

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

WEDNESDAY, OCTOBER 16, 2013

Present: Ald. Johnson (Chairman), Danberg, Swiston, Yates, Kalis, Sangiolo, Lennon and Baker
Also Present: Ald. Rice and Harney

Planning & Development Board Present: Scott Wolf (Chairman), Roger Wyner, Peter Doeringer and Leslie Burg

Others Present: Dori Zaleznik (Commissioner, Health and Human Services), Marie Lawlor (Assistant City Solicitor), James Freas (Chief Planner, Long Range Planning), Alice Walkup (Planning Dept.), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#320-13 STEPHEN FELLER, 64 Harvard Street, Newtonville, appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire September 10, 2016 (60 days 12/20/13) [09/16/13 @ 10:46 AM]

ACTION: **APPROVED 6-0 (Ald. Lennon and Baker not voting)**

NOTE: Mr. Feller addressed the Committee. He explained that he owns two businesses in Newton, Bread and Chocolate Bakery Café in Newtonville and in Newton Highlands. As someone who lives in Newton and is a business owner in Newton, he said he lives Newton economics everyday on both sides of the coin. He has attended many grassroots meetings for years in the City relative to how small businesses can grow, flourish and incubate in Newton so when he learned of the Economic Development Commission (EDC), he felt it was a way to work from the inside to further the development of small merchants in Newton. Ald. Yates said he would send Mr. Feller some information on the Main Streets Program as it might be a useful model for the EDC. Committee members expressed appreciation for Mr. Feller's willingness to devote his time and perspective to the EDC. Ald. Yates and Johnson moved to approve the appointment and the Committee voted in favor.

Re-appointment by His Honor the Mayor

#321-13 CHARLES EISENBERG, 4 Ashford Road, Newton Centre, re-appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire September 10, 2016. (60 days 12/20/13) [09/16/13 @ 10:46 AM]

ACTION: **APPROVED 8-0**

NOTE: Ald. Baker moved to approve Mr. Eisenberg's re-appointment and the Committee voted in favor.

Re-appointment by His Honor the Mayor

#322-13 BARBARA LISCHINKSY, 1942 Washington Street, Auburndale, re-appointed as a member of the NEWTON COMMISSION ON DISABILITY for a term to expire June 30, 2015. (60 days 12/20/13) [09/19/13 @ 2:00 PM]

ACTION: **APPROVED 8-0**

NOTE: Ald. Sangiolo moved to approve Ms. Lischinsky's re-appointment and the Committee voted in favor.

Re-appointment by His Honor the Mayor

#323-13 JINI FAIRLEY, 80 Rowena Road, Newton Centre, re-appointed as a member of the NEWTON COMMISSION ON DISABILITY for a term to expire June 30, 2015. (60 days 12/20/13) [09/16/13 @ 10:46 AM]

ACTION: **APPROVED 8-0**

NOTE: Ald. Danberg moved to approve Ms. Fairley's re-appointment and the Committee voted in favor.

A Public Hearing was held on the following item:

#309-13(3) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, as needed to add a definition of "registered marijuana dispensary" and to create a temporary moratorium on the use of land, buildings and structures for registered marijuana dispensaries in the City of Newton in order to allow the City adequate time to complete a planning process to consider in what districts and under what conditions registered marijuana dispensaries will be allowed. [09/25/13 @ 9:21 AM]

ACTION: **PUBLIC HEARING CLOSED 8-0**
APPROVED 5-3-0 (Ald. Johnson, Swiston and Sangiolo opposed)

NOTE: Ald. Johnson introduced the item and James Freas, Chief Planner for Long Range Planner presented. The item proposes a moratorium on registered marijuana dispensaries (RMD) in the City in order to allow time for zoning changes to be considered and enacted to allow this use. The moratorium is proposed to end on March 1, 2014 at the latest. The 2012 referendum legalizing the use of marijuana for medical purposes in Massachusetts effectively created a new zoning use for the municipality to consider. This is a new use that doesn't have any similar models as to regulation of the land use, which is why the City would like some time to work on this issue. RMDs are very heavily regulated at the state level to insure the product only reaches registered, qualified medical users and also to discourage a recreational use environment through restriction of signage and location. The medical community is in consensus that medical marijuana does present benefits to many people so there is a sense that the need should be met in as timely a manner as possible.

A potential applicant for an RMD does not need to have a confirmed location in order to proceed into Phase 2 of the state process. A moratorium, therefore, does not necessarily affect a delay for anyone trying to move forward with an application. An applicant does need to propose a

timeline, however, for opening and a moratorium might have some bearing on that. If no moratorium were issued by the City, an RMD could not be blocked from coming into the Newton. If the use were not defined or regulated in the ordinance at that time, it would then be the job of the Chief Zoning Code Official to identify a similar use within the existing ordinance and regulate the use as per the regulation of that similar use. The RMD use is very unique so it would be difficult to predict what the similar use might be. It could be anywhere from retail to medical office use, for example. If the Department of Public Health (DPH) determined that there were no RMDs within a reasonable distance to qualified, registered medical marijuana users, home-growing waivers would be granted to those users. The majority of the surrounding communities have moratoriums in place and most are expected to expire in early spring. Boston has adopted zoning regulations as of July and Framingham, Brookline and Cambridge will be adopting regulations soon.

Ald. Johnson opened the Public Hearing.

Public Comment

Matt Allen, Director of the Massachusetts Patient Advocacy Alliance (MPAA), 8 Woodside Ave. Jamaica Plain. He explained that he represents patients who live in Newton including Peter Hiyashi who spoke at the last discussion of this item. Mr. Hiyashi has a debilitating nerve condition and has found that medical marijuana addressed that condition more effectively than opiates or other medications. Mr. Allen was also talking with Alan Bloom whose his wife passed away from a brain tumor. Mr. Bloom related that medical marijuana was the only thing that helped her with the symptoms of her aggressive chemotherapy. This allowed her more days at home instead of at hospice. This is real issue for people in the area. Mr. Allen explained that the MPAA is opposed to a moratorium. This would prevent RMDs from opening here and deny access to patients. He would like to propose sensible regulations that allow access with necessary controls for the safety of the community. There are tools that can be used short of a moratorium. **Mr. Allen submitted documents that are attached to this report.**

Mr. Allen reported that about 1% of residents are thought to be in need of medical marijuana. That is the figure that has been reported from communities with legal RMDs and the Commissioner of the Department of Public Health has mentioned this figure as well. He has been to town meetings in Brookline and Framingham and worked on putting information together for some regional planning commissions as well. He thinks mixed use and business designations are appropriate zones for locating this use.

Karen Munkacy, MD, President of Garden Remedies, 116 Chestnut Hill Road, Newton. Dr. Munkacy said she was interested in locating an RMD in Newton. Her family lives in Newton and she is licensed as a physician in California and a board certified anesthesiologist. She is a delegate to the Massachusetts Medical Society, a breast cancer survivor, and a patient advocate on this issue. **Dr. Munkacy read a prepared statement which is attached to this report.**

Committee members asked about the operation she would running. She answered that she would be cultivating the plant off-site and would only be dispensing at the site in Newton. She anticipates having 10-15 employees when fully operational in a 3,000 square foot property. She

has a specific location in mind that falls within the state regulations. Delivery to patients is allowed and there are regulations which require that two people are in the vehicle delivery, one person in the vehicle at all times during the delivery process. Her employees would be fully trained in security measures. Her operation would provide free delivery and she realizes that many people are too ill to leave the house so this is an invaluable service.

A Committee member asked if she would look to a community whose moratorium would be ending before March 1st and abandon her plans for Newton. She said she wants to work with a community that is welcoming and she has a strong desire to have her business in Newton. Dr. Munkacy said she would wait for Newton if she had some statement of support for her application from the City. Marie Lawlor explained that the state assigns locations and applicants apply with a specific site in mind. It was noted that it was unclear from whom such a statement of support would come. The support is through the regulatory framework in the zoning ordinance and also from a lease or title for a property for the RMD. Ultimately it is up to the state to approve an RMD in a particular location which is in compliance with the local ordinance. Commissioner Zaleznik said the state regulations do not exclude some expression of support in some tangible way other than the zoning regulations. She explained that only 5 dispensaries will be allowed in each county and applicants can apply in more than one county. But if a potential RMD has applied in Middlesex County, for example, it's not possible to just locate in another County. It was noted that Brookline is not in Middlesex County as Newton is.

John Madfis, 95 Central St., Auburndale. Mr. Madfis explained that his son was diagnosed with inflamed bowel disease, ulcerative colitis at the age of 13 and then with Crohn's Disease. It is a debilitating disease and had his colon removed at 15. Medical marijuana has eliminated the pain of cramping and increased his appetite. His weight was down to about 114 pounds from 140 pounds at one point because he had to choose either eating, or having access to a bathroom and dealing with pain. Mr. Madfis said doctors' offices don't need to be located away from parks or schools or houses of worship. He read from Dr. Gupta who endorses the use of medical marijuana and states that it works when many other medicines do not. Mr. Madfis also said that Francis Young a DEA judge stated that marijuana is far safer than many commonly consumed foods. Marijuana is the safest and most therapeutically active substance known to man by any measure of rational analysis, it can be used within the supervised routine of medical care. Mr. Madfis hoped Newton would not be so restrictive as he has seen highly regulated RMDs in other states and it is a safe environment. Kids are hanging around looking for marijuana. It is a great benefit to people suffering from various illnesses.

Scott Murphy, 115 Central St. Auburndale. Mr. Murphy said he was a combat veteran from the Iraq war and a patient who uses medical cannabis. He noted that he can get delivery service to his house through the Veterans Administration. He is prescribed narcotics and it is delivered by a mailman who is by himself every day. The delivery of medical cannabis would require two persons per vehicle trained in safety measures. Mr. Murphy said he has small children at home and their safety is of his utmost concern. If he is too far from a RMD then he would be allowed to grow at home and while he is very careful, perhaps other might not be. There could be hundreds of home grown operations in Newton and if word gets out, houses could be targets for theft. There is a lot of work involved in growing and some old houses may not be well suited for

the electrical and venting needs. The Board is concerned about zoning around residential areas yet these waivers allow growing in homes.

He has to drive over 30 minutes to a caregiver to get his medical marijuana which is very inconvenient. He also started a non-profit called Veterans for Safe Access Compassionate Care. His best friend suffered from PTSD and committed suicide at 22 years old. Many veterans suffer from brain injuries, PTSD and other issues. Unregulated cannabis is dangerous as some of it has chemicals in it and can be sprayed with Raid it provides a false high. He said the measure of a community is how it treats its veterans and its sick. The moratorium says to him that the City does not have compassion for patients, for veterans who were willing to die for freedom and compassion. This is a vote of morals and conscience. Do you want to treat patients respectfully or like criminals and kick them out of the door. He said the state worked very hard on putting in place a safe and secure policy that should be sufficient for the City of Newton and it continues to be their number one priority.

Hardship waivers are given to those who do not have reasonable access to a RMD. Home growing is expensive. Patients can also get the product from a caregiver but that is a one-to-one ratio. If all the communities have moratoriums in place then an RMD will be further away from Newton and accessibility is more problematic. Commissioner Zalesnik said the only way so far that patients in Massachusetts can legally get medical marijuana is to get a hardship waiver from the DPH to grow their own. If there are no places within a reasonable distance for the patient or their designated caregiver (who will also be registered to pick-up marijuana), DPH will continue to consider hardship waivers. Some will continue to have to home grow if a RMD is not reasonably nearby. Massachusetts has put in a clause to have independent testing of the medical marijuana product so there is a higher assurance of quality when it comes from an RMD. This is not the case for home grown or black market product. At this time, there is no way to know where the RMDs will be located.

Ald. Lennon explained that a vote for a moratorium does not reflect a lack of care or compassion for veterans. He feels the Board wants to do the right thing and they need adequate time to work out a workable zoning ordinance, and in fact the timeframe is shorter than what is typical for a zoning amendment. He said Mr. Murphy's point of view is compelling and he feels the Board is empathetic to that and compassionate to the needs of veterans and others in need of this medication.

It was pointed out that if there is resolution earlier than the March 1st deadline, the moratorium can be dropped prior to that date.

Ald. Johnson explained that the term is ending December 31, 2013 and the new year may bring about a different composition to the Zoning & Planning Committee. Therefore, it is her hope that this issue can be resolved before the end of the year, if at all possible. The moratorium will protect the City in the case that they cannot resolve the zoning amendment by year's end. If they cannot, they will need to do another public hearing on the zoning amendment portion of this with the new members of the Zoning & Planning Committee.

The Committee voted to close the Public Hearing. The Planning & Development Board also voted closed the public hearing. They will re-join the Zoning & Planning Committee after their deliberations with their recommendation.

Working Session

The Committee re-convened in a working session. Commissioner Zaleznik noted that some people have been referring to the “federal regulations” for the RMDs when in fact because marijuana is still federally illegal there are no regulations for RMDs. The 1,000 foot buffer around schools refers to federal prosecution criteria for drug cases. If something occurs within 1000 foot of a school related to drugs, the penalty is higher than if it is outside that 1000 foot area. Some dispensaries are voluntarily adopting the 1000 foot boundary.

If the moratorium is not put in place, people will be able to arrange for sites for RMDs and must abide by the 500 foot buffer zone established by the state. And because the use would not yet be defined or regulated in the ordinance, it would then be the job of the Chief Zoning Code Official to identify a similar use within the existing ordinance and regulate the use as per the regulation of that similar use. The moratorium puts a timeline in place to develop a zoning plan, with a specific end date which could be lifted earlier should resolution come earlier. Originally the regulations appeared to require that applicants had to have secured a site in order to put in their Phase 2 application within 45 days of being accepted in Phase 1. However, it looks like that is looser than it first appeared. Someone can go forward with several different sites and put in a Phase 2 application. The state is going to take it’s time looking at those applications. Many other communities with moratoriums are still working on their zoning and Newton would be doing the same thing. It was noted that state regulations cannot be changed by the City. However, for example, the state has strict regulations for signs; Newton also has a sign ordinance that prohibits illuminated signs and that would also apply in addition to the state regulations.

Committee members wondered if a moratorium was really necessary. It seems like the work could be done in a timely manner and not having the luxury of a moratorium may be motivating. Marie Lawlor said that a moratorium, unfortunately, has a negative connotation. It is merely an often used tool to give the planning process time to play out adequately. In either case, the work on the zoning issue would continue as efficiently as possible. A Committee member said the basic work of the Committee is to determine which zone or zones would allow this use. There was a suggestion to buckle down to that task and lift the moratorium as soon as possible.

A Committee member said he heard an opinion from a state legislator that the state regulations were not adequate to protect on the recreational use problem. That is one of the concerns that colleagues and residents may have. There is a balance of the legitimate medical needs and the problem of recreational use and what other problems that may or may not lead to. Commissioner Zaleznik said the California regulations were not adequate to prevent the recreational use of what was meant to be medical marijuana and they have become the test case of how to do this wrong. They allowed for facilities to fill prescriptions that did not have proper regulations and safeguards. Colorado’s program is very successful and has not had the problems that California has experienced. Prescription-writing “mills” were regulated out of the process. The regulations require that doctors, patients and caregivers are registered and doctors writing prescriptions must

have a legitimate relationship with the patient and legitimate reason to prescribe the medication. She realizes that this will be a concern for people, but believes the regulations are carefully drawn to avoid the problem.

The Planning & Development Board concluded its deliberations and reported that they did not feel a moratorium was necessary because the existing state regulations and existing zoning was sufficient to protect the City on land use. They did decide, however, to recommend that a moratorium be instituted to expire with the current aldermanic session on December 31, 2013. **Their recommendation is attached to this report.**

There was question about timing of these items and end of term concerns. The City Clerk confirmed that if a public hearing is held and not voted out before the end of the term, and the composition of the Zoning & Planning Committee changes in the new term, the new members would be at a disadvantage as they were not present for the public hearing. While technically not against any rules, this should be avoided if at all possible. This would be true for both the moratorium item and the amendment item. As a point of information, the Board has 90 days to vote on an item that has been heard at a public hearing. If no action is taken, a public hearing has to be re-advertised and heard.

There was some sentiment in the Committee that the state regulations are sufficient and a moratorium is not necessary, especially since there is a feeling the work can be done by the end of the term. There was also sentiment that the City voted overwhelmingly to accept RMDs and there is a need in the City and in surrounding communities. There was not a high level of concern over recreational use and that there are many suitable areas in the City in which facilities could operate successfully.

Ald. Baker moved to approve the moratorium as submitted, to expire on March 1, 2014. There was feeling from several Committee members that there needs to be time to hear testimony and time for the rest of the Board to consider the issues. The moratorium is now less likely to cause delay to possible applicants, as was explained by Commissioner Zaleznik. The last chance to vote a moratorium this year would be at the December 9th Zoning & Planning Committee meeting, to be voted out by the Board on December 16th.

The Committee voted to approve the moratorium as submitted by a vote of 5 in favor and 3 opposed. (Ald. Swiston, Johnson and Sangiolo were opposed).

#309-13 DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton. [09/11/13 @ 4:12PM]

ACTION: **HELD 8-0**

NOTE: A Working Group was assembled to study the need for changes to the zoning ordinance to allow for RMD use. The members included Ald. Yates, Ald. Schwartz, Commissioner

Zaleznik, Marie Lawlor, Candace Havens and Captain Mintz. The Working Group is proposing the use would only be allowed by special permit in defined zoning districts of Business 2 and Business 5 as well as Mixed Use 1. The Group also proposes conforming to the state regulations of a 500-foot buffer around schools and daycare centers, and also adds houses of worship (as they often house daycare, camps, children's events, etc.) and other places that children may congregate. A transportation analysis would be required. Under state regulations the applicant is required to submit information that estimates their service area and a general idea of number of clients they might serve. From that, transportation analysis and impact data could be generated to devise a parking requirement. There will likely only be one RMD so it would make sense to make this site-specific. A context map would be required of the surrounding area of the proposed site to determine compatibility of the proposed use with the area and if there are any places where children might congregate within a 500-foot radius of the site. The nature of the use is going to be fairly suburban: they will be serving a regional population; the security requirements are such that it would not really be a use that contributes to "village vitality"; access to regional transportation; security and law enforcement concerns need to be heard. Commissioner Zaleznik said the Group looked at the 1000 foot buffer but it didn't add or detract much so they decided to be consistent with the state regulations. The special permit process allows each application to be assessed on its individual merit. A Committee member asked if a daycare center or child-centered business moved in within a 500 foot radius to an existing RMD, would the RDM would be allowed to stay and it was confirmed that it would be.

Committee members reviewed a zoning map with buffer overlays. Ald. Lennon asked that James Freas provide copies of the map for the packet.

There was concern that if Newton became a site, the state would not locate another one close to Newton and it would be a regional hub. This could impact traffic and other issues. Commissioner Zaleznik said that was a fair statement but the state has not indicated exactly how they would assign the RMDs, therefore, Newton can only work on its own zoning. It would certainly be serving a region since only 5 will be allowed in the county. Middlesex has more applications than any other county at this point.

Ald. Johnson asked any Committee members to be in touch with the Working Group if they have any questions they would like answered in preparation for the next discussion. Ald. Sangiolo asked that James Freas provided copies of what Brookline, Cambridge and Framingham are working on. They will be attached to the October 22nd Zoning & Planning Committee agenda. Ald. Baker would also like to see what other communities have done in terms of the 1000-foot buffer versus the 500-foot buffer as it relates to recreational use issues and concerns.

The Committee voted to hold this item.

Due to the late hour, the following four items were held without discussion:

#295-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by deleting paragraph (11) *Hotels* in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing. [08/26/13 @ 12:30PM]

ACTION: **HELD 7-0 (Ald. Yates not voting)**

#64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities. [03-14-12 @8:54AM]

ACTION: **HELD 7-0 (Ald. Yates not voting)**

#296-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by reorganizing and clarifying the provisions regarding purchaser and renter income limits and sale and rental price limits. [08/26/13 @ 12:30PM]

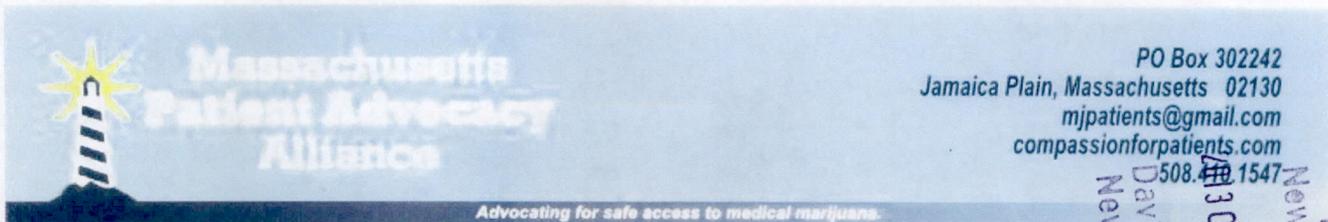
ACTION: **HELD 7-0 (Ald. Yates not voting)**

#294-13 ALD. DANBERG proposing amendment to **Sec.30-24(f) Inclusionary Zoning** to clarify the limitation on use of public funds in constructing inclusionary units and to expand on where the use of public funds for inclusionary units will be allowed. [08/26/13 @ 12:30PM]

ACTION: **HELD 7-0 (Ald. Yates not voting)**

Respectfully Submitted,

Marcia T. Johnson, Chairman



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October 16, 2013
Newton Zoning and Planning Committee
Planning Development Board

In opposition to #309-13(3) Medical Marijuana Dispensary Moratorium
In support of #309-13 Medical Marijuana Dispensary Regulations
Matthew J. Allen, Executive Director, Massachusetts Patient Advocacy Alliance

BACKGROUND

The Massachusetts Patient Advocacy Alliance (MPAA) is a coalition of medical marijuana patients, their family members, medical professionals, and public health groups advocating for safe access to medical marijuana for patients with a doctor's recommendation. MPAA backed the 2012 medical marijuana ballot initiative, and has since been working to ensure that patients have a voice in implementation.

MPAA represents patients in Newton suffering from multiple sclerosis, severe chronic pain, cancer, and other serious illnesses who have voiced the need for a medical marijuana dispensary in the community, so that they can safely access their medicine.

STATE REGULATIONS

The medical marijuana law in Massachusetts includes extensive controls at the state level in order to relieve municipalities from the burden of regulating the day to day operations of registered marijuana dispensaries (RMDs). Patients must:

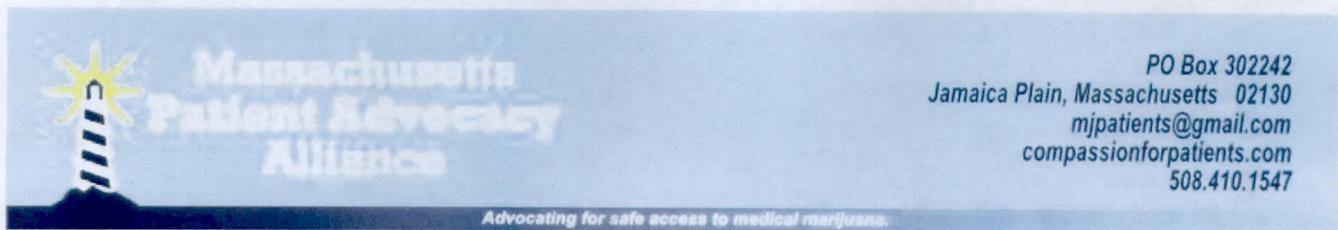
- obtain a recommendation from a doctor with whom they have a bona fide patient-physician relationship,
- register with the state and receive a state issued identification card,
- renew the recommendation and card annually.

The state Department of Public Health is required to:

- verify doctors' recommendations,
- maintain a database of all patients who have received and doctors who have written recommendations,
- license no more than five dispensaries per county by January 2014, meaning no community will host more than one dispensary.

RMDs are required to:

- follow strict security plans including state-of-the-art video surveillance,
- track inventory from seed to sale,
- admit only patients with a recommendation that has been verified by the state,
- locate at least 500 yards from a school or daycare center,
- limit how much medicine they provide to each patient,



- prohibit on site consumption of medical marijuana.

As an extra measure to prevent abuse of the system, the law created a new felony for anyone who defrauds the medical marijuana system for profit.

LOCAL REGULATIONS

The experience of other states has demonstrated that when well regulated, dispensaries offer a needed resource to patients while having a positive impact on communities. Dispensaries function more effectively when local authorities and dispensary operators work together to address any community concerns.

In Opposition of 309-13(3): RMD Moratorium

MPAA is opposed to a moratorium on RMDs. Even if the moratorium extends no further than March 2014, it will prevent a dispensary licensed by the state in January from operating in Newton. This would deny patients in Newton access to an effective treatment.

In Support of 309-13, with amendments: RMD Parameters for RMD Licensing

MPAA supports local involvement in siting and operation of RMDs, provided that local ordinances do not reduce access to medical marijuana by qualifying patients, and that regulations do not place onerous or unnecessary restrictions on RMDs. This proposal includes such measures. Examples of thoughtful regulations included in 309-13 that will form the basis of successful collaboration between RMDs and the city of Newton include:

- establishing a special permitting process,
- restricting RMDs to locate in mixed-use or business zones, and at least 500 feet from schools,
- requiring RMDs to submit information about traffic impact, and other specifications.

Concern: Language in 30-36 f(2) requiring RMDs to locate at least 500 feet from "a school, day care center, preschool, or after school facility or any facility in which children commonly congregate, or from a house of worship" is too restrictive. While zoning RMDs away from schools is already part of state level regulations, adding an additional buffer zone around churches and after school facilities could make it impossible for RMDs to find appropriate siting in town.

Recommendation: Remove "or after school facility" and "house of worship" from the zoning requirement so that local level buffer zones mirror state level regulations.

Beyond the possibility that excessive buffer zones could prevent RMDs from finding an appropriate site in Newton, this proposal is indicative of thoughtful regulations that balance safe access for patients with safety for the community. MPAA supports 309-13.



Massachusetts
Patient Advocacy
Alliance

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Advocating for safe access to medical marijuana.

MPAA is not only a patient advocacy organization, but also a clearinghouse for information related to medical marijuana policies. Please do not hesitate to contact me if you are seeking any additional information about the issue. Thank you for your consideration of this important matter.

Sincerely,

Matthew Allen
Executive Director
Massachusetts Patient Advocacy Alliance

MEDICAL CANNABIS DISPENSARIES IN THE COMMONWEALTH OF MASSACHUSETTS

Report prepared by
Americans for Safe Access

March 2013

RECEIVED
Newton City Clerk
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Safe Access in Massachusetts

A report prepared by Americans for Safe Access

BACKGROUND

To address the need for safe and affordable access to medical marijuana, voters in Massachusetts approved Question 3 in November of 2012 by over 63%. Eighteen states and the District of Columbia have now adopted medical marijuana laws in the United States. Beginning with California in 1996, voters have passed initiatives in ten of those states—Alaska, Arizona, Colorado, Maine, Massachusetts, Michigan, Montana, Nevada, Oregon, and Washington—plus the District of Columbia. Beginning with Hawaii in 2000, state legislatures have followed suit, with elected officials in Delaware, Maryland, New Jersey, New Mexico, Rhode Island, Vermont, and, most recently, Connecticut taking action to protect patients from criminal penalty.

The Massachusetts medical marijuana law was written to be the basis of the safest medical marijuana system in the country. The hallmark of this law is substantial state regulation to allow patients with a doctor's recommendation safe access to medical marijuana while including safeguards to prevent misuse of the program. The specifics on how the medical marijuana program will operate will be determined when the state Department of Public Health (DPH) issues regulations, which are to be complete by May 1, 2013. Americans for Safe Access (ASA) urges municipalities to wait until then before considering any policies related to the new law, including zoning for medical marijuana treatment centers.

This report is meant to help inform policy makers as they work to implement the Massachusetts medical marijuana law. It addresses several questions related to regulated distribution systems such as Massachusetts' "medical marijuana treatment centers" (MTCs). It demonstrates that when effectively regulated, treatment centers are:

- benefiting patients by providing safe access in a supportive environment,
- helping revitalize neighborhoods by improving public safety, reducing crime, and bringing new customers to surrounding businesses, and
- committed to following local laws and being good neighbors.

WHAT IS A MEDICAL MARIJUANA TREATMENT CENTER?

An MTC is a location where medical marijuana patients who have received a doctor's recommendation and registered with the state may purchase their medicine. MTCs are also called medical marijuana dispensaries.

The initiative lays the necessary framework for the implementation of a well-controlled

medical marijuana dispensary system. Some provisions in the law that will facilitate this include:

- requiring that MTCs operate as nonprofits under Massachusetts law,
- capping the state-wide limit on treatment centers to 35 across the state, with no more than five per county,
- requiring DPH to establish a rigorous application and registration process,
- authorizing DPH to set licensing fees and schedules to ensure the program is revenue neutral, and
- requiring all MTC employees to register with the state, while excluding anyone who has been convicted of a drug felony from working at an MTC.

TIMELINE FOR IMPLEMENTATION

January 1, 2013—The new medical marijuana law is effective. Patients with a physician's recommendation are protected by the law for possessing medical marijuana, but have no legal venue to purchase their medicine until MTCs are approved by DPH.

By May 1, 2013—DPH is required to write regulations regarding how patients can apply for a medical marijuana registration card, and nonprofit organizations can apply for treatment center registrations.

By January 2014—After regulations are written, the state will have up to eight months to issue registrations to at least 14 but no more than 35 MTCs, with a minimum of one but not more than five issued in each county.

DISPENSARIES, COMMUNITIES, AND REGULATION

In recent years, medical marijuana treatment centers or dispensaries have emerged in various parts of the country as community-based solutions for patient access to medicine. From Portland, Maine to Denver, Colorado to Seattle, Washington, dispensaries are no longer a uniquely California phenomena, although due to the relative newness of dispensaries elsewhere, the greatest depth of experience with medical marijuana dispensary regulation is in California. When considering that experience, it is important to keep in mind that Massachusetts' medical marijuana law is much stricter than those in California, Colorado, and many other medical marijuana states.

The experience of cities and towns in California demonstrates that when dispensaries are tightly regulated they have a positive effect on neighborhoods. The Massachusetts law starts with significant regulations at the state level that are absent in California. A rigorous statewide application process for MTCs seeking registrations is just one provision found in Massachusetts but not California. Capping the number of authorized MTCs is another.

Maine and Rhode Island chose an approach similar to Massachusetts by putting in place a rigorous licensing process, placing strict limits on the number of dispensaries that will ultimately be licensed by the state, and requiring the state to regulate dispensaries on

an ongoing basis. However, dispensaries have only recently opened in Maine and “compassion centers,” as dispensaries are called in Rhode Island, have not yet opened.

The California law that was passed by voter initiative over fifteen years ago did not include provisions to address dispensary operation, so as it became clear that dispensaries play a crucial role in providing safe access, municipalities had to step forward and craft dispensary regulations on their own. In Massachusetts, the law’s emphasis on high levels of state regulation will create a more ordered environment for implementing safe access statewide. Communities in the Commonwealth can expect that many parameters set by local governments in California will be addressed by regulations that are issued at the state level here. Even though the two laws are very different, the experience of the many local jurisdictions in California that have passed dispensary regulations provides the best picture of how the law may be implemented here, the difference being that regulations in Massachusetts will be set out by the state and will apply across the whole Commonwealth.

ASA does not oppose local regulation of medical treatment centers, but it believes that the most sensible course for municipalities is to allow the state to promulgate regulations governing the operation of MTCs before considering action at the local level. While placing limits on MTC operation now may seem like the safest course of action, passing local restrictions that were hastily adopted without full consideration of all relevant factors runs the risk of harming communities by placing unforeseen burdens on vulnerable patients and impeding their physician-recommended medical therapy.

WELL-REGULATED DISPENSARIES ARE GOOD NEIGHBORS

The experience of California reveals that medical marijuana dispensaries are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area. Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses simply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit.

They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors.

—Kris Worthington, longtime councilmember in Berkeley, California
commenting on dispensaries there.

The absence of any connection between dispensaries and increased local crime can be seen in data from Los Angeles, San Diego, Denver, and Colorado Springs. After reviewing a study he commissioned, Los Angeles Police Chief Charlie Beck observed that "banks are more likely to get robbed than medical marijuana dispensaries," and that the claim that dispensaries attract crime "doesn't really bear out."

Studies on Dispensaries and Crime

Typical of California ordinances is Oakland's, which limits the number of dispensaries that may be licensed and requires them to develop a security plan that must be reviewed by the city police department and the city administrator. Other communities in California have followed suit with similar provisions. In Massachusetts, the state will set such regulations so localities can benefit from the best practices and lessons learned from other medical marijuana states.

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security for their members and staff more seriously than most businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

Some opponents have erroneously suggested that dispensaries are magnets for criminal activity and other undesirable behavior, which poses a problem for the community. But the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials indicate that crime is consistently reduced by the presence of a dispensary.

DISPENSARIES DO NOT ATTRACT CRIME

—Mike Rotkin, councilmember and former mayor of Santa Cruz, California
There have been no complaints either about establishing it or running it.
The immediately neighboring businesses have been uniformly supportive or neutral.

—Oakland, California City Councilmember Nancy J. Nadel,
in an open letter to her colleagues.
Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses, law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parties in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise.

In San Diego, where some officials alleged there was increased crime associated with dispensaries, an examination of city police reports by a local paper, the *San Diego CityBeat*, found that as of late 2009 the number of crimes in areas with dispensaries was frequently lower than it was before the dispensary opened or, at worst, stayed the same.

A 2009 analysis of robbery and burglary rates at medical marijuana dispensaries conducted by the Denver, Colorado Police Department at the request of the Denver City Council found that the robbery and burglary rates at dispensaries were lower than area banks and liquor stores and on par with those of pharmacies. Specifically, the report found a 16.8 percent burglary and robbery rate for dispensaries, equal to that of pharmacies. That's lower than the 19.7 percent rate for liquor stores and the 33.7 percent rate for banks, the analysis found.

A 2010 analysis by the Colorado Springs Police Department found that robbery and burglary rates at area dispensaries were on par with those of other businesses.

The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed.

—Oakland city administrator Barbara Killey, responsible for the ordinance regulating dispensaries.

Officials in Santa Rosa have had a similar experience. After an ordinance requiring treatment centers to implement security measures was enacted the city noticed:

...a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens or from neighboring businesses.

—former Santa Rosa Mayor Jane Bender.

WHY DIVERSION OF MEDICAL MARIJUANA IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of marijuana on the street. But cities where dispensaries are well regulated have not encountered such problems. In addition to being monitored by law enforcement, dispensaries universally have strict rules about how members are to behave in and around the facility. Many have “good neighbor” trainings for their members that emphasize sensitivity to the concerns of neighbors, and all dispensaries absolutely prohibit the resale of marijuana. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

Beyond regulations that will be enacted by DPH, the Massachusetts medical marijuana law creates a new felony for anyone who defrauds the medical marijuana system for profit. If marijuana is falsely obtained for personal use or non-medical purposes, the offender will be facing two-and-a-half years in a House of Correction. Anyone who obtains marijuana by defrauding the medical marijuana system for distribution will face

up to five years in state prison. A person who now faces a mere civil fine could be facing a criminal conviction and a jail sentence. This is one of the measures in the Massachusetts law to help prevent diversion of medical marijuana that is not seen in other states.

[D]ispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell.

—Oakland's city administrator for the regulatory ordinance there.

[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced.

—Oakland's legislative analyst, Lupe Schoenberger.

DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING

Safe and legal access to medical marijuana is the reason dispensaries have been created by patients and caregivers around the nation. For many people, dispensaries remove significant barriers to obtaining medical marijuana. Patients in urban areas with no space to cultivate marijuana, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness—all tend to rely on dispensaries as a compassionate, community-based solution as a preferable alternative to potentially dangerous illicit market transactions.

After more than 16 years of existence, dispensaries are proving to be an asset to the communities they serve, as well as the larger community in which they operate. Research shows that once effective regulations are in place, dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries across the nation are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

California public officials in both urban and rural communities have been outspoken in praise of the dispensary regulatory schemes they enacted and the benefits to the patients and others living in their communities.

With the passage of the initiative, patients in Massachusetts are joining the over 1 million patients from other medical marijuana states who finally have safe access to their medicine. The law in Massachusetts will alleviate the suffering of thousands of patients here suffering with paralysis, multiple sclerosis, cancer, HIV/AIDS, ALS, and other debilitating diseases.

Policy makers in the Commonwealth have a chance to create the safest and most innovative medical marijuana program in the country, one that will become a model for other states seeking to provide relief to medical marijuana patients. Significant state regulation included in the law will facilitate this.

When designing regulations, it is crucial to remember that at its core this is a health-care issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost.

—Nathan Miley, Alameda County supervisor,
former Oakland City Council member.

ABOUT THIS REPORT

This report was produced by Americans for Safe Access (ASA). ASA is the largest national member-based organization of patients, medical professionals, scientists, and concerned citizens promoting safe and legal access to marijuana for therapeutic use and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to marijuana for patients and researchers. ASA has more than 50,000 active members with chapters and affiliates in all 50 states.

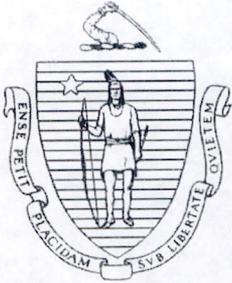
Learn more about ASA at AmericansForSafeAccess.org.

APPENDIX

While the Massachusetts Department of Public Health was developing the state's medical cannabis regulations, Massachusetts Attorney General Martha Coakley's office issued several opinions regarding the right of municipalities to regulate, ban, or impose temporary moratoriums on MTCs in their jurisdiction. The text of these decisions can be found in the pages following the summary below.

On March 13, 2013, the AG's office issued an opinion stemming from the Town of Wakefield's by-law to ban MTCs from the town. The opinion held that outright bans are in conflict with the law that was approved by voters, and therefore outright bans are prohibited. However, towns may adopt zoning by-laws to regulate the location of MTCs within a town.

In a separate opinion also issued on March 13, 2013, the AG's office approved a by-law from the Town of Burlington which allows the town to impose a temporarily moratorium on MTCs within the town until a specified date (June 30, 2014). The moratorium is permitted because its purpose is to determine local regulation that may need to be addressed following the issuance of state-wide regulations by DPH later in 2013.



MARTHA COAKLEY
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March 13, 2013

Via Electronic Mail

Mary K. Galvin, Town Clerk
Town of Wakefield
W.J. Lee Town Hall
One Lafayette Street
Wakefield, MA 01880

RE: Wakefield Fall Annual Town Meeting of November 15, 2012 - Case # 6601
Warrant Article # 11 (Zoning)

Dear Ms. Galvin:

Article 11 – Our review of Article 11 presents the question whether a town meeting vote to completely ban medical marijuana treatment centers from town conflicts with state law. We find that such a ban would frustrate the purpose of Chapter 369 of the Acts of 2012, “An Act for the Humanitarian Medical Use of Marijuana” (enacted as Question 3 on the November 2012 state ballot), to allow qualifying patients, who have been diagnosed with a debilitating medical condition, reasonable access to medical marijuana treatment centers. The Act’s legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, presumably all could do so. Because we find that such a total ban conflicts with the Act, we must disapprove Article 11 on that basis. *See Bloom v. Worcester*, 363 Mass. 136, 154 (1973) (by-law that conflicts with state statute is invalid).

Although we conclude that a municipality may not completely ban such centers within its borders, we also conclude that municipalities are not prohibited from adopting zoning by-laws to regulate medical marijuana treatment centers, so long as such zoning by-laws do not conflict with the Act (or regulations adopted to implement the Act), and are not “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.” *Sturges v. Chilmark*, 380 Mass. 246, 256 (1980) (quoting *Euclid v. Ambler Realty Co.*,

272 U.S. 365, 395 (1926)).¹

We emphasize that our disapproval of Article 11 in no way implies any position on the policy views that led to the passage of the Wakefield by-law amendment. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

We have reviewed court decisions from other states invalidating municipalities' total ban on medical marijuana treatment centers. Such decisions, while instructive, are not binding here, because other states allow varying degrees of home rule power, and other states' medical marijuana statutes differ from the Act. Moreover, in the one state where multiple appellate courts have considered the issue (California), the courts have issued conflicting decisions.²

This decision briefly describes the by-law amendments and the Act; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we must disapprove the by-law amendments adopted under Article 11 because they conflict with the Act.

I. Description of Article 11.

The amendments adopted under Article 11 add "Medical Marijuana Treatment Center" to the Use Table in the Town's zoning by-law, and establish it as a prohibited use in all zoning districts in Town. The amendments define "Medical Marijuana Treatment Center" as follows:

"Medical Marijuana Treatment Center – An establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana or products containing marijuana and/or related supplies for ostensibly medical purposes.

II. Summary of Medical Marijuana Act.

Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana" ("the Act") was adopted by the voters under Question 3 on the state ballot as a result

¹ We also recognize that a municipality has the authority to adopt a zoning by-law imposing a temporary moratorium on medical marijuana treatment centers while it studies how best to respond to this new legal use. Today we issued a decision approving one such moratorium adopted by Burlington. *See* Decision on Case # 6619.

² *See e.g.*, City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc., 133 Cal. Rptr. 3d 363 (2012) (rev. granted Jan. 18, 2012 S198638) (city's ban on medical marijuana dispensaries not preempted by state law); City of Lake Forest v. Evergreen Holistic Collective, 138 Cal. Rptr. 3d 332 (2012) (rev. granted May 16, 2012, S201454) (citywide ban on dispensaries conflicts with state law); County of Los Angeles v. Alternative Medicinal Cannabis Collective, 143 Cal. Rptr. 3d 716 (2011) (county's ban on dispensaries preempted by state law). This conflict may soon be resolved by the California Supreme Court in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., S198638 (argued Feb. 5, 2013).

of an initiative petition process.³ The Act states in Section 1 that its purpose is:

[T]hat there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana[.]

The Act allows qualifying patients – those “diagnosed by a licensed physician as having a debilitating medical condition” (Section 2 (K)) – to obtain a registration card from the Department of Public Health (DPH) authorizing the person to possess “no more marijuana than is necessary for the patient’s personal medical use, not exceeding the amount necessary for a sixty-day supply [as defined by DPH].” Sections 4, 12. The DPH registration card is issued only after the person submits a written certification from his or her physician “stating that in the physician’s professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.” Sections 2 (N), 12.

The Act authorizes DPH to issue registrations for up to thirty-five medical marijuana treatment centers (as defined in the Act) in the first year after the Act’s effective date, “*provided that at least one treatment center shall be located in each county*, and not more than five shall be located in any one county.” Section 9 (C) (emphasis added). DPH is authorized to increase or modify the number of registered treatment centers in a future year if DPH determines “that the number of treatment centers is *insufficient to meet patient needs*.” Section 9 (C) (emphasis added).

The Act allows for hardship cultivation registrations for qualifying patients “whose access to a medical (*sic*) treatment center⁴ is limited by verified financial hardship, a physical incapacity to *access reasonable transportation*, or the *lack of a treatment center within a reasonable distance of the patient’s residence*.” Section 11 (emphasis added). Such hardship registration allows the patient (or the patient’s caregiver, as defined in the Act) to cultivate a limited number of plants (sufficient for a 60-day supply) in an enclosed locked facility. Section 11.

The Act is silent regarding the power of municipalities to adopt zoning (or other) regulations pertaining to medical marijuana treatment centers. However, the Act does restrict the municipal police power⁵ in many respects, including, for example, that “Any person meeting the

³ The initiative petition process is governed by Mass Const. amend. art. 48 and has been described as a “people’s process.” Buckley v. Sec. of the Commonwealth, 371 Mass. 195, 199 (1976). It provides a method for the people of Massachusetts to directly enact statutes “which they deem[] necessary and desirable without the danger of their will being thwarted by legislative action.” Citizens for a Competitive Mass. v. Secretary of the Commonwealth, 413 Mass. 25, 30 (1992) (citation and internal quotation omitted).

⁴ In several places the Act refers to “medical treatment center,” a term not defined in the Act. We construe these references to mean “medical marijuana treatment center,” a term defined in Section 2 (H).

⁵ Section 6 of the Home Rule Amendment grants municipalities “broad powers to adopt by-laws for the protection of the public health, morals, safety, and general welfare, of a type often referred to as the ‘police’ power.” Marshall House, Inc. v. Rent Review and Grievance Bd., 357 Mass. 709, 716 (1970). The zoning power was one of the “independent municipal powers” granted to cities and towns by the Home Rule Amendment, enabling them to enact zoning ordinances or bylaws as an exercise of their “independent police powers” to control “land usages in an

requirements under this law shall not be penalized under Massachusetts law in any manner, or denied any right or privilege, for such actions.” (Section 4). (*See generally* Sections 4, 5, 6 (A), 6 (B) and 9 (D)).

Finally, Sections 8 and 13 direct DPH, within 120 days of the effective date of the Act (or May 1, 2013), to issue regulations defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients, and regulations to implement Sections 9 through 12 of the Act (governing registration of treatment centers, their agents, hardship cultivation, and qualifying patients and caregivers).⁶

III. Attorney General’s Standard of Review and General Zoning Principles.

Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.⁷ “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom, 363 Mass. at 154 (emphasis added). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 11, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a

orderly, efficient, and safe manner to promote the public welfare,” Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 359, as long as their enactments were “not inconsistent with the Constitution or laws enacted by the Legislature.” Id. at 358.

⁶ No DPH regulations have been issued as of the date of this decision.

⁷ The Attorney General also reviews by-laws for consistency with the federal constitution and statutes. This is because towns draw their legislative power from the state’s Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (as amended by amend. art. 89), which allows a town to exercise, subject to certain limits, “any power or function which the general court has power to confer upon it,” and the Legislature has no power to confer on a town the power to enact by-laws contrary to federal law. Here, we find no conflict between Article 11 and federal law.

zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." *Id.* at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (*quoting* Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (*quoting* Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). Nevertheless, where a zoning by-law conflicts with state law or the constitution, it is invalid. *See* Zuckerman v. Hadley, 442 Mass. 511, 520 (2004) (rate of development by-law of unlimited duration did not serve a permissible public purpose and was thus unconstitutional).

IV. Challenges to the Validity of Article 11.

In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]..." Home Rule Amendment, Mass. Const. amend. art. 2, § 6. Courts have found local regulation to be inconsistent with and thus invalid under a state statute when "the purpose of the statute cannot be achieved in the face of the local [regulation]." Tri-Nel Mgt. Inc. v. Board of Health of Barnstable, 433 Mass. 217, 223 (2001) (internal quotations and citations omitted).⁸ Local regulation has thus been found invalid where it "would somehow frustrate the purpose of the statute so as to warrant an inference that the Legislature intended to preempt the subject." Boston Gas Co. v. City of Somerville, 420 Mass. 702, 704 (1995) (citing Bloom, 363 Mass. at 155-156). It is here where Article 11 presents a conflict with the Act.

To determine whether Article 11 would frustrate the Act's purposes, we first must determine what those purposes are. Because the Act was adopted by way of the initiative petition process, "the voters of the Commonwealth . . . are the legislators whose intent we must discern," in order to effectuate the voters' "'object' and 'purpose.'" Bates v. Director of the Office of Campaign and Political Finance, 436 Mass. 144, 165 (2002).

The stated purpose of the Act is that "there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana." Section 1.

⁸ A by-law is also invalid where there is "an express legislative intent to forbid local activity on the same subject." Fafard v. Conservation Commission of Barnstable, 432 Mass. 194, 200 (2000) *quoting* Boston Gas Co. v. Somerville, 420 Mass. 702, 704 (1995). Where, as here, there is no express legislative intention to preclude local action, we must determine whether "a legislative intent to bar local action should be inferred in all the circumstances." Wendell v. Attorney General, 394 Mass. 518, 524 (1985). "In some circumstances, legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field." *Id.* Our review of the Act in the context of this by-law reveals no legislative purpose to completely bar municipalities from regulating medical marijuana treatment centers, other than in those specific areas where the municipal police power has expressly been limited. (*See supra* page 4). In this respect, the Act more closely represents the statutes at issue in Golden v. Selectmen of Falmouth, 358 Mass. 519 (1970) and Fafard, 432 Mass. 194, both of which were held to establish "minimum standards" and left room for local communities to adopt additional controls. *Id.* at 201.

However, a review of the entire Act makes plain another legislative intent: that qualifying patients, who have been diagnosed with a debilitating medical condition, will have reasonable access to medical marijuana treatment centers. With its dictate that in the first year after its effective date, there should be “registrations for up to thirty-five . . . treatment centers,” with “at least one treatment center....located in each county, and not more than five...located in any one county” (Section 9 (C)), the Act anticipates that such centers will be distributed throughout the Commonwealth. Notably, DPH is authorized to increase or modify the number of registered treatment centers in future years if DPH determines “that the number of treatment centers is insufficient to meet patient needs.” Section 9 (C). Moreover, the Act ensures that qualifying patients “whose access to a medical (*sic*) treatment center is limited by...a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient’s residence” may obtain a hardship cultivation registration. Section 11. All together these provisions reflect a legislative intent that qualifying patients have reasonable access to centers and, to that end, that the centers be reasonably dispersed throughout the Commonwealth.

This legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, we see no principled basis on which every other municipality could not do the same. The question is not whether a ban in Wakefield alone would make it impossible for there to be “at least one treatment center...in each county.” The question is whether the legislative purpose of reasonable access to treatment centers could be achieved if every municipality banned them. *Cf. St. George Greek Orthodox Cathedral of Western Mass., Inc. v. Fire Department of Springfield*, 462 Mass. 120, 130 (2012) (invalidating Springfield ordinance where, “[i]f all municipalities in the Commonwealth were allowed to enact similarly restrictive ordinances and bylaws,” legislative purpose would be frustrated); *Connors*, 430 Mass. at 41 (examining whether legislative purpose would be served “if each [governmental unit] could” depart from state law, as City of Boston had attempted). The answer to that question is clearly “no.” In a very practical sense, one of the clearly discernible purposes of the Act could not be achieved in the face of municipalities’ total ban of medical marijuana treatment centers.

The courts have relied on similar principles to invalidate other local laws that could frustrate statewide legislative purposes. *See Wheelabrator Land Resources, Inc. v. Town of Saugus*, 2005 WL 2338672 (Mass. Land Ct. 2005) (“To allow individual towns and cities to veto the creation and ongoing operation of landfills would sabotage the stated goal of ensuring sufficient waste disposal capacity in the Commonwealth.”); *see also Wendell v. Attorney General*, 394 Mass. 518, 529 (1985) (“An additional layer of regulation at the local level, in effect second-guessing the [state-level] sub-committee, would prevent the achievement of the identifiable statutory purpose of having a centralized, Statewide determination of the reasonableness of the use of a specific pesticide in particular circumstances.”). *Cf. Greater Lawrence Sanitary District v. Town of North Andover*, 439 Mass. 16, 24 (2003) (“While this statutory scheme clearly limits the town’s ability to regulate wastewater facilities and sewage disposal, it does not prevent the town from imposing limited antinuisance conditions...that do not prevent or interfere with [the department’s] performance of its legislative mandate and that are not preempted by the department’s regulatory authority.”).

In reaching this decision we are also guided by decisions of the Supreme Judicial Court considering a municipality’s right to exclude or limit certain land uses. In *Framingham Clinic*

Inc. v. Board of Selectmen of Southborough, 373 Mass. 279, 283 (1977), the court invalidated a Framingham zoning by-law which made abortion clinics a prohibited use in all districts in town because it unduly burdened the constitutionally protected rights of a woman regarding the termination of her pregnancy. The court dismissed an argument that Southborough's ban could be upheld because a woman could go elsewhere for such services:

Neither could Southborough justify its own rule by saying that a woman might overcome it by going elsewhere in the Commonwealth. May a "fundamental" right be denied in Worcester County because it remains available in Suffolk or Barnstable?...The picture of one community attempting thus to throw off on others would not be a happy one.

Id. at 287.⁹

In Zuckerman v. Hadley, 442 Mass. 511, 512 (2004), the court held on due process grounds that "absent exceptional circumstances . . . restrictions of unlimited duration on a municipality's rate of development are in derogation of the general welfare and thus are unconstitutional." The court viewed the Town's rate-of-growth by-law as pushing off onto other municipalities its burden of accommodating new residents, because its by-law limited the number of building permits that could be issued each year for single-family homes. Id. at 519-20. "Despite the perceived benefits that enforced isolation may bring to a Town facing a new wave of permanent home seekers, it does not serve the general welfare of the Commonwealth to permit one particular Town to deflect that wave onto its neighbors." Id. at 519. Although Zuckerman involved a challenge to a residential rate-of-growth by-law, an analogous principle would appear to apply to a by-law banning a non-residential land use, as does Wakefield's by-law, at least where the applicable Act reflects a legislative intent that the use be distributed throughout the Commonwealth.

V. Arguments In Support of Article 11.

During the course of our review of Article 11 we have heard from various individuals and organizations urging us to approve the amendments on various grounds. We briefly address those major arguments which we have not previously addressed above, and explain why we are not persuaded that they furnish a basis to approve the amendments.

We recognize that on occasion the court has upheld a municipal ban on activity even in the face of state regulation on the subject. Amherst, 398 Mass. 793; Marshfield Family Skateland, Inc. v. Marshfield, 389 Mass. 436 (1983); John Donnelly & Sons, Inc. v. Outdoor Advertising Board, 369 Mass. 206 (1975). We agree "that in some areas of activity legal business activities regulated by State law may be prohibited by local by-laws." Marshfield, 389 Mass. at 442 (*citing* John Donnelly & Sons, 369 Mass. at 214). However, where a local by-law prevents a legislative purpose from being achieved, the by-law may be deemed to be preempted.

⁹ We recognize that, unlike the constitutional principles at stake in Framingham Clinic, the Act does not grant a constitutional right to obtain medical marijuana. *See* Browne v. County of Tehama, 2013 WL 441604, *7 (Cal.App. 3 Dist.) (California's Compassionate Use Act "only provides a limited defense to certain crimes, not a constitutional right to obtain marijuana."). However, the Framingham Clinic court's concern about "throwing off" a controversial use to another town is instructive.

Id. at 441. In each of these three cited cases the court evaluated, and rejected, the argument that the local by-law at issue frustrated the purpose of the statute in question. *See Amherst*, 398 Mass. at 797-798; *Marshfield*, 389 Mass. at 441; *John Donnelly & Sons*, 369 Mass. at 212. These cases reinforce the notion that although municipalities have power to prohibit otherwise legal activities, they may not do so where the result would frustrate a legislative purpose or would otherwise conflict with state law.

One supporter of Article 11 contends that local by-laws may always supersede state laws enacted through initiative petitions. Because the Act resulted from an initiative petition, the argument goes, the Act does not have the same weight as other statutes “enacted by the general court” as referenced by the Home Rule Amendment (HRA), Mass. Const. amend. art. 2 (as amended by amend. art. 89). The HRA establishes that “[a]ny city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is *not inconsistent with* the constitution or *laws enacted by the general court*[.]” *Id.* § 6. (emphasis added) We have reviewed whether the phrase “laws enacted by the general court” in the HRA was intended to somehow leave municipalities free to legislate in a manner that conflicts with laws enacted by initiative petition, such as the Act, and we are persuaded that it was not. “[E]xcept as to matters expressly excluded, the scope of the power of the people to enact laws directly is as extensive as that of the General Court.” *Opinion of the Justices*, 375 Mass. 795, 817 (1978). Certain subjects are expressly excluded from the initiative process. *Massachusetts Teachers Assoc. v. Secretary of the Commonwealth*, 384 Mass. 209, 217 (1981). But those exclusions are not applicable here, and we find no cases to support the argument that statutes enacted by way of initiative petition are given less weight in the context of analyzing the HRA’s limitations on municipality’s home rule power. If laws enacted by the statewide initiative process could be superseded at will by local ordinances and by-laws, the “power of the people to enact laws directly,” far from being “as extensive as that of the General Court,” would be greatly diminished.¹⁰

Finally, we have considered the argument that Wakefield’s ban on medical marijuana treatment facilities must be upheld because doing otherwise would force the Town to accommodate an activity which is illegal under federal law, in violation of the Supremacy Clause. Under the federal constitution’s Supremacy Clause, Article VI, cl. 2, federal law may supersede, or “preempt,” the effect of state law (including municipal law). This may occur in any of three ways. “State action may be foreclosed by express language in a congressional enactment . . . by implication from the depth and breadth of a congressional scheme that occupies the legislative field, . . . or by implication because of a conflict with a congressional enactment[.]” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 540-541 (2001) (citations omitted).

We recognize that marijuana remains a Schedule I drug and that the federal government is empowered to enforce the Controlled Substances Act (CSA) against those possessing or cultivating medical marijuana. *Gonzales v. Raich*, 545 U.S. 1 (2005). However, no court has held that the Massachusetts Act is preempted by the federal CSA, and it is beyond the Attorney

¹⁰ The result would be that significant state initiative laws limiting local action, such as Proposition 2½ (St. 1980, c. 580), could be reduced to a near-nullity. *See generally Massachusetts Teachers Association*, 384 Mass. 209 (rejecting various challenges to enactment of Proposition 2½ through initiative process).

General's limited standard of review of town by-laws to determine that issue.¹¹ Further, other state courts have held that claimed federal preemption of a state's medical marijuana law is not a valid basis for upholding a municipal zoning ordinance banning medical marijuana dispensaries that are authorized by that state law. Qualified Patients Ass'n v. City of Anaheim, 187 Cal. App. 4th 734, 763, 115 Cal. Rptr. 3d 89, 110 (Cal. App. 4 Dist. 2010); City of Palm Springs v. The Holistic Collective, 2012 WL 1959571, *5-6 (Cal. App. 4 Dist. 2012). See also Ter Beek v. City of Wyoming, 823 N.W.2d 864 (Mich. App. 2012) (city ordinance banning land uses that are contrary to federal law, including CSA, and thus preventing qualified patient from growing marijuana in home as permitted under Michigan Medical Marijuana Act (MMMA), was inconsistent with purposes of MMMA and thus invalid; rejecting city's defense that relevant section of MMMA was preempted by federal CSA). In reviewing Wakefield's ban, we are limited to a determination whether the ban conflicts with state or federal law, not whether the state law that led to that local ban is in turn preempted by federal law. Because we find that Wakefield's proposed by-law conflicts with state law, we must disapprove it.

V. Conclusion.

While we disapprove the amendments adopted under Article 11, we reiterate that this decision is limited to a town's vote to adopt a total ban on medical marijuana treatment clinics. We recognize that the Act presents legal issues new to Massachusetts communities, and many communities may wish to adopt zoning by-laws and other regulations to preserve "public health, safety, morals, or general welfare" in response to this new legal use. Zuckerman, 442 Mass. at 516. However, where a by-law frustrates a statutory purpose, such as Wakefield's total ban on medical marijuana treatment clinics, the Attorney General's standard of review compels us to disapprove it.

¹¹ Cf. National Revenue Corp. v. Violet, 807 F.2d 285, 289 (1st Cir. 1986) (state attorney general should not agree to judgment that statute is unconstitutional, but may inform court if of the opinion that statute is flawed, leaving final determination to court); Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 374 (2006) (Spina, J., concurring) ("The duty of a public official is simply to enforce duly enacted and presumptively constitutional statutes"); Tsongas v. Sec'y of the Comm., 362 Mass. 708, 713 (1972) (officials "had no authority to depart from the statutes on the ground that the statutes were unconstitutional"); Assessors of Haverhill v. New Eng. Tel. & Tel. Co., 332 Mass. 357, 362 (1955) ("In general an administrative officer cannot refuse to proceed in accordance with statutes because he believes them to be unconstitutional," citing Smith v. State of Indiana, 191 U.S. 138, 148 (1903)).

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

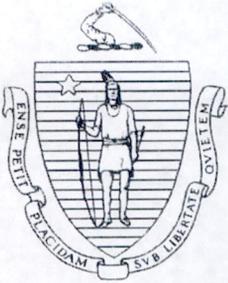
Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
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(508) 792-7600 x 4402

cc: Town Counsel Thomas A. Mullen (via electronic mail)



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ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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March 13, 2013

Via Electronic Mail

Amy E. Warfield, Town Clerk
Town of Burlington
29 Center Street
Burlington, MA 01803

RE: Burlington Annual Town Meeting of January 28, 2013 - Case # 6619
Warrant Articles # 1, 2, 3, 4 and 5 (Zoning)

Dear Ms. Warfield:

Articles 1, 2, 3, 4 and 5 - We approve the amendments to the Burlington by-laws adopted under these Articles on the warrant for the Burlington Annual Town Meeting that convened on January 28, 2013. Our comments on Article 5 are detailed below.

Article 5 – The amendments adopted under Article 5 amend the Town’s zoning by-laws to add a new Section 10.6, “Temporary Moratorium on Medical Marijuana Treatments Centers.” The new Section 10.6 institutes a temporary moratorium, through June 30, 2014, on the use of land or structures for a medical marijuana treatment center (as defined in Section 10.6). The stated purpose of the temporary moratorium is:

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law’s effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on

local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Medical Marijuana Treatment Centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

We approve this temporary moratorium because it consistent with the Town's authority to "impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies." Sturges v. Chilmark, 380 Mass. 246, 252-253 (1980). Such a temporary moratorium is clearly within the Town's zoning power when the stated intent is to manage a new use, such as medical marijuana treatment centers, and there is a stated need for "study, reflection and decision on a subject matter of [some] complexity..." W.R. Grace v. Cambridge City Council, 56 Mass. App. Ct. 559, 569 (2002) (City's temporary moratorium on building permits in two districts was within city's authority to zone for public purposes.) The time limit Burlington has selected for its temporary moratorium (through June 30, 2014) appears to be reasonable in these circumstances, where the Department of Public Health regulations have not yet been issued and those regulations "are expected to provide guidance" to the Town. Section 10.6.1. The moratorium is limited in time period and scope (to the use of land and structures for medical marijuana treatment centers), and thus does not present the problem of a rate-of-development bylaw of unlimited duration which the Zuckerman court determined was unconstitutional. Zuckerman v. Hadley, 442 Mass. 511, 512 (2004) ("[A]bsent exceptional circumstances not present here, restrictions of unlimited duration on a municipality's rate of development are in derogation of the general welfare and thus are unconstitutional.")

Because we find the amendments adopted under Article 5 are clearly within the Town's zoning power, and otherwise do not conflict with the laws or Constitution of the Commonwealth, (*see Bloom v. Worcester*, 363 Mass. 136, 154 (1973)), we approve them.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
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(508) 792-7600 x 4402

cc: Town Counsel John Giorgio (via electronic mail)

NEWTON TALKING POINTS

Before the Zoning and Planning Committee

October 16, 2013

RECEIVED
Newton City Clerk
2013 OCT 17 AM 11:51
David A. Gison, CMC
Newton, MA 02459

Good evening. I am Dr. Karen Munkacy. I am the president of Garden Remedies. Our organization is interested in locating a medical marijuana dispensary in Newton.

I live in Newton, and my husband and I are raising our 11 year old son here. I am a California-licensed physician and board-certified anesthesiologist. I am a delegate to the Mass Medical Society, a breast cancer survivor, and a patient advocate.

I commend Newton for addressing this subject in a positive, patient-centered manner. I was very impressed with the quality of the presentations and discussion here on September 23rd. I think Newton can fully address the zoning issues regarding medical marijuana facilities without a moratorium, and I urge you to vote against a moratorium tonight.

A moratorium is not necessary because licenses for dispensaries will not be issued by DPH until Jan. 31, 2014. Only after a license is issued can growing of the marijuana plant begin. Medicine will not be available for sale in a dispensary until June 2014 at the very earliest. There is more than adequate time to determine appropriate zoning.

Garden Remedies is in favor of dispensaries being zoned in all industrial, retail, and business zones that are also compliant with federal and state regulations.

Garden Remedies is thoroughly committed to providing the highest quality medical marijuana to patients who can benefit from this medicine, and will provide this service in a secure, accessible and professional setting.

Garden Remedies' dispensary will provide good jobs for local residents, revenue for the city of Newton, and education for patients, their loved ones, medical professionals and community members.

Until a dispensary opens in a convenient location for patients, the Department of Public Health regulations allow patients who have received a recommendation from their doctors to grow marijuana in their homes. Garden Remedies will minimize the need for patients to seek DPH hardship waivers to grow their own medicine at home by providing affordable medicine and free delivery to eligible local patients.

Garden Remedies is committed to working productively with city officials and to developing positive working relationships with other Newton community stakeholders.

Garden Remedies dispensary will be providing education to all patients on proper dosage, use of vaporizers and oral medications. This will require significant time per patient. No medicating will be allowed on site, but private rooms will be needed for patient education, so that patients have privacy when discussing their medical symptoms. These private discussions will be essential in determining the correct strain of medical marijuana for each patient.

Thank you.



CITY OF NEWTON, MASSACHUSETTS
Planning and Development Board

October 17, 2013

The Honorable Marcia Johnson
Chair, Zoning and Planning Committee
Members, Zoning and Planning Committee
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Setti D. Warren
Mayor

Candace Havens
Director
Planning & Development

Anne Marie Belrose
Community Development
Manager

Members

Scott Wolf, Chair
Roger Wyner, Vice Chair
Leslie Burg, CPC Liaison
Candace Havens, *ex officio*
Tabetha McCartney
Joyce Moss
Doug Sweet
Peter Doeringer, Alternate

Dear Alderman Johnson and Members of the Zoning and Planning Committee:

This letter documents the voting action taken and advisory opinion developed by the Planning and Development Board (P & D Board) on October 16, 2013, following the close of its public hearings on the following item:

#309-13(3) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, as needed to add a definition of “registered marijuana dispensary” and to create a temporary moratorium on the use of land, buildings and structures for registered marijuana dispensaries in the City of Newton in order to allow the City adequate time to complete a planning process to consider in what districts and under what conditions registered marijuana dispensaries will be allowed.

The P & D Board voted unanimously to indicate that they do not want to vote for a moratorium because state regulations and existing municipal zoning are sufficient; however, the P&D Board would support a moratorium that expires at the end of the current Aldermanic term.

Respectfully submitted on behalf of the Planning & Development Board,

Scott Wolf
Chair

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