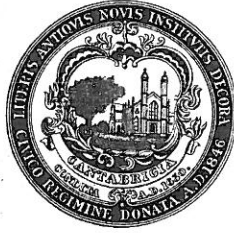


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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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January 14, 2020

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

**Re: *Revolutionary Clinics II, Inc.'s Application to Amend its January 11, 2019
Special Permit for 541 Massachusetts Avenue, Case No. PB-339***

Dear Mr. DePasquale:

I am submitting this legal opinion in response to the Planning Board's (the "Board") request for a legal opinion concerning the above-referenced case, which relates to Revolutionary Clinics II, Inc.'s (the "Revolutionary Clinics") application to amend its special permit granted on January 11, 2019 (the "Special Permit"), to allow it to co-locate a Cannabis Establishment for the non-medical use of cannabis ("Cannabis Establishment") at 541 Massachusetts Avenue, Cambridge (the "Property").

Specifically, the Board has requested guidance concerning the requirement that new Cannabis Retail Store uses be located one thousand eight hundred (1,800) feet from prior permitted Cannabis Retail Stores, pursuant to Cambridge Zoning Ordinance (the "Zoning Ordinance") Article 11.000, Section 11.803.1(b), to Revolutionary Clinic's application to amend the Special Permit. The Special Permit authorizes Revolutionary Clinics to operate a Registered Marijuana Dispensary ("RMD") at the Property. Revolutionary Clinics seeks to co-locate a Cannabis Establishment at the Property along with the RMD.

In my opinion, as will be discussed further below, Revolutionary Clinics is seeking to add a new Cannabis Retail Use at the Property, and under the Zoning Ordinance, a new Cannabis Retail Store use is not permitted within 1,800 feet of a prior permitted Cannabis Retail Store, unless the applicant is designated as an Economic Empowerment Applicant or is eligible to participate in the Cannabis Control Commission's Social Equity Program. However, pursuant to the adult-use cannabis law, G.L. c.94G, §3(a)(1), a zoning ordinance cannot prevent a RMD

registered by July 1, 2017 from converting to, or co-locating with, a Cannabis Establishment. Therefore, the 1,800 feet buffer cannot be applied to Revolutionary Clinics' application to amend the Special Permit.

Background

Pursuant to the application materials it submitted to the Planning Board, Revolutionary Clinics obtained a Provisional Certificate of Registration to operate a RMD from the Massachusetts Department of Public Health (the "State") on June 2, 2017. The Provisional Certificate of Registration was issued for property located at 229-231 Third Street, but on May 10, 2018, the State¹ approved the relocation of the Provisional Certificate of Registration to the Property. On January 11, 2019, Revolutionary Clinics obtained its Special Permit to operate a RMD at the Property. Revolutionary Clinics has received its Certificate of Occupancy from the Inspectional Services Department to operate a RMD at the Property, but my understanding is it has not commenced operations of a RMD at the Property yet.

Revolutionary Clinics has now applied to amend the Special Permit to allow it to add a co-located Cannabis Establishment as a new use at the Property. Zoning Ordinance Article 2.000 defines a Cannabis Establishment as a "marijuana-related business licensed by the Massachusetts Cannabis Control Commission, except a medical marijuana treatment center [also known as a RMD]." A Cannabis Retail Store is defined as "[a]n establishment authorized to sell or otherwise transfer cannabis or marijuana products to consumers for use off the premises A Cannabis Retail Store may be licensed to operate as a Cannabis or Marijuana Retailer or registered as a Medical Marijuana Treatment Center (also known as a Registered Marijuana Dispensary or RMD), or both" The Cannabis Establishment will be co-located with the RMD because Revolutionary Clinics seeks to continue to operate the RMD at the Property.

Section 11.803.1(b) of the Zoning Ordinance states that:

A Cannabis Retail Store shall not be permitted within one thousand and eight hundred (1,800) feet of another Cannabis Retail Store, except if the applicant has been designated as an Economic Empowerment Applicant or certified as eligible to participate in the Social Equity Program by the Massachusetts Cannabis Control Commission and it is made a condition of the special permit that such designation or eligibility shall be maintained.

On August 6, 2019 and September 10, 2019, the Planning Board approved special permits for two Cannabis Retail Stores located at 580 Massachusetts Avenue and 567 Massachusetts Avenue. These locations are within 1,800 feet of the Property and each other, but the special permits were granted to Economic Empowerment Applicants, so the 1,800 feet buffer requirement was not applicable to those special permits.

¹ The Massachusetts Department of Public Health previously issued Certificates of Registration for RMDs, but its authority was transferred to the Commission pursuant to Chapter 55 of the Acts of 2017.

Discussion

The Planning Board seeks guidance as to whether Revolutionary Clinic's application to amend the Special Permit to add a new Cannabis Retail Store use, specifically a Cannabis Establishment use, is subject to the 1,800 feet buffer requirement and therefore not permissible because two other Cannabis Retail Stores have already obtained special permits to operate within 1,800 feet of the Property. The Zoning Ordinance prohibits a new Cannabis Retail Store use from being located within 1,800 feet of a prior permitted Cannabis Retail Store, unless the applicant is designated as an Economic Empowerment Applicant or is eligible to participate in the Cannabis Control Commission's Social Equity Program. Here, Revolutionary Clinics is permitted to operate a RMD use at the Property, and two other permitted Cannabis Establishments, located at 580 Massachusetts Avenue and 567 Massachusetts Avenue, are permitted within 1,800 feet of the Property. Those two Cannabis Establishments were granted special permits to locate within 1,800 feet of the Property and each other because they were granted their special permits as Economic Empowerment Applicants.

Revolutionary Clinics now seeks to add a new use as a Cannabis Establishment at the Property, and that use would be within 1,800 feet of the 580 Massachusetts Avenue and 567 Massachusetts Avenue Cannabis Establishments. Revolutionary Clinics is not permitted to add the Cannabis Establishment use at the Property under Zoning Ordinance Section 11.803.1(b) because a new Cannabis Retail Store use is not permitted within 1,800 feet of a prior permitted Cannabis Retail Store.

However, the adult-use cannabis law affords certain protections to RMDs registered with the State by July 1, 2017. Specifically, G.L. c.94G, §3, states:

- (a) A city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter and that:
- (1) govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories, **except that zoning ordinances or by-laws shall not operate to: (i) prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment engaged in the same type of activity under this chapter;**

(emphasis added). Pursuant to the language of G.L. c.94G, §3(a)(1), a zoning ordinance cannot prevent a RMD registered with the State by July 1, 2017 from converting to a Cannabis Establishment for the non-medical use of cannabis. Accordingly, the 1,800 feet buffer requirement does not apply to a RMD registered by July 1, 2017 that is seeking to convert to, or co-locate with, a Cannabis Establishment. The Cannabis Control Commission interprets this section, G.L. c.94G, §3(a)(1), to apply to RMDs with a provisional registration by July 1, 2017, so the RMD does not have to have commenced operations yet. Revolutionary Clinics received its provisional registration from the State for the operations at the Property on June 2, 2017, so it

is protected by the language of G.L. c.94G, §3(a)(1) and the 1,800 feet buffer requirement cannot prevent it from converting to, or co-locating with, a Cannabis Establishment at the Property.²

For these reasons, the 1,800 feet buffer requirement pursuant to Section 11.803.1(b) is not applicable to Revolutionary Clinic's application to amend the Special Permit to co-locate a Cannabis Establishment at the Property along with the RMD.

Please let me know if I may be of assistance with any additional questions.

Very truly yours,



Nancy E. Glowa

² Please note that the City's Cannabis Business Permitting Ordinance that was passed by the City Council on September 23, 2019 prohibits any Cannabis Establishment other than one operated by an Economic Empowerment Applicant from obtaining a Business Permit or operating a Cannabis Establishment until two years from the date of passage of the Cannabis Business Permitting Ordinance.