

Bethany Vujnov to me

Feb 7

Thank you.

From: Derek Dobies [mailto:derekdobies@gmail.com]
Sent: Tuesday, February 07, 2017 1:51 PM
To: Patrick H. Burtch; Bethany Vujnov
Subject: Fwd: Following up: CMS Energy legal review of NDO

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From Consumers Legal team for what its worth.

----- Forwarded message -----

From: Trevor R. Thomas <Trevor.Thomas@cmsenergy.com<mailto:Trevor.Thomas@cmsenergy.com>>
Date: Mon, Feb 6, 2017 at 2:21 PM
Subject: Following up: CMS Energy legal review of NDO

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To: Derek Dobies <derekdobies@gmail.com<mailto:derekdobies@gmail.com>>

Councilmember –

Please share as makes sense as this is approved for external sharing. It is from our in-house counsel who reviewed the current language of the NDO.

From internal CMS Energy counsel on concern the city could be sued:

- “The Jackson City Attorney has opined that any false claims under the NDO would be limited by the false claims provision of the ordinance. Basically if someone is found to have filed a false claim they would be subject to a potential misdemeanor. I agree with this opinion.
- “The Equality Michigan legal team has opined that non-discrimination laws in Michigan are common and that the ordinance does not create any unique liability for the City. Also, they believe that the only ability to dispute the ordinance is to claim the City does not have the authority to enact the ordinance. I agree with these statements.
- “It is my opinion that the City does not create any unique risk for itself by enacting the NDO. It is also my opinion that the City violation track is vastly superior to the court enforcement/civil action track.

Risk of City Liability

- “I can see no reason by which the City would increase its liability by enacting the NDO. If we assume that the ordinance track is adopted, then a defendant (someone whom a claim is made against) would have the benefit of City review prior to the issuance of a citation. In addition there is a penalty for filing a false claim, thus dissuading false claims. If the defendant disagrees with the citation, a Court proceeding would occur and a Court would review the evidence and make a final decision.
- “The defendant would have to go through the process, and that would protect their rights concerning the claim of a violation. The defendant could claim that the City did not have the authority to enact the ordinance or that the ordinance is too vague, but I believe both of these defenses would be unsuccessful. I do not see any legitimate legal method by which the City could be sued over enacting the NDO.

- “Publicity: Any filed Court action is immediately open to the public view. Any statements made in a court filing have absolute immunity (you can say almost anything you want without any repercussions. You can file frivolous claims with almost no consequence. An ordinance complaint must not be false, or the claimant faces a potential misdemeanor. While a complaint is under investigation, it is protected from a FOIA (freedom of information act) request. Claims without a reasonable basis made to enforcement authorities are not immune.
- “Review: There is no review of a Court civil action. Anyone can file anything they want to. A person and business would have to go through the time and expense of defending any claim made (also, what would the damages be?). I would strongly recommend against this option for any business owner. This opens the door to frivolous suits just trying to collect some money. The ordinance track has an initial review process (by the City, with the possibility of reconciliation). After the initial review, there is a Court hearing and a review of the evidence by a Court. I believe this would be a much better process and lead to better and less costly results.
- “Example: Most cities have weed ordinances. If your weeds get beyond a certain height, the City can fine you or mow them at your expense. If instead the ordinance allowed for private lawsuits, then anyone that did not like the weeds in their neighbor's yard could then sue their neighbor. What if there were some weeds next to the garage, could suit be brought to weed whack those few weeds? Flowers that have gone to seed in late summer, are they weeds? How much do you have to pay your neighbor for your weeds? This example shows the advantage of City enforced ordinance over a privately enforced ordinance.”

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