

Town of



AMHERST

Massachusetts

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MEMORANDUM

TO: Select Board

FROM: Jeff Bagg, Senior Planner

RE: Registered Marijuana Dispensary (RMD)

DATE: November 18, 2015

Recently, the Town has been approached by at least three separate entities regarding establishing a Registered Marijuana Dispensary (RMD) in Amherst. The following is intended to be a basic overview for use by the Select Board and others of the history, general process, and letter of support or non-opposition.

The following is enclosed:

1. RMD application process overview (chart)
2. Section C: Letter of Support or Opposition (excerpt from Siting Profile application)
3. Section D: Local Compliance (excerpt from Siting Profile application)
4. The RMD Application Process (excerpt from Guidance for Municipalities Regarding the Medical Use of Marijuana, updated August 2015)
5. Email from Town Counsel, dated November 19, 2015
6. Planning Board Report to Town Meeting, November 2013
7. RMD Zoning Bylaw overview

Brief History

- November 2012 – Ballot Question 3, “An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana” passed.
- May 2013 – The state Department of Health (DPH) regulations and licensing processes are published and made effective.
- September 2013 – Amherst Planning Board holds public hearings on proposed RMD Zoning Bylaw amendments and voted unanimously to send amendment to Town Meeting
- November, 2013 – Amherst Select Board unanimously supported Article 13.
- November 6, 2013 – Amherst Town Meeting voted by declared 2/3 to adopt Article 13.
- 2014-2015 – Town receives various inquiries from prospective applicants, but no formal applications received. Several dispensaries and grow facilities are licensed in eastern part of State (Ayer, Lowell, Salem, Brockton). Northampton dispensary granted only license in Pioneer Valley.

- June 29, 2015 - The state DPH announces new rolling application process revised the licensing process to allow additional entities to apply.
- September/October 2015 - The first and only dispensary in Hampshire, Hampden, and Franklin County is licensed and opens in Northampton.
- Since July 2015, the Town has been receiving inquiries from entities seeking to establish a medical marijuana dispensary in Amherst, with several entities now seeking letters of support or non-opposition from the Town.

General process

- Phase I - An entity submits to the Department of Public Health (DPH) an Application of Intent. The DPH reviews and chooses to “invite” an entity into Phase II.
- Phase II – An entity submits a Management and Operations Profile. If phase II is approved by DPH the entity enters into phase III (Siting Profile).
- Phase III – An entity submits a Siting Profile application. One of the requisite steps is to secure a letter of support or non-opposition from either the Town Manager (if authorized by the Select Board) or by the Select Board.
 - The ZBA Special Permit process (and any other local permitting) would also occur later in this phase.

Letter of support or non-opposition

A letter of support from either the Chief Executive Officer (Town Manager) or the Select Board is required for an entity to enter into Phase III.

- The DPH application includes two sample “form letters” and mandates that certain language be included in any letter.
- The letter must be signed by either:
 - The Chief Executive Officer (Town Manager)
 - The Chief Executive Officer (or other official) authorized to sign on behalf of the Select Board. This option requires a vote of the Select Board at a noticed public meeting to authorize someone to act on behalf of the Select Board.
- Kopelman & Paige has given initial information that a letter of intent to lease a property would be sufficient for this stage and that such a letter does not constitute an approval nor any guarantee, rather it is intended to be an expression of the Town’s general sentiment.
- A local official, in this case, the Building Commissioner would provide the Town Manager or Select Board with a verification that the location is located in a Zoning District which allows the use.
- The DPH regulations allow an entity to seek local zoning approval at any point. It will be the Town’s policy to require the issuance of a letter of support or non-opposition to occur first followed by a complete Special Permit application to the Zoning Board of Appeals.

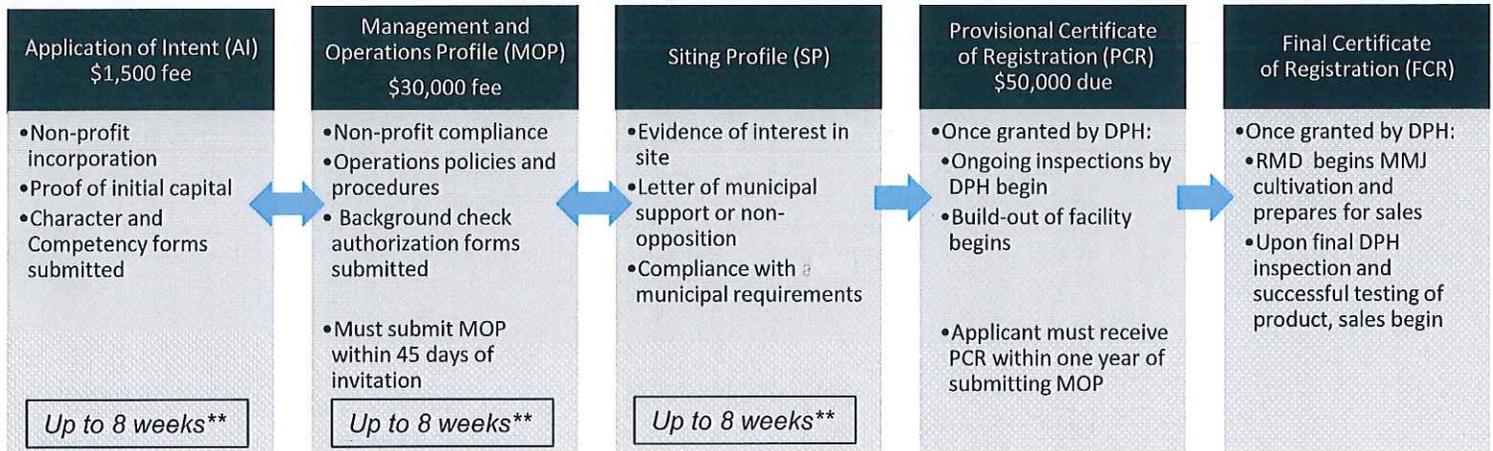
Phase IV - If all local approvals are granted, an entity would enter into Phase IV (Provisional Certificate of Registration) which includes construction and inspections. Finally, once the final inspections are approved a Final Certificate of Registration is granted by DPH. An entity has one year from submission of a Management and Operation Profile (Phase II) to obtain the Final Certification.

Registered Marijuana Dispensary (RMD) Application Process Overview (chart)

Prepared by Massachusetts Department of Health (DPH)



RMD Application Process Overview



** Represents estimated time for DPH to process an application that is submitted as complete and in compliance with the law and regulations. The submission of revised or additional information may require additional time to process.

- Applicants have the opportunity to provide clarifications/updates to DPH throughout the application review process.
- Applications are accepted on a rolling basis.
- Municipal permitting may take place at any time throughout the process.
- Program staff is available to answer questions from applicants by emailing RMDapplication@state.ma.us or by calling 617.660.5370.
- Applications are posted at mass.gov/medicalmarijuana after receipt by DPH.
- Written guidance regarding background checks and non-profit compliance is posted at mass.gov/medicalmarijuana.

Section C: Letter of Support or Non-Opposition

Excerpt from DPH Siting Profile application

SECTION C: LETTER OF SUPPORT OR NON-OPPOSITION

Attach a letter of support or non-opposition, using one of the templates below (Option A or B), signed by the local municipality in which the applicant intends to locate a dispensary. The applicant may choose to use either template, in consultation with the host community. If the applicant is proposing a dispensary location and a separate cultivation/processing location, the applicant must submit a letter of support or non-opposition from both municipalities. This letter may be signed by (a) the Chief Executive Officer/Chief Administrative Officer, as appropriate, for the desired municipality; or (b) the City Council, Board of Alderman, or Board of Selectmen for the desired municipality. The letter of support or non-opposition must contain the language as provided below. The letter must be printed on the municipality's official letterhead.

Template Option A: Use this language if signatory is a Chief Executive Officer/Chief Administrative Officer

I, [Name of person], do hereby provide [support/non-opposition] to [name of non-profit organization] to operate a Registered Marijuana Dispensary ("RMD") in [name of city or town].

I have verified with the appropriate local officials that the proposed RMD facility is located in a zoning district that allows such use by right or pursuant to local permitting.

Name and Title of Individual

Signature

Date

Template Option B: Use this language if signatory is acting on behalf of a City Council, Board of Alderman, or Board of Selectman

The [name of council/board], does hereby provide [support/non-opposition] to [name of non-profit organization] to operate a Registered Marijuana Dispensary in [name of city or town]. I have been authorized to provide this letter on behalf of the [name of council/board] by a vote taken at a duly noticed meeting held on [date].

The [name of council/board] has verified with the appropriate local officials that the proposed RMD facility is located in a zoning district that allows such use by right or pursuant to local permitting.

Name and Title of Individual (or person authorized to act on behalf of council or board) *(add more lines for names if needed)*

Signature *(add more lines for signatures if needed)*

Date

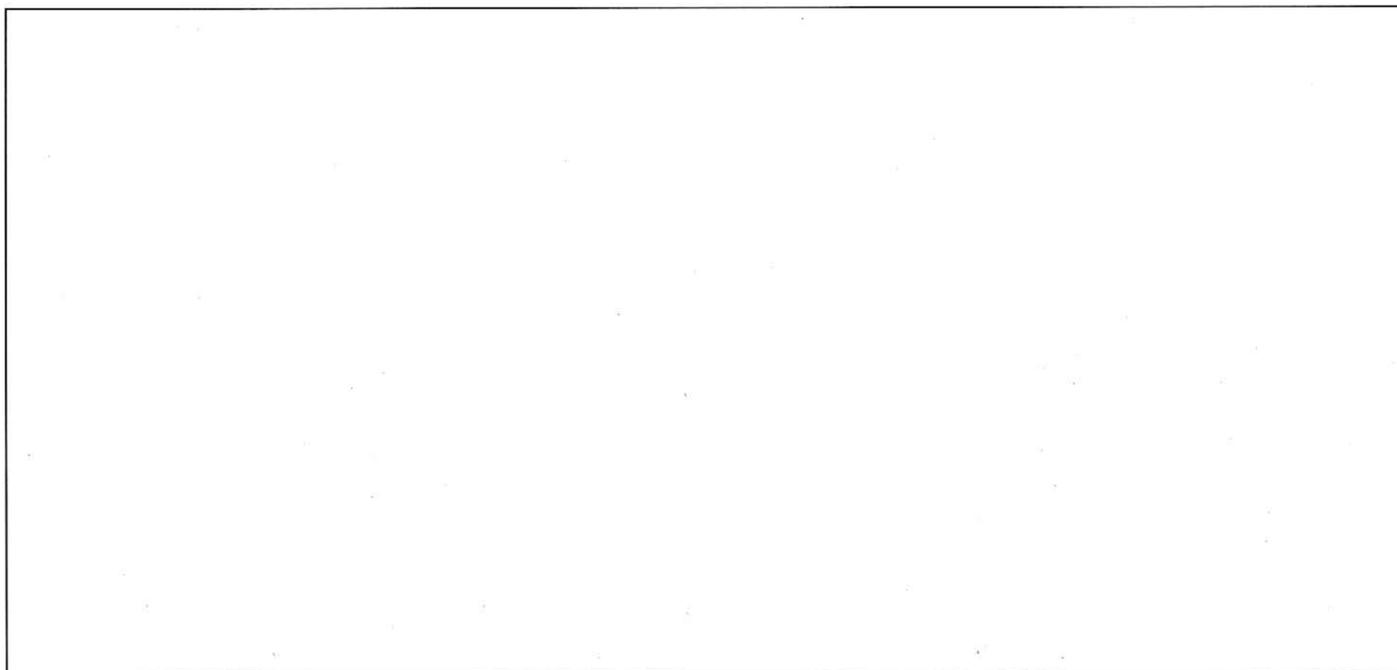
Information on this page has been reviewed by the applicant, and where provided by the applicant, is accurate and complete, as indicated by the initials of the authorized signatory here: _____

Section D: Local Compliance

Excerpt from DPH Siting Profile application

SECTION D: LOCAL COMPLIANCE

Describe how the Corporation has ensured, and will continue to ensure, that the proposed RMD is in compliance with local codes, ordinances, and bylaws for the physical address(es) of the RMD.



Information on this page has been reviewed by the applicant, and where provided by the applicant, is accurate and complete, as indicated by the initials of the authorized signatory here: _____

RMD Application Process (summary)

Excerpt from DPH Guidance for Municipalities Regarding the

Medical Use of Marijuana, updated August 2015

The RMD Application Process

Overview. DPH will evaluate the applications received on or after June 29, 2015 on a rolling basis, with priority given to the review of applicants proposing to site an RMD in an Open County. Each successful applicant will be notified that they are authorized to proceed to the Inspection Phase, during which they may seek all required local permits, and when authorized by their community, commence building out the RMD. The Inspections Phase also includes evaluation of documentation prepared in compliance with the Regulations and guidance provided by the Department regarding the operation of a nonprofit RMD. After passing all applicable local and state inspections, an RMD may receive a Final Certificate of Registration.

Role of Municipalities. Municipalities should determine what local permits or licenses may be required if a RMD wishes to locate there, and consult their Town Counsel or City Solicitor if there are any questions about the required process.

Proposed Locations. As part of the application process, an RMD applicant will submit an *Application of Intent*, a *Management and Operations Profile*, and a *Siting Profile* in sequential order. An applicant must be formally invited by the Department in writing in order to submit a *Management and Operations Profile* or *Siting Profile*. An RMD applicant does not inform the Department of their proposed RMD location(s) until the time of submission of the *Siting Profile*.

Letters of Support or Non-Opposition. RMDs may approach municipal officials to acquire letters of local support or non-opposition, which is required for the *Siting Profile* portion of the application. An RMD is required to obtain a letter of support or non-opposition from its host community before it will be permitted to proceed to the Inspection Phase. In terms of the evaluation, there is no difference between a letter of support or a letter of non-opposition. Either letter will satisfy the requirement.

If the applicant is proposing a retail dispensary location and a remote cultivation facility, the applicant must submit a letter of support or non-opposition from both municipalities. This letter may be signed by (a) the Chief Executive Officer/Chief Administrative Officer, as appropriate, for the desired municipality; or (b) the City Council, Board of Alderman, or Board of Selectmen for the desired municipality. The applicant's choice of (a) or (b) should be done in consultation with the host community. Each letter requires that particular language be included in the letter, as provided in Section C of the *Siting Profile*. If the applicant and the host community choose (b), please note that the template language requires the signor to state that there was a vote to sign the letter taken at a duly noticed meeting and to identify the date of that meeting.

Notification of Municipality. After receiving an invitation to submit a *Management and Operations Profile*, the applicant must Notify the chief administrative officer, or equivalent, and chief of police, or equivalent, of the proposed city or town in which an RMD would be sited, if applicable, and the sheriff of the applicable county, of the intent to submit a *Management and Operation Profile* and a *Siting Profile*.

Municipal Approval Prior to Opening. Before an RMD can open, it must comply with all local rules, regulations, ordinances and bylaws, in addition to all applicable state laws.

Initial Town Counsel guidance

Email dated November 9, 2015

Bagg, Jeffrey

Subject: FW: Medical Marijuana

From: Joel Bard [mailto:JBard@k-plaw.com]
Sent: Monday, November 09, 2015 1:10 PM
To: Bagg, Jeffrey
Cc: Ziomek, David
Subject: RE: Medical Marijuana

Hi Jeff

In my opinion, "a letter of intent to lease" a location would provide sufficient information for the Town's letter of support/non-opposition. The site control criterion under the Zoning Bylaw would not be controlling at this stage. The approval/non-opposition letter is intended to be an expression of the Town's general sentiment, not an approval of a specific location. As you may have noticed, the DPH form letter does include a sentence to the effect that the site proposed for a medical marijuana facility is consistent with the town's zoning, but that is not intended to signify zoning approval for the site. As the DPH guidance document makes clear, any applicant must comply with local zoning requirements. At the early stage of seeking preliminary local approval/non-opposition, it is understandable that an applicant would not have secured control of a site before confirming that the community will not oppose the project or the site.

I will be happy to discuss these siting issues further if you wish.

Joel

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Planning Board Report to Town Meeting

November 2013



PLANNING BOARD

Report to Town Meeting

**Article 13. Zoning – Medical Marijuana Uses
(Planning Board)**

To see if the Town will amend Section 3.360, Medical Uses, and Article 12, of the Zoning Bylaw, as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 7-0, with two members absent, to recommend that Town Meeting adopt Article 13.

Background

History – Article 13 is Amherst’s response to the November 6, 2012 passage of a state-wide ballot measure under which medical marijuana became legal in Massachusetts. Anticipating the need for local zoning, the Amherst Planning Department began working with other western Massachusetts communities and the Pioneer Valley Planning Commission in February 2013, to evaluate the meaning of the new law, and develop a model zoning bylaw which western Massachusetts communities could use as a basis for developing their own regulations. The Planning Board and its Zoning Subcommittee received regular reports on this work, which is ongoing.

In May, the Massachusetts Dept. of Public Health (DPH) published state regulations (105 CMR 725.000) to governing the conduct of medical marijuana cultivation, processing and dispensing. Interpretation of how those regulations enable or limit potential local zoning regulations has been ongoing since. The Planning Board’s Zoning Subcommittee began work on Amherst’s own medical marijuana zoning regulations following the 2013 Annual Town Meeting.

At the end of August, the state accepted applications for prospective operators of medical marijuana dispensaries, and 5 of the 6 applicants for Hampshire County passed that first phase hurdle. There is a second review in progress. At least one prospective operator is in discussions with staff about operating a facility in Amherst. Currently there is no highly logical zoning use category under which a medical; marijuana facility could be operated, but the Zoning Bylaw requires that any use be placed in the category “to which it is most similar” and regulated under that category. For

Amherst, without adopting new zoning regulations, a medical marijuana facility might have to be regulated as a retail use (the category under which pharmacies are regulated), which would be allowed by right through Site Plan Review approval in most mixed-use center districts. Article 13 creates new use categories tailored for this purpose and responding to the requirements of state law.

The Planning Board understands that there is a level of concern about these uses, but the Board strongly believes that these are medical facilities, no different from facilities like pharmacies which dispense controlled substances as medicine to alleviate pain and suffering. These facilities will serve a needed and legitimate medical purpose. In many ways, the stringent controls of the state regulations are a reflection of the slow cultural transition from responding to marijuana as a dangerous illegal substance to a growing understanding of marijuana as a substance with an ancient history of both medical and recreational use which can and should be regulated in a reasonable manner. While remaining within the very cautious framework established by state regulations, Article 13 accommodates and encourages medical marijuana uses in appropriate areas of the community.

The State Framework – All local zoning governing medical marijuana uses has to operate within the framework established by the Mass. DPH regulations. Those regulations establish the range of possibility for the operation of these facilities in several important ways:

- **Two Types** – The state regulations refer to all medical marijuana facilities as Registered Marijuana Dispensaries, but recognize that these facilities may be operated as two different kinds of uses: 1) facilities which cultivate and process medical marijuana and may also (but are not required to) dispense it on-site, and 2) facilities which primarily dispense (and may deliver) already-processed medical marijuana. This essentially creates two different kinds of land uses in need of local zoning regulation, and that is why Article 13 proposes to regulate them as two distinct use categories.
- **Must be Non-Profit** – The entities operating medical marijuana facilities must be non-profit entities, and must go through a rigorous state review before being certified to operate. Five (5) prospective applicants have applied to be eligible to operate facilities in Hampshire County.
- **How Many?** – For the first year, the state has authorized only 35 dispensaries (of whatever kind) state-wide. In order to disperse these facilities closer to potential patients, the state is requiring that each county have no fewer than one (1) facility, and no more than five (5).
- **Ownership & Control** – Any non-profit entity involved must own facilities which conduct all three elements of the process—cultivation, processing, and dispensing. This ensures both control over and responsibility for the entire process. Except during limited emergency circumstances spelled out in the state regulations, non-profit entities can only dispense medical marijuana that they themselves have cultivated and processed. There will be no ‘free market’ of cultivated medical marijuana in Massachusetts.

- **How Close?** – Within the requirement for there to be 1-5 dispensaries per county, there is no geographic limitation on the operation of the different elements of medical marijuana uses. As long as they are operated by the same non-profit entity, all of Massachusetts is available. The same non-profit entity which operates a cultivation and processing facility in Amherst could dispense the resulting processed medical marijuana at a facility it owns in Newton, or vice-versa.

Security – The cultivation, processing, and dispensing of medical marijuana can occur only in highly secured facilities. The levels of security required effectively rule out cultivation in open fields or greenhouses with a tall fence around them. Essentially, the cultivation and processing of medical marijuana will most often occur inside a secured building and will be conducted like an industrialized process. There will be no fields of tall green plants, waving in the sun. For reasons of security, none of the cultivation and processing will be visible.

- **Buffers** - Medical marijuana uses must be set at a minimum distance from any strictly residential uses or any building or facility which is used on a regular basis by children. State regulations establish a default buffer of 500 feet if a community does not set its own distance. Article 14 proposes a buffer of 300 feet for Amherst, which is the setback proposed in the regional model bylaw and is the same setback required by the state for drug treatment centers.

What Article 13 Would Do

Article 13 proposes to allow medical marijuana uses only in selected mixed-use or business zoning districts. They would be allowed only under a Special Permit.

Responding to State Regulations - Many of the provisions of Article 13 are a direct reflection of the state regulations. These include:

- Identification and current contact information for all those responsible for owning, controlling and operating the use, including all designated contact persons.
- Additional requirements, over and above the normal requirements for submission of applications, including the submission of plans showing all security measures
- Regulations governing the conduct of the uses:
 - ♦ No consumption of medical marijuana on the premises
 - ♦ 8 a.m. to 8 p.m. limit on hours of operation
 - ♦ Enclosure of the building and visual screening of operations
 - ♦ No outside storage
 - ♦ Ventilation keeping cultivation/processing chemicals and odors within the facility
 - ♦ Control of signs and marketing, on and off-site
 - ♦ Reporting and contact requirements
 - ♦ Required steps when ownership of a facility is transferred or the facility is discontinued.
- Findings required over and above the normal Special Permit findings.

What's Unique to Amherst – Here's how the regulations proposed under Article 14 have been tailored to Amherst:

- **Use Categories** – The use is divided into two categories: 1) Medical Marijuana Treatment Centers (MMTC)—the use category involving cultivation and processing, which may also include dispensing, and 2) Off-Site Medical Marijuana Dispensary (OMMD)—the use category which only involves dispensing.
- **Size** – Buildings for MMTCs (cultivation, processing, dispensing) are limited to 25,000 sq. ft. in gross floor area. This is in the mid-to-low range of the size for such facilities in other states. OMMDs (dispensaries only) are limited to 2,500 sq. ft. for that portion of a dispensary that is available to patients. This would exclude any secured, employee-only space like administrative offices and storage space.
- **Buffers** – As previously noted, Article 13 sets a 300 foot required buffer between medical marijuana uses and residence-only buildings, schools, or other buildings/facilities frequented on a regular basis by children. Article 13 also applies this buffer to any building owned or operated by an institution of higher learning. Article 13 deliberately does not require a buffer for mixed-use buildings which include residential units. Mixed-use buildings are traditionally located in busy centers filled with a range of fairly intensive uses like retail stores, restaurants, bars, offices, etc. Someone choosing to live in a mixed use building is choosing its setting, as well. Amherst is also seeking to encourage the development of mixed use buildings, as a more responsible way to develop our centers and provide needed new housing in the process.

All buffers are measured between buildings containing the uses in question, not between property lines. The Planning Board is proposing 300 foot buffers not only because of the precedent in state-mandated setbacks for drug treatment centers, but because an analysis of the zoning districts involved has shown that any larger buffer, including the 500 foot 'default' buffer in state law, would make it impossible to site a medical marijuana use in most of the districts in Amherst where the use would logically be permitted.

- **Co-Occurring with Other Uses** – The Mass. DPH regulations prohibit the operation of a medical marijuana use in the same building as a pharmacy or the offices of a doctor or anyone else authorized to prescribe medical marijuana. The state wants to avoid the establishment of medical marijuana "mills", where people come to get prescriptions from medical professionals and then walk next door to pick up their medication. Article 14 repeats this prohibition.

There are, however, numerous other medically-related uses that would be of value to people suffering from the medical conditions that are relieved by medical marijuana. For that reason, Article 14 would allow the Special Permit Granting Authority to permit the operation of other "palliative and therapeutic care uses" such as acupuncture, therapeutic massage, etc., in the same building with an MMTC or an OMMD.

Public Hearing

The Planning Board held a public hearing on Article 13 on September 11 and 18. The Zoning Subcommittee presented its recommendation at both meetings and explained proposed revisions made between meetings.

During the public hearing, concern was expressed that the residents of mixed-use buildings were being treated differently than other residents in terms of being protected from the proximity of medical marijuana uses. Board members noted that mixed-use buildings were typically located near other intensive uses in centers and that applying buffers to mixed-use buildings would render many districts unusable for these uses. Further, the Board noted that Town Meeting has for some time been encouraging the development of mixed-use buildings in Amherst centers and it made no sense to unintentionally complicate and thereby discourage their development by establishing buffers for entirely different uses.

Some citizens recommended that the zoning districts and permitting paths chosen ensure that medical marijuana uses are accessible by public transit and can be located near concentrations of elderly housing, since elders represented a significant population of potential patients.

The Board discussed and accepted the revisions which had been proposed between meetings.

After further discussion, the Planning Board voted 7-0, with two members absent, to recommend that Town Meeting adopt Article 13.

RMD Zoning Bylaw overview

November 2015

Preliminary zoning overview for Medical Marijuana facilities in Amherst

Prepared October 4, 2013 (updated November 3, 2015)

Disclaimer: This is not a substitute for a full review of the Zoning Bylaw requirements

This must be known to determine applicable permitting requirements

1. Is this a dispensary (Off-Site Medical Marijuana Dispensary (OMMD)
2. Is this a production/manufacturing facility (Medical Marijuana Treatment Center (MMTC)
3. Is this both (Medical Marijuana Treatment Center (MMTC)?

Primary location requirements

- Special Permit from the Zoning Board of Appeals is required in all designated districts
- Restricted to the following designated Zoning Districts:
 - B-G - General Business
 - B-L (*) - Limited Business (w/ R & D overlay only)
 - B-VC - Business Village Center
 - COM - Commercial
 - OP - Office Park (District occurs only on University Drive)
 - LI - Light Industrial
- See Zoning Map for physical locations
- See Section 2.0 for definitions of each district

Setbacks from other uses

- A facility must be at least 300 feet from the following (as measured from the outward most part of the facility to the next building):
 - Another Medical Marijuana facility
 - Public or private elementary, middle, secondary, preparatory school, licensed daycare center, or any other facility where children formally congregate
 - Building owned or operated by an institution of higher education (UMass, Amherst College, Hampshire College etc)
 - Public library
 - Any residential use and/or residential dwelling unit; except a “mixed-use” building under 3.325
 - Within or on the same property as a licensed pharmacy
 - On a lot immediately adjacent to a licensed pharmacy
 - In a building containing a licensed pharmacy, other medical doctor offices (exception for Palliative or therapeutic care uses allowed by Special Permit)

Other important design criteria

- Evidence of site control or right to use facility (deed, valid purchase and sale, lease)
- No dispensary shall have a Gross Floor Area accessible to patients greater than 2,500 sq. ft.
- No facility for production/processing, etc shall have a gross floor area greater than 25,000 sq. ft.
- All aspects of use must be in a fully enclosed building
- No odor can be detected
- Provides adequate vehicular and pedestrian traffic circulation and parking, etc. NOTE: a site plan drawn by a Registered Engineer or Surveyor is required for a Special Permit.
- Adequate security measures

Preliminary zoning overview for Medical Marijuana facilities in Amherst

Prepared October 4, 2013

Disclaimer: This is not a substitute for a full review of the Zoning Bylaw requirements