



Michael V. O'Brien
City Manager

CITY OF WORCESTER

cm2013aug15021537

Attachment for Item # 10.4 H

August 20, 2013

TO THE WORCESTER CITY COUNCIL

COUNCILORS:

As City Council is aware, on November 6, 2012, Ballot Question 3, "An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana" passed with a 63.3% vote and won a majority of votes in 349 of the State's 351 communities according to a briefing provided by the Commonwealth's Department of Public Health (DPH) Medical Marijuana Work Group. By doing so, the voters of the Commonwealth approved a law allowing for, but regulating, the cultivation, distribution, possession, and use of marijuana for medical purposes.

On May 8, 2013 the Commonwealth's Public Health Council unanimously approved regulations related to the medicinal use of marijuana, which became effective on May 24, 2013. These regulations provide guidance on restrictions related to medical marijuana, including the use of land for Registered Medical Marijuana Dispensaries (RMDs) and related cultivation that impacts localities. While primary responsibility for medical marijuana regulation and control lies with the Commonwealth and the Massachusetts DPH, I am encouraged that State regulations allow communities to regulate siting through local zoning controls.

I assembled a multidisciplinary "working group" of key internal staff to consider this new law and its implications. The issues presented by this new law are complex. Balancing medical needs (with legal limitations and the potential for abuse) requires careful oversight by the Commonwealth and ongoing attention by the City. If the City fails to act quickly, we recognize that the "hardship provision" of the law allows qualifying patients unable to access Medical Marijuana Dispensaries due to financial, physical, or



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transportation issues, to cultivate marijuana anywhere within the city in an enclosed, locked facility. Given safety concerns related to home cultivation, with recognition of the medical exigencies behind the law, the working group has expedited its research and development of local regulations appropriate to the situation. At this time, we believe it is important for the City to establish clear zoning controls to ensure the proper location and operation for RMDs and related cultivation.

At a minimum, the City's Zoning Ordinance must be amended to allow both RMDs and related marijuana cultivation facilities since neither use exists within our Zoning Ordinance and is therefore not allowed. Since the State will begin accepting applications for RMDs on August 22, 2013, **it is very important that the City begin its formal consideration of land use regulations immediately to allow this use as required by State Law. If there is no local zoning restriction, RMDs will be authorized under State law to site in most areas of the city.**

Therefore, I respectfully recommend the attached proposed zoning ordinance forwarded by Timothy J. McGourthy, Chief Development Officer, be referred to Planning Board to begin the formal consideration process. By beginning the advertising and review process, these attached zoning recommendations will be applicable as of the date of first advertisement.

I want to thank the internal working group and especially commend Joel Fontane, Director of Planning & Regulatory Services, and Michael Traynor, Deputy City Solicitor, for their efforts to review the demands of this new State Law. Other regulations may be forthcoming, as the group continues its efforts.

Respectfully submitted,



Michael V. O'Brien
City Manager



CITY OF WORCESTER, MASSACHUSETTS

Executive Office of Economic Development
Planning and Regulatory Services Division

Timothy J. McGourthy
Chief Development Officer

Joel J. Fontane, Jr.
Director of Planning and
Regulatory Services

To: Michael V. O'Brien, City Manager
From: Timothy J. McGourthy, Chief Development Officer
Date: August 20, 2013
Re: Registered Medical Marijuana Dispensaries

As you know, on November 6, 2012, the voters of the Commonwealth of Massachusetts approved "An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana," providing for the cultivation, distribution, possession, and use of marijuana for medical purposes. The law required the Commonwealth's Department of Public Health (DPH) to craft regulations that allow for the implementation of a medical marijuana program throughout Massachusetts. On May 24, 2013, the final regulations went into effect. While primary responsibility for medical marijuana regulation and control lies with the Commonwealth and its DPH, the regulations do provide localities some involvement through local zoning controls and ordinances.

At your request, a working group composed of staff from key Departments including Economic Development, Law, Public Health, Inspectional Services, Worcester Public Schools, Police, and Fire, reviewed the municipal implications of the recent medical marijuana regulations. Members considered issues related to land use, public health, and public safety. Importantly, the working group focused on the research and development of local regulations related to the location and operation of Registered Medical Marijuana Dispensaries (RMDs) and related cultivation. While there are other issues to address moving forward – local licensing obligations, monitoring, enforcement – the Commonwealth will begin accepting applications for RMDs on August 22, 2013.

It is clear that land use regulations are needed to ensure that RMDs and related marijuana cultivation facilities are located appropriately. From a land use perspective, dispensaries and cultivation are distinct uses. Under the law, the State will license up to thirty-five (35) RMDs across Massachusetts, with no more than five (5) per county. Municipalities are not allowed to ban the facilities. If there is no local zoning restriction, RMDs may locate anywhere within Worcester, except for "...five hundred feet of a school, daycare center, or any facility in which children commonly congregate."¹ This would allow the siting of RMDs in most residential neighborhoods of Worcester.

¹ CMR 725.110 (A)(14)



To address this concern, we are proposing that RMDs, which will function essentially as a commercial/medical use, be limited to business general, manufacturing, or institutional-hospital zones. This will allow RMDs in most higher-density areas of the city including the downtown and primary commercial/industrial corridors, but restrict their presence in neighborhood centers. In light of the proposed limitations outlined in the regulations related to youth, we are also proposing a 300 foot buffer² from any public or private primary or secondary school, licensed daycare center, public library, public park, or playground, as well as a residential zone. We also recommend a 300 foot buffer between any two RMDs. If operated properly, RMDs will have similar characteristics to clinic and drug store uses which do not require buffers. However, buffering was included in the regulations adopted by the State presumably as a prudent first step until the uncertainty associated with the proper implementation and enforcement of these new regulations has been demonstrated. We agree with this approach. Through a special permit process, the Zoning Board of Appeals could consider an RMD proposal for a particular location within the 300 foot buffer from a residential district within the context of the criteria for granting a special permit, including neighborhood character and social structure.

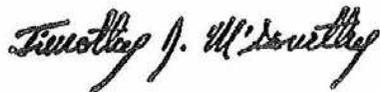
As such, I respectfully recommend the attached zoning ordinance amendment be forward to City Council and Planning Board for adoption that defines each of these uses and the allowed zoning districts.

Specifically, the proposed ordinance allows dispensaries and cultivation, by-right, in all Business General (BG) and Manufacturing General (MG) zones provided that any such use is 300' away from any residential district and allows dispensaries without cultivation within 300' of a residential zone by special permit. Both dispensaries and cultivation facilities are allow by-right in Institutional Hospital zones. RMDs shall not be permitted within 300' of a public or private, primary or secondary school, licensed daycare center, public library, public park, or playground.

I want to highlight the contributions of Joel Fontane, Director of Planning and Regulatory Services, and Michael Traynor, Deputy City Solicitor, for their committed efforts to research and review the new regulatory framework and provide the attached recommendations.

Please do not hesitate to contact me with any questions.

Sincerely,



Timothy J. McGourthy
Chief Development Officer

² Not as large as the 500 foot buffer outlined in the DPH regulations, but similar to the 300 foot buffer outlined in the Massachusetts Drug Free School Zone law.

**AN ORDINANCE AMENDING THE WORCESTER ZONING
ORDINANCE ADOPTED APRIL 2, 1991, RELATIVE TO
REGISTERED MARIJUANA DISPENSARIES**

Be it ordained by the City Council of the City of Worcester as follows:

SECTION 1. The City of Worcester Zoning Ordinance is hereby amended by inserting in Article I, Section 2 after the definition of “REFUSE TRANSFER STATION FACILITY,” the following new definition:

REGISTERED MARIJUANA DISPENSARY (RMD) – A building or structure used for a medical marijuana treatment center approved and licensed by the Massachusetts Department of Public Health pursuant to 105 CMR 725.000, owned and operated by a not-for-profit entity registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as marijuana-infused products, 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.

SECTION 2. The City of Worcester Zoning Ordinance is hereby amended by inserting in Article IV, Section 2, Table 4.1 – Business Uses, the following new line 30. Registered Marijuana Dispensary:

30. Registered Marijuana Dispensary (provided, not within 300 feet of a residential district in BG and MG districts. See, Notes to Table 4.1, Note 13.)

RS 10	RS 7	RL 7	RG 5	BO 1	BO 2	BL 1	BG 2	BG 3	BG 4	BG 6	ML 0.5	ML 1.0	ML 2.0	MG 0.5	MG 1.0	MG 2.0	IP .33	IN S	IN H	A 1
N	N	N	N	N	N	N	Y	Y	Y	Y	N	N	N	Y	Y	Y	N	N	Y	N

SECTION 3. The City of Worcester Zoning Ordinance is hereby amended by inserting in Article IV, Section 2, Table 4.1 – Business Uses, the following new line 31. Registered Marijuana Dispensary, without cultivation operations:

31. Registered Marijuana Dispensary, without cultivation operations and within 300’ of a residential district (See, Notes to Table 4.1, Note 13.)

RS 10	RS 7	RL 7	RG 5	BO 1	BO 2	BL 1	BG 2	BG 3	BG 4	BG 6	ML 0.5	ML 1.0	ML 2.0	MG 0.5	MG 1.0	MG 2.0	IP .33	IN S	IN H	A 1
N	N	N	N	N	N	N	SP	SP	SP	SP	N	N	N	SP	SP	SP	N	N	Y	N

SECTION 4.

The City of Worcester Zoning Ordinance is hereby amended by inserting in Article IV, Section 2, Table 4.1, Notes to Table 4.1, the following new Note 13:

Note 13. No Registered Marijuana Dispensary, with or without cultivation operations shall be sited within a radius of three hundred feet of a public or private, primary or secondary school, licensed daycare center, public library, public park or playground, or another RMD. The 300' distance under this note shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.



FAQ Regarding the Medical Use of Marijuana in Massachusetts (Updated 5/24/2013)

In November 2012, Massachusetts voters approved a ballot question that allows a qualifying patient with a debilitating medical condition to obtain and possess marijuana for medical use, beginning January 1, 2013. The Department of Public Health was required by law to develop regulations for patient and caregiver registration, operation of dispensaries, and other aspects of the law. The Public Health Council unanimously approved the regulations on May 8, 2013. The regulations are now in effect.

DPH has partnered with a wide range of stakeholders in public safety, patient advocacy, the medical community, and municipal government and will learn from other states' experiences to put a system in place that is right for Massachusetts. Listening sessions and public hearings across the Commonwealth contributed to the Department's understanding of the complexity surrounding the implementation of a program for the medical use of marijuana.

The Department is currently building the necessary infrastructure to implement the law, including the development of an on-line registration process for patients and caregivers. The Department will issue registration cards to patients and caregivers once it completes the implementation of the program.

The Department will offer further guidance on applications for Registered Marijuana Dispensaries this summer. Until that time, applications for dispensaries are not being accepted. A competitive application process for dispensaries will occur this summer and fall.

The following are frequently asked questions about the current status and planned timeline for the implementation of regulations required by the new law:

How do I qualify as a patient?

A patient must obtain a written certification from a physician for a debilitating medical condition. The law specifies: cancer, glaucoma, AIDS, hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician. The law allows a qualifying patient to possess up to a 60-day supply of marijuana for his or her personal medical use. The regulations define a 60-day supply as up to 10 ounces.

Are qualifying patients eligible for marijuana while the program is being implemented?

Yes. During the time DPH is implementing this program, the ballot measure allows the written recommendation of a qualifying patient's physician to serve as a medical marijuana registration card. Similarly, the law allows a qualifying patient to cultivate his or her own limited supply of marijuana during this period. A certifying physician may issue a written certification only for a qualifying patient with whom the physician has a bona fide physician-patient relationship.

Under the law, until its program is implemented, DPH is not involved in regulating any recommendations between physicians and patients for the medical use of marijuana, or in defining the limited cultivation registration. DPH has clarified in its final regulations that these provisions of the law will remain in effect until further notice. Even though final regulations are in

place now, patients may continue to visit physicians for certification, and to possess legally allowable amounts of medical marijuana as defined in the regulations, before DPH's anticipated online registration system is available.

DPH will notify the public on its medical marijuana website, www.mass.gov/medicalmarijuana, when this system is operational and must be used.

I am a patient and I want to designate a personal caregiver. How can I do that?

At present and until the DPH program is implemented, qualifying patients may register their personal caregivers by sending a letter to DPH containing certain required information, including the patient's and personal caregiver's names, addresses and dates of birth. A certified mail return receipt for this letter is to be used as the registration card for the patient's personal caregiver.

The regulations provide that qualifying patients must apply formally to DPH for registration cards for their personal caregivers no later than January 1, 2014 (unless DPH specifies a different date). Until that time, the initial letter submitted to DPH will remain valid until the application for the registration card is approved or denied by DPH.

What are the requirements for personal caregivers?

Except in the case of an employee of a hospice provider, nursing facility, or medical facility providing care to a qualifying patient admitted to or residing at that facility, or a visiting nurse, home health aide, personal care attendant, or immediate family member of more than one registered qualifying patient, an individual may not serve as a personal caregiver for more than one registered qualifying patient at one time.

A personal caregiver may not receive payment or other compensation for services rendered as a personal caregiver other than reimbursement for reasonable expenses incurred in the provision of services as a caregiver. A caregiver's time is not considered a reasonable expense. In the case of an employee of a hospice provider, nursing facility, or medical facility, or a visiting nurse, personal care attendant, or home health aide serving as a personal caregiver, such person may not receive payment or compensation above and beyond his or her regular wages.

When will the Department begin issuing registration cards to patients and caregivers?

This date has not yet been determined. DPH must develop the technology to receive and process registrations. Any date for issuing registration cards will take into account the time needed to build such technology and related support systems.

When will the department begin accepting applications to operate Registered Marijuana Dispensaries (RMDs)?

DPH must develop an application process for entities that seek to be registered as marijuana dispensaries. DPH will make application materials available for prospective RMDs this summer and will complete the application review and selection process this summer and fall.

In the first year, the law allows DPH to register up to 35 non-profit RMDs across the state, with at least one but no more than five dispensaries per county. The non-profit RMDs will be registered under the law to cultivate, process, and provide marijuana and marijuana-infused products to registered qualifying patients.

Will health insurers or governments be required to cover the cost of marijuana for medical use?

No. Nothing in the law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana.

Will Massachusetts give guidance to health care providers on the medical use of marijuana?

The Board of Registration in Medicine is collaborating with DPH to determine how to ensure that physicians understand the law and its provisions. The Board welcomes the recommendations of the Massachusetts Medical Society and other interested stakeholders, and is collaborating with DPH to successfully implement the law and promote patient safety.

Can cities and towns ban Registered Marijuana Dispensaries?

The Massachusetts Attorney General issued a decision that municipalities are not permitted to enact a total ban on Registered Marijuana Dispensaries. However, cities and towns may adopt zoning by-laws to regulate such dispensaries, so long as such by-laws do not conflict or interfere with the operation of the Department's regulations, and may enact a temporary moratorium in order to study the zoning issues related to the development of dispensaries.