



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

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Community Development

To: Planning Board
From: CDD Staff
Date: October 16, 2013
Re: **Medical Marijuana Zoning Proposal**

Attached is a zoning petition for Registered Marijuana Dispensaries in Cambridge. This memo provides some additional background information on medical marijuana, as it is regulated in Massachusetts, and the rationale behind the zoning proposal.

Medical Marijuana in Massachusetts

In November, 2012, Massachusetts voters approved a Law for the Humanitarian Medical Use of Marijuana, which permits the use of marijuana or marijuana-infused products (MIPs, such as foods or tinctures) by patients with certain debilitating and/or terminal illnesses with their doctor's recommendation.

The law specified that the Massachusetts Department of Public Health would be responsible for promulgating regulations to implement the law, and would be responsible for registering up to 35 Medical Marijuana Treatment Centers (also known as Registered Marijuana Dispensaries, or RMDs) within the state during the first year of implementation, with at least one but no more than five located in each county. In future years, Mass. DPH could register more RMDs if the number is found insufficient to meet patients' needs. Mass. DPH will also register qualifying patients.

In May, the Public Health Council approved regulations presented to it by Mass. DPH with regard to the certification and administration of medical marijuana (105 CMR 725.000). Relevant information is available at www.mass.gov/medicalmarijuana.

What is a Registered Marijuana Dispensary (RMD)?

According to the Massachusetts regulations, a Registered Marijuana Dispensary (RMD) is a not-for-profit entity that cultivates, prepares, and dispenses marijuana or MIPs only to qualifying patients or their caregivers. RMDs and qualifying patients must be registered with Mass. DPH.

In Massachusetts, an RMD must cultivate, prepare and dispense marijuana and MIPs in a vertically-integrated way. RMDs may not buy or sell marijuana amongst each other, except in unusual circumstances. However, an RMD may operate on two different sites, with cultivation occurring at one location and dispensing occurring at the other. Also, a single corporate entity may control up to three (3) RMDs in the state which may share a cultivation site. For example, a single not-for-profit corporation could operate one cultivation site that serves up to three dispensaries across the state.

The state regulations are comprehensive, and some aspects of the regulations will impact the character of RMDs from a planning and urban design perspective. Some of the regulations that are most pertinent to local planning considerations are summarized below (refer to 105 CMR 725.00 for details):

- **Access Limitations:** Only registered qualifying patients are permitted to enter an RMD. Identification will be checked upon entry. Moreover, products may not be visible to passersby outside the RMD, and within the RMD only samples may be displayed in locked cases.
- **Branding and Signage:** Only the registered name and logo of the RMD are allowed to be displayed. Signage may not include any graphic representations of marijuana or paraphernalia, the word marijuana or any colloquial terms for marijuana, medical symbols, or any information about products or pricing.
- **Security:** All marijuana must be stored in a secure, locked area within the RMD that is accessible only to designated employees. Perimeter alarms are required along with 24-hour video surveillance of all access and egress points and parking areas. Security lighting is required around the perimeter and any trees, bushes or other foliage must not allow for hiding places.
- **Deliveries:** An RMD may offer home delivery. However, all marijuana must be transported in an unmarked vehicle with a locked storage compartment that is part of the vehicle (e.g., an armored truck) and must be operated by at least two dispensary agents. Although it is not specifically required in the regulations, an RMD offering deliveries may need an enclosed loading/unloading area to ensure proper security.
- **Supply:** An RMD is allowed only to dispense up to a 60-day supply of marijuana or MIPs to a registered qualifying patient, and must limit its total supply on-hand to reflect the projected needs of its patients.
- **Accessory Activities:** An RMD may only sell marijuana, MIPs and vaporizers, but no other marijuana-related paraphernalia. An RMD may distribute patient education materials as required, but may not sell or distribute any promotional or other items. No consumption of marijuana is allowed on the premises, except for the purpose of demonstrating proper use of vaporizers. No other unrelated activities are allowed to occur within the RMD.
- **Siting:** According to the state regulations, an RMD must be sited at least 500 feet from a school, daycare center, or any facility in which children commonly congregate if no local siting regulations exist. It may be possible to set a different local standard. However, Federal enforcement practices in other states with legalized medical marijuana have disallowed dispensaries within 1,000 feet of schools. Therefore, an RMD may be taking a significant risk by locating near a school or other child-oriented facility.

What is the statewide RMD registration process?

The state regulations set a two-phase competitive process for selecting applicants to operate RMDs:

- In August, Mass. DPH accepted Phase 1 applications. There were a total of 181 applications, with 47 indicating interest in locating in Middlesex County. Phase 1 did not require identification of specific cultivation, processing or dispensing sites.
- On September 23, Mass. DPH released the list of applicants that were approved in Phase 1 and may submit a more detailed Phase 2 application. A total of 159 RMD applicants were selected into Phase 2, with 40 indicating interest in Middlesex County.
- On October 7, Phase 2 applications were made available. Applications are due on November 21. Part of the Phase 2 application requires RMD applicants to identify cultivating, processing and dispensing sites and to provide evidence of local support.
- Final decisions are anticipated on January 31, 2014. At that time, Mass. DPH will approve up to 35 RMDs statewide, with at least one but no more than five in each county.

More Information is available at www.mass.gov/medicalmarijuana.

How will RMDs be regulated at the local level?

The state regulations (105 CMR 725.000) permit local regulatory oversight so long as it does not conflict or interfere with the state regulations.

Before the law took effect in January, 2013, Cambridge (along with many other municipalities) enacted a zoning moratorium on the establishment of medical marijuana dispensaries, to allow for time to review the state regulations and consider local regulations that would fit within the statewide framework. In March, 2013, the state Attorney General issued legal opinions to towns that had enacted a moratorium or a complete ban on marijuana dispensaries (Burlington and Wakefield, respectively). In summary, these opinions concluded that a temporary moratorium and reasonable zoning restrictions were appropriate, but that marijuana dispensaries could not be completely banned from a municipality.

While the Cambridge moratorium has been in effect, representatives from various City departments including the Community Development Department, Public Health Department, Law Department, Police Department, Department of Human Service Programs, Inspectional Services Department, License Commission and City Manager's office have met to review the statewide regulations and discuss local regulatory approaches. Cambridge's moratorium expires on November 20, and a zoning petition is being submitted at this time so that the public hearing process may begin prior to expiration.

The expectation is that land use characteristics such as location, parking and urban design would be controlled through the Zoning Ordinance, and the operational aspects of RMDs could be controlled through Cambridge public health regulations that would be enforced locally in addition to the state public health regulations. The Cambridge Public Health Department, Inspectional Services Department, License Commission and Police Department would be authorized to enforce the local health regulations. This will be discussed further at the meeting on Tuesday.

Land Use and Zoning Considerations

The proposed zoning attempts to follow the lead of the state law and regulations by treating RMDs as regional service providers with a limited, specialized function and a client base that will be spread across a large area. The following land use topics were considered:

- **Use Compatibility.** As a business use, RMDs would not be considered appropriate for residential neighborhoods. Compatibility with neighborhood-scale retail districts is also an issue because, unlike neighborhood-serving retail stores, they would serve a select, regional clientele and not the neighborhood as a whole. Also, the security requirements may conflict with the pedestrian-friendly storefront character that is carefully cultivated in many retail areas.
- **Transportation.** Because of their regional nature, it is important to consider access to public transportation as well as regional roadways, since clients may travel from areas without access to public transportation or may otherwise need to use a car. Locations that would bring excess auto traffic to smaller residential streets should be discouraged. Availability of parking is also an issue. Because the state controls the number and location of RMDs, it may be difficult to set a general standard for how much parking should be provided. Also, given the security needs, an RMD may prefer on-site customer parking that can be monitored, rather than relying on public parking. For RMDs that make deliveries, the potential for secure loading facilities may also be a factor.
- **Public Safety.** The Police Department has expressed the importance of being able to effectively respond to emergency calls at or near an RMD site. Therefore, isolated areas without convenient street access should be avoided.
- **Urban Design.** The access and security requirements for RMDs have the potential to create a streetfront that is visually unfriendly to pedestrians or a design that is out of character with surrounding uses. This concern could be mitigated through careful urban design, and therefore binding design review may be an appropriate measure.
- **Distance from Child-Oriented Facilities.** Although the City is not required to adopt the same standards that apply on the state or Federal level, it may be prudent to adhere to the statewide standard of a 500-foot buffer from schools, child care centers, or other places where children normally congregate to avoid potential confusion or jurisdictional conflicts.

Based on these considerations, the zoning proposal takes the following approaches:

- **Overlay Districts.** The proposal limits RMDs to the North Point (near Lechmere station) and Alewife areas, since they are in predominantly commercial districts with access to public transportation service and regional road networks. They also contain many sites that have the potential for on-site parking and loading and are adequately distanced from schools and other child-oriented facilities.
- **Planning Board Review.** A special permit requirement would allow for meaningful review of design and transportation impacts, as well as a greater level of oversight and assurance that an RMD will be operated in a manner that is consistent with the intent of the zoning and other regulations.

These considerations will be discussed in further detail at Tuesday's meeting.