

Proposed Zoning Ordinance Related to

Registered Dispensaries for the Humanitarian Medical Use of Marijuana

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City of Worcester, MA
City Council Committee – November 19th, 2013

Background

- **On Nov. 6th, 2012** Ballot Question 3, “An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana” passed with a 63.3% vote and won the majority of votes in 349 of the State’s 351 communities.
- **On May 8th, 2013** the state Public Health Council unanimously approved regulations for the medicinal use of marijuana, which became effective on May 24th, 2013.
- **On Aug. 22nd, 2013** the State began accepting applications (Phase I consideration) for dispensaries.
- **November 21st, 2013** is the deadline for the State’s Phase II application

Background

November 21st, 2013 is the deadline for the State's Phase II application:

- 159 applicants were invited to participate in Phase 2.
- Applications will be evaluated by expert reviewers in fields including, but not limited to, public health, security, suitability, non-profit management, law enforcement, food protection, agriculture, and toxicology.
- A Selection Committee will review the results from the Expert Review and evaluate applications based on the following considerations:
 - The expert review scores and summaries
 - Geographic dispersion
 - Drug diversion prevention, and
 - Patient access
- The Selection Committee will present recommendations to the DPH Commissioner. The DPH Commissioner will make the final decision in consultation with the Secretary of the Executive Office of Health and Human Services.

Provisional RMD Certificate of Registration

- Upon selection by the Department, an applicant will be issued a Provisional RMD Certificate of Registration once it has submitted the required \$50,000 registration fee.
- After the proposed RMD has passed a Provisional Inspection by the Department, **is in compliance with all local requirements**, and the Department has issued final approval, the Department will subsequently issue a RMD Certificate of Registration.

Municipal Requirements

725.600: Municipal Requirements

- (A) A RMD and other registered persons shall comply with all local rules, regulations, ordinances, and bylaws.
- (B) The Department does not mandate any involvement by municipalities or local boards of health in the regulation of RMDs, qualifying patients with hardship cultivation registrations, or any other aspects of marijuana for medical use. However, nothing in 105 CMR 725.000 shall be construed so as to prohibit **lawful local oversight and regulation**, including fee requirements, that does not conflict or interfere with the operation of 105 CMR 725.000.

Land Use Implications

Given the medical nature of this use, safety concerns related to hardship cultivation, and to be in compliance with State Law, it is important that the City adopt a zoning amendment to allow for dispensaries and cultivation at certain locations.

Medical Marijuana Treatment Center (a.k.a RMD)

- A not-for-profit entity registered under 105 CMR 725.100, to be known as a **registered marijuana dispensary (RMD)**, that acquires, cultivates, possesses, **processes** (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

Who Can Use Medicinal Marijuana?

- **Qualifying Patient:** Means a Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed certifying physician as having a **debilitating medical condition** that is also a life-limiting illness, subject to 105CMR 725.010(J).
- **Debilitating Medical Condition:** means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, and multiple sclerosis (MS) when such diseases are debilitating, and other debilitating conditions as determined in writing by a qualifying patient's certifying physician.

Key Land Use Policy Considerations

- ◉ **Number.** Can municipalities regulate the number of registered medical dispensaries?
- ◉ **Zoning Districts.** What zoning districts to allow dispensaries and cultivation facilities and whether to allow them by-right or by special permit.
- ◉ **Buffers.** Whether to modify the buffer requirements provided by State regulations, and, if so, what distance should be used and what uses should be buffered?

Policy Consideration

Number of RMDs

- ◉ The State has imposed a quota on the number of dispensaries at 35 Statewide and not more than five (5) per county – municipalities cannot further limit the number of facilities.
- ◉ Per 105 CMR 100(A)(4): An RMD may not have more than 2 locations in the state at which marijuana is cultivated, prepared, or dispensed.
- ◉ The Law empowers the State to increase the number of RMDs in the future based on its assessment of whether there are a sufficient number to meet patient needs.
- ◉ The State DPH will score applications using, among other criteria, “[...] desired geographical distribution of dispensaries (i.e. convenience for and proximity to Massachusetts Residents, and avoidance of clustering of dispensaries on one area), [and] local support for the RMD application [...]”.
- ◉ At the municipal level the distribution of dispensaries can be regulated through required buffers between RMDs.

Policy Consideration of

Zoning Districts

- From a land use perspective, dispensaries and cultivation are considered distinct uses.
- Based on perceived public sentiment, the characteristics of RMD uses, and the City's land use policy, the proposed ordinance allows (by-right) RMDs in all Business General (BG), Manufacturing General (MG) and Institutional-Hospital (IN) Zones with certain buffers and Special Permit controls .

Policy Consideration

Why Include Buffers?

- Buffers are a prudent first step until uncertainty associated with the proper implementation and enforcement (by the State) of its new regulations has been demonstrated.
- Buffering was included in the regulations adopted by the State presumably for similar reasons.

Policy Consideration

Buffers – State Regulation

- The State's regulations include a provision for buffering dispensaries from facilities in which children commonly congregate as follows:
 - CMR 725.110(A)(14) – Security Requirements for Registered Marijuana Dispensaries states:

“A RMD shall comply with all local requirements regarding siting, provided however that **if no local requirements exist**, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate...”

Policy Consideration

Buffers – State Regulation

- The State's buffering provision centers on children and does not include a buffer from residential districts, or require that RMDs be separated by a specific distance.
- The State's buffering provision is more restrictive than the State's most recently modified Drug Free School Zone buffer of 300'.

Policy Consideration

Buffers – Proposed New Definition

- The proposed ordinance defines places where children commonly congregate as:

Public and private primary and secondary schools, licensed daycare centers, public libraries, public parks and playgrounds.

Policy Consideration

Buffers – Distance

- Proposed Ordinance:
 - Establishes a buffer distance consistent with the State's Drug Free School zones – 300'.

Policy Consideration

Buffers – Locations / Uses

• Proposed Ordinance:

- Requires a 300' buffer from a well-defined set of places where **children commonly congregate**.
- Requires that RMDs be no closer than 300' from **one another**.
- Provides control through a special permit (from ZBA) process for RMDs (dispensary only, not cultivation) within 300' of a **residential zoning district**.

Planning Board Recommendation

On September 4, 2013, the Planning Board held a hearing and recommended the proposal to the City Council with 2 of the 4 members additionally recommending that RMDs are also allowed in the **Manufacturing, Limited (ML)** zoning districts with the same buffers as the ones proposed for BG and MG zones.

Suggested Amendment by adding ML zones

	Allowed areas for RMD as proposed	% of the City's land	ML zones	Allowed areas for RMD with ML zones added	% of the City's land
Total Acres by-right	2,134	8.67%	249	2,383	9.69%
Total Acres by SP	965	3.92%	409	1,374	5.58%
Total Acres (by SP & by-right)	3,099	12.60%	658	3,757	15.27%

Analysis Map - Proposed Potential Locations for Medical Marijuana Dispensaries and Cultivation Facilities

(with 300-ft buffers from residential districts, primary and secondary schools, libraries, parks & licensed daycare centers)

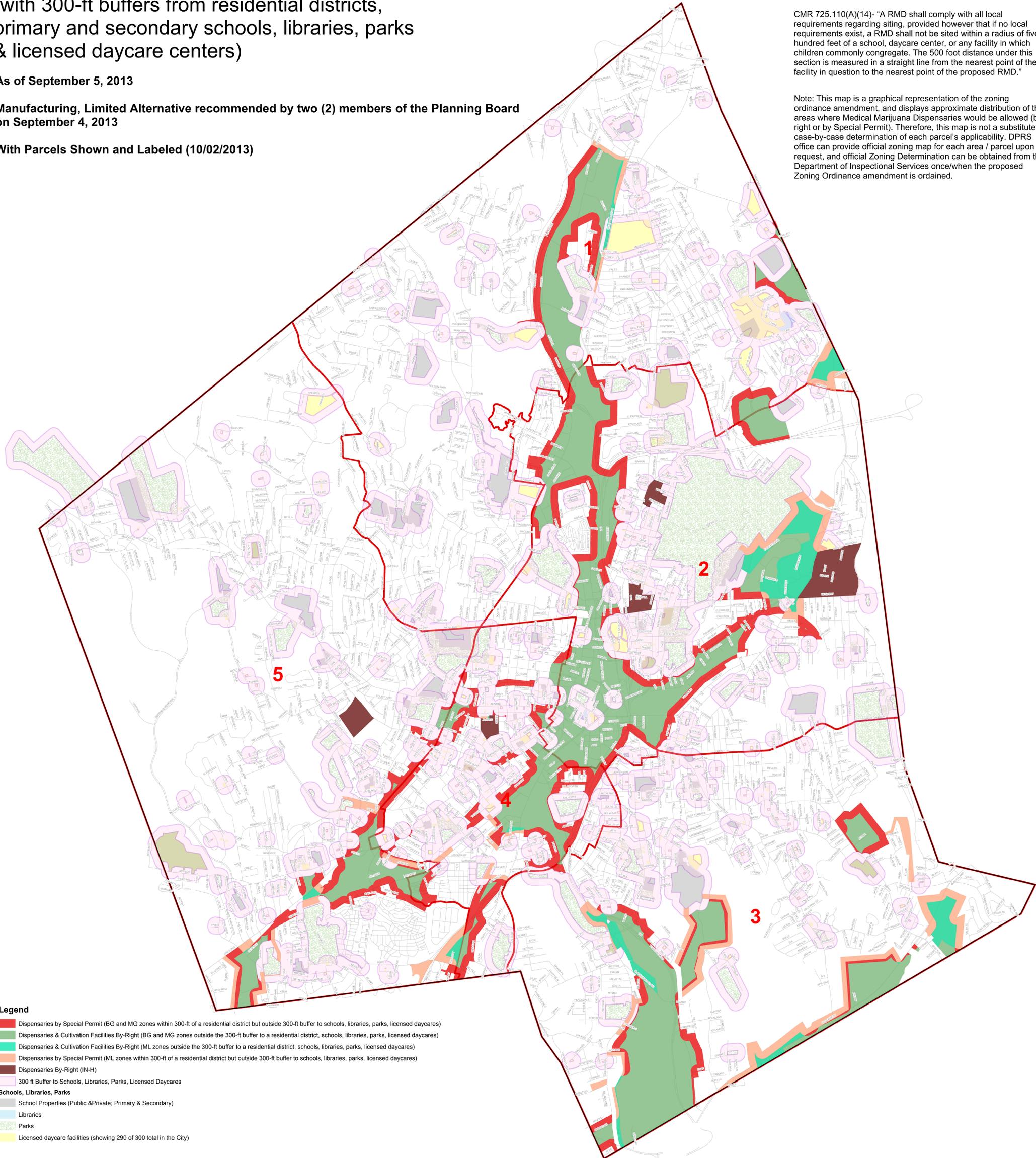
As of September 5, 2013

Manufacturing, Limited Alternative recommended by two (2) members of the Planning Board on September 4, 2013

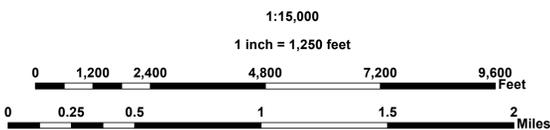
With Parcels Shown and Labeled (10/02/2013)

CMR 725.110(A)(14)- "A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD."

Note: This map is a graphical representation of the zoning ordinance amendment, and displays approximate distribution of the areas where Medical Marijuana Dispensaries would be allowed (by-right or by Special Permit). Therefore, this map is not a substitute for case-by-case determination of each parcel's applicability. DPRS office can provide official zoning map for each area / parcel upon request, and official Zoning Determination can be obtained from the Department of Inspectional Services once/when the proposed Zoning Ordinance amendment is ordained.



- Legend**
- Dispensaries by Special Permit (BG and MG zones within 300-ft of a residential district but outside 300-ft buffer to schools, libraries, parks, licensed daycares)
 - Dispensaries & Cultivation Facilities By-Right (BG and MG zones outside the 300-ft buffer to a residential district, schools, libraries, parks, licensed daycares)
 - Dispensaries & Cultivation Facilities By-Right (ML zones outside the 300-ft buffer to a residential district, schools, libraries, parks, licensed daycares)
 - Dispensaries by Special Permit (ML zones within 300-ft of a residential district but outside 300-ft buffer to schools, libraries, parks, licensed daycares)
 - Dispensaries By-Right (IN-H)
 - 300 ft Buffer to Schools, Libraries, Parks, Licensed Daycares
- Schools, Libraries, Parks**
- School Properties (Public & Private; Primary & Secondary)
 - Libraries
 - Parks
 - Licensed daycare facilities (showing 290 of 300 total in the City)



Produced by City of Worcester
Executive Office of Economic Development
Division of Planning and Regulatory Services

DATA SOURCES:
All data: City of Worcester Geographic Information System
Original Data - Digitized at 1:480 scale (Data true resolution: 1 inch = 40 feet)
Updated Using Spring 2003 Aerial Photography at 1:1,200 scale (1 inch = 100 feet)
Further Updates Using City of Worcester Information

COORDINATE SYSTEM:
All map data is in the Massachusetts State Plane Coordinate system, North American Datum of 1983, Massachusetts Mainland Zone (415').
Units are measured in Feet.