

Proposed Zoning Ordinance Related to

Registered Dispensaries for the Humanitarian Medical Use of Marijuana

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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.
- 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.
- ◉ 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 City Council sentiment, the characteristics of RMD uses, and the City's land use policy, the proposed ordinance allows (by-right) RMDs in all Business General, Manufacturing General and Institutional-Hospital 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. 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.”

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.
 - Specifically, an [...] “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 State’s buffering provision is more restrictive than the State’s most recently modified Drug Free School Zone buffer of 300’.

Policy Consideration Proposed Ordinance Defining Buffers

- 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 Proposed Ordinance Buffers

- Proposed Ordinance:
 - Provides control through a special permit (from ZBA) process for RMDs within 300' of a residential zoning district.
 - Requires that RMDs be no closer than 300' from one another.
 - Requires a 300' buffer from a well defined set of places where children commonly congregate.
 - Establishes a buffer distance consistent with the State's Drug Free School zones – 300'.

Questions & Comments?

Conflicting Intergovernmental Policies & Locational Choice

- Regardless of local regulation, Drug Free School Zones may influence the locational choice of RMD's. Since Federal Drug Free School zones provide greater penalties for drug related offences within 1,000' from primary and secondary school properties among other things, proponents of dispensaries indicated to staff that they would probably not locate close to schools.
- In terms of distance, the buffer required by CMR 725 is more restrictive than the State's most recently modified Drug Free School Zone buffer of 300'. The State's school zone policy also increases penalties for drug offences, but its role in the State's consideration of RMD siting is unclear.