:

1. Public Perception

* + The manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.

1. Capital Investment
   1. Due to the significant capital investment to open a dispensary, there will likely be a market requirement for a longer term. As such, it would be challenging for the City to make changes in the operator if needed or desired.

Option #4 – Issuance of a limited number of licenses to private businesses

This option would be similar to how several cities in South Dakota operate liquor stores. The City would issue licenses for a set number of dispensaries within the community. The license could include a license fee. This is the route Mitchell recently chose and set an annual fee at $5,000.

Potential benefits:

1. Public Perception

* + This is likely the least controversial selection, however, the manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.

Potential adverse impacts:

1. Ability to implement changing community norms

* Under private ownership, the City would not be able to simply stop selling certain products or require leases to stop selling products. Instead, the only option would be to regulate that certain products of concern not be legally available for sale within the community. We do not know at this time if this would even be an option. If it is, such an action would likely be seen as adversarial and might well lead a private operator to challenge the City’s ability to do so in court.

2. Public Benefit

* + The only revenue the community would see is the sales tax rate approved by the state and the license fee. It is believed the sales tax revenue would likely be at most 3%. Given the Colorado example this would mean a maximum return to the community of $52,000. The only other potential source of revenue would be a licensing fee.

**Projected Timeline**

Planning and Zoning Commission Policy Discussion

June 22, 2021

City Council Policy Discussion

July 6, 2021

Planning and Zoning Commission Recommendation

July 7, 2021

City Council First Reading

July 19, 2021

City Council Second Reading

July 26, 2021 – Becomes effective immediately