

**STATE OF MICHIGAN
IN THE 22nd CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

<p>ANN ARBOR CHRONICLE, LLC, a Michigan Limited Liability Company,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>CITY OF ANN ARBOR, a Michigan Municipal Corporation,</p> <p style="text-align:center">Defendants.</p>	<p>Case No.: 10- -CZ</p> <p>HONORABLE:</p>
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COMPLAINT TO COMPEL COMPLIANCE WITH THE OPEN MEETINGS ACT

NOW COMES Plaintiff, The Ann Arbor Chronicle, by and through its attorneys, Hank Law, PLLC, and states for its complaint as follows:

INTRODUCTION

Defendant violated the Open Meetings Act (OMA), *MCL § 15.261 et seq.*, on July 19, 2010, relating to policy discussions and decision making during a closed session City Council meeting on July 19, 2010, regarding medical marijuana policy. Such conduct is prohibited by the OMA and is not allowed under any statutory of precedential exception. Plaintiff requests that the court find that a violation occurred on July 19, 2010; compel Defendant to comply with the OMA; and enjoin any further noncompliance.

JURISDICTION AND VENUE

1. Jurisdiction and venue are conferred on the Washtenaw Circuit Court under *MCL* § 15.270(10)(3), (4).

PARTIES

2. Plaintiff, The Ann Arbor Chronicle, LLC, is a Michigan Limited Liability Company with its principle place of business at 330 Mulholland Avenue, Ann Arbor, Michigan, 48103, County of Washtenaw.
3. Defendant, City of Ann Arbor, is a Michigan Municipal Corporation with its principal place of business located at 100 North Fifth Avenue, Ann Arbor, Michigan, 48104, County of Washtenaw.

GENERAL ALLEGATIONS

4. On July 19th, 2010, the Ann Arbor City Council met for an open session at City Hall.
5. During the course of the meeting, the City Council entered into a closed session.
6. The purpose of the closed session was reportedly to discuss attorney-client privileged communication.
7. Subsequent to the closed session of July 19, 2010, the City enacted a medical marijuana zoning moratorium during an open session on August 5, 2010.
8. The Open Meetings Act has been interpreted to preclude the practice of cloaking secret decision-making with the attorney-client privilege, which is an exception to the requirements of the Open Meetings Act (OMA). *State of Michigan v Whitney et al.*, 228 Mich App 230; 578 NW2d 329 (1998).

9. Only if the discussion at the closed session was strictly limited to legal advice contained within a written legal opinion would the OMA's exception be legitimate.
10. During the open session on August 5, 2010, various councilmembers made statements to the effect that directives, decisions, or policymaking occurred at the closed session meeting on July 19, 2010.
11. Councilmember Margie Teall reportedly stated,

“We had talked about it, I had expressed interest in looking at this issue, but [she didn't think it would be coming this soon.]”
12. Councilmember Carsten Hohnke stated at the August 5, 2010 Council meeting that he was unaware the moratorium was coming for consideration, and therefore moved for postponement of the moratorium.
13. In response to Hohnke and Teall, Councilmember Stephen Rapundalo reportedly stated on August 5, 2010, in regards to the medical marijuana zoning moratorium, that,

“In fact, this was discussed at our last meeting and a directive was given to the city attorney at that time to bring this forward to this meeting tonight and I believe everybody was in the room when that was indicated.”
14. Stephen Rapundalo was referring to the July 19, 2010 closed session meeting.
15. Upon information and belief, other councilmembers will testify to the fact that policy discussions and decisions were made at the July 19, 2010 closed session regarding medical marijuana, which strayed outside the stated purpose for the closed session, and further, that there was no written document that was a part of the closed session discussion.
16. On September 7, 2010, the City Council met again for an open session.

17. At the September 7, 2010 Council meeting, Councilmember Stephen Rapundalo reportedly stated that:

“I just wanted to make a clarification, I think last meeting when we were discussing the medical marijuana moratorium that we adopted that evening, I may have mispoken or misrepresented some activities that were done in closed session. First of all, I think I might have used or indicated that there had been a "discussion" – if there was a discussion it was actually one-sided it was done by the city attorney as part of the focus of that closed session, which was concerning legal advice. Secondly I think I indicated that there was a directive given. That was a misrepresentation. There certainly *was* a councilmember who indicated that they were interested in bringing this matter forward at the earliest time, the next meeting. That councilmember subsequently did work with the city attorney on that matter and then certainly obtained other additional sponsors including myself for that resolution that we entertained that evening. So I just wanted to go ahead and make sure that clarification was done and I apologize to my colleagues if it was confusing.”

18. At the September 7, 2010 Council meeting, City Attorney Stephen Postema stated that Rapundalo’s assertion was accurate that no directive had been given to him on the matter of bringing something forward to the City Council.
19. Stephen Rapundalo’s statement on September 7, 2010 that he made a misrepresentation in his earlier August 5 account of the closed session on July 19 leaves intact the fact that a councilmember discussed, with all councilmembers present, the timing of bringing forward some kind of medical marijuana legislation to the council.

COUNT I- VIOLATION OF THE OPEN MEETINGS ACT

20. Plaintiff incorporates all allegations contained in the foregoing paragraphs as if fully set forth herein.
21. The City Council is a public body under *MCL § 15.262(a)*.

22. The City Council entered into closed session on July 19, 2010 as defined by *MCL § 15.262(c)*.
23. On July 19, 2010, the City Council violated the Open Meetings Act by discussing public policy regarding medical marijuana during a closed session, in violation of *MCL § 15.263(2)*.
24. The closed session was supposedly called for the purpose of attorney-client privileged information, however the discussions regarding medical marijuana were not restricted to the specific legal advice contained in an attorney-client privileged document.
25. Decisions were made, discussion occurred, and/or directive was given to the City Attorney regarding medical marijuana at the closed session.
26. Discussions, decisions, and/or directives at the closed session regarding the politically sensitive topic of medical marijuana do not fall within any recognized exception to the requirements of the Open Meetings Act under *MCL § 15.268*.
27. As a result of Defendant's actions, the public was harmed by failing to have adequate notice and an opportunity to participate in the democratic process regarding the rapidly evolving legal landscape of the Michigan Medical Marijuana Act.
28. As a result of Defendant's actions, the state constitutional rights of Ann Arbor citizens under the Michigan Medical Marijuana Act were unduly damaged.
29. As a result of Defendant's actions, Plaintiff was damaged by an inability to effectively engage in the news business and to timely disseminate information to the public under the 1st Amendment of the United States Constitution freedom of press guarantee.

CONCLUSION

The totality of the circumstances complained of herein present clear evidence of a violation of the Open Meetings Act by the Ann Arbor City Council regarding medical marijuana policy set at a closed session meeting on July 19, 2010. Given the sensitive political nature of medical marijuana and the citizenry's newly regained rights to use marijuana medically without interference from an oppressive government, it is unlawful and completely unacceptable that the Ann Arbor City Council formulated medical marijuana policy in secret and to the detriment of the public's right to know and to the rights of its citizens. It is clear that secret discussions occurred during the July 19, 2010 closed session of City Council, and attempts to deny such secret discussions occurred may rise to the level of misrepresentation, fraud, and/or criminal misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment for the following relief:

1. That this honorable court find the Defendant guilty of violation of the Open Meetings Act, *MCL § 15.261 et seq.*, for its conduct on July 19, 2010.
2. Plaintiff requests that Defendant be compelled to comply with the OMA and be further enjoined from continuing to violate the Open Meetings Act.
3. Plaintiff requests an award of attorney fees and costs that are provided by statute under *MCL § 15.271(4)*.
4. Any other such legal and equitable relief the court deems just and proper under the circumstances.

Respectfully submitted,

HANK LAW, PLLC

Dated: _____

By: _____

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