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July 18, 2018

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: PROPOSED ZONING ORDINANCE TEXT AMENDMENT
MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA TREATMENT CENTERS

Dear Chairman Dunn,

This letter is to advise you that the Planning Board met on Wednesday, July 11, 2018 to discuss the proposal to amend the city's Zoning Ordinance Chapter 9, Comprehensive Zoning, by adding a new section: Section 4100B. Marijuana Establishments and Medical Marijuana Treatment Centers. The Planning Board sends a favorable recommendation for this proposal with comments noted herein.

Patrick Sullivan, Director of the Department of Planning, Housing & Community Development (DPHCD), City Councilor Ian Abreu and City Solicitor Mikaela McDermott each provided an overview of the proposed ordinance and state legislation related to marijuana establishments and licensing. These individuals explained to the Planning Board that the development of the proposed ordinance had been a collaborative process involving the City Council's Licensing and Zoning for Cannabis Committee as well as additional city departments. A GIS map displaying a single layer (red color) with all of the proposed buffers overlaying Industrial Zones A, B and C (green color) was presented during the hearing as well.

No one spoke in favor of the request nor asked to be recorded in favor of such. Several residents were recorded as being in opposition to ordinance as presented: Mr. Christian Smith (86 Calmut Street New Bedford, MA), Ms. Ericca Kennedy (192 N. Front Street New Bedford, MA), Mr. Jeff Pepi (170 Elm Street New Bedford, MA), Mr. Job Roach (319A Union Street New Bedford, MA), and Mr. Hans Doherty (319A Union Street New Bedford, MA). Those in opposition expressed concern relative to the proposed buffer zones limiting the potential number of locations available for marijuana establishments.

The Planning Board accepted documentation from Mr. Jeff Pepi on Economic Empowerment Licensing in Massachusetts. Ms. Ericca Kennedy also spoke in detail about Economic Empowerment Licenses available through the state's Cannabis Control Commission.

In the course of its review, Planning Board members deliberated three key elements of the proposal:

- The proposed ordinance amendments and the comments received during the public hearing. The board noted that the proposed zoning ordinance represents the first of its kind developed for the City relative to marijuana establishments. The Board described the proposal as cautious and conservative, an approach they considered favorable for a first-time ordinance which could be amended over time.
- The collaborative process. The Board acknowledged that the proposal was developed collaboratively and represented a consensus of a diverse committee.
- The proposed buffers. Planning Board members noted the concerns expressed by those in opposition regarding the breadth of buffers zones as well as information it received about Economic Empowerment Licensing.

After closing the public hearing and deliberating the requested ordinance, a motion was made in the affirmative to recommend the City Council consider amending City of New Bedford Zoning By-Laws, Chapter 9- Comprehensive Zoning, by adding a new Section 4100B. Marijuana Establishments and Medical Marijuana Treatment Centers. In so doing, the Planning Board requested that two items be sent with their endorsement to the City Council: information on the Economic Empowerment certification that the Planning Board received during the public hearing and the Planning Board's own comments that the buffer zones, appear to be, at first pass, a hardship for businesses trying to develop. The motion passed unanimously on a vote of 5-0.

Sincerely,



Kirsten Bryan
Acting City Planner

encls. Economic Empowerment Certification
Staff Report

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk

? CannabisLicensing (CNB) ←
to me
5:13 PM View details

April 24, 2018

Dear Jeffrey Pepi,

Your application for Economic Empowerment priority certification has been approved. Your certification number is:

Sincerely,

The Cannabis Control
Commission



Local Control: Buffer Zones, Signage, and Transportation

Buffer Zone:

Under state law, a marijuana establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. Municipalities may adopt an ordinance or bylaw to reduce that distance requirement.

Signage:

A municipality may regulate, by bylaw or ordinance, signage regarding marijuana-related uses, but the ordinance or bylaw may not impose a standard more restrictive than those applied to retail establishments selling alcoholic beverages within the municipality.

Transportation:

Municipalities are prohibited from barring the transportation of marijuana or marijuana products or adopting an ordinance or by-law that makes the transportation of marijuana or marijuana products unreasonably impracticable.

Local Control: Bylaws & Ordinances

The law allows, but does not require, municipalities to pass bylaws and ordinances governing the "time, place, and manner" of marijuana establishments (cultivators, retailers, manufacturers, testing labs, and any other licensed marijuana-related businesses) as well as businesses dealing with marijuana accessories. Such bylaws and ordinances may not be "unreasonably impracticable."

Under the definition in the law, this means that the local laws cannot be so difficult to comply with that they would subject licensees to unreasonable risk, or require such a high investment of risk, money, time or any other resource or asset, that a reasonably prudent businessperson would not operate a marijuana establishment.

Alternatively, a municipality may determine a proposed marijuana-related use falls under an existing use authorized by its bylaws or ordinances. For the purpose of understanding how to respond to a notification from the Commission that an application has been deemed to be complete, the Commission provides the following interpretation of the limits of local control.

Summary of Equity Provisions

Under St. 2017, c.55, *An Act To Ensure Safe Access To Marijuana*, the Cannabis Control Commission (Commission) is required to ensure that people from communities that have been disproportionately harmed by marijuana law enforcement are included in the new legal marijuana industry. This handout summarizes Economic Empowerment Priority Review and the Social Equity Program as well as additional regulations regarding equity. The Commission filed its final regulations with the Secretary of State on March 9.

These programs were developed in response to evidence which demonstrates that certain populations, particularly Blacks and Latinos, have been disproportionately impacted by high rates of arrest and incarceration for marijuana and other drug crimes as a result of state and federal drug policy.¹ Criminalization has had long-term ill effects, not only on the individuals arrested and incarcerated, but on their families and communities.

Economic Empowerment Priority Review for Applicants

St. 2017, c.55, *An Act To Ensure Safe Access To Marijuana*, requires the Commission to prioritize review and licensing decisions for applicants seeking retail, manufacturing, or cultivation licenses who are able to demonstrate experience in – or business practices that promote – economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for offenses under state and federal laws, including the Controlled Substances Act. As will be described in further detail below, the Commission has designated areas of disproportionate impact.

Definition:

Priority Review will be granted to Economic Empowerment Applicants who demonstrate three of the following criteria:

- Majority of ownership belongs to people who have lived in *areas of disproportionate impact* for 5 of the last 10 years;
- Majority of ownership has held one or more previous positions where the primary population served were disproportionately impacted, or where primary responsibilities included economic education, resource provision or empowerment to disproportionately impacted individuals or communities;
- At least 51% of current employees/sub-contractors reside in *areas of disproportionate impact* and will increase to 75% by first day of business;
- At least 51% of employees or sub-contractors have drug-related CORI, but are otherwise legally employable in a cannabis-related enterprise;
- A majority of the ownership is made up of individuals from Black, African American, Hispanic or Latino descent;
- Owners can demonstrate significant past experience in or business practices that promote economic empowerment in areas of disproportionate impact.

To ensure an equitable distribution of economic empowerment and registered marijuana dispensary licenses, both of which receive priority review, the Commission will consider on an alternating basis (1) economic empowerment applications and (2) registered marijuana dispensaries that are applying for an adult-use license.

After receiving priority review, priority applicants are subject to the same requirements as general applicants.

Social Equity Program for Applicants

Requirement:

State law requires the Commission to adopt procedures and policies to promote and encourage full participation in the marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities.

The Social Equity Program has several goals to decrease the disparities in life outcomes for these individuals and improve the quality of life in areas of disproportionate impact: reduce barriers to entry in the commercial marijuana industry; provide professional and technical services and mentoring for businesses facing systemic barriers; and promote sustainable, socially and economically reparative practices in the commercial marijuana industry in Massachusetts.

Eligibility:

Applicants or licensees are eligible for the social equity program if they demonstrate at least one of the following criteria:

- They have resided in an *area of disproportionate impact* for at least 5 of the past 10 years;
- They have a past drug conviction and they have been residents of Massachusetts for at least the preceding 12 months; or
- They have been married to or are the child of a person with a drug conviction and they have been residents of Massachusetts for at least the preceding 12 months.

Benefits:

Qualifying applicants and licensees can receive training and technical assistance in the following areas:

- Management, recruitment and employee trainings;
- Accounting and sales forecasting;
- Tax prediction and compliance;
- Legal compliance;
- Business plan creation and operational development;
- Marijuana industry best practices; and

- Assistance with identifying or raising funds or capital.

Outreach:

The Commission has allocated significant funds to ensure people from underrepresented communities have opportunities to learn about Economic Empowerment Priority Review and the Social Equity Program. The Commission will partner with organizations throughout the Commonwealth to create programs for outreach, technical assistance, workforce development and skills-based training programs. Equitable employment and ownership opportunities for minorities, women, veterans, and low-income individuals also will be established. Educational materials will be disseminated in multiple languages online through the Commission's website and through in-person trainings.

Areas of Disproportionate Impact

Based primarily on arrest rates, the Commission has designated 29 cities as *areas of disproportionate impact*. Cities with a population of more than 100,000 people, such as Springfield and Worcester, will be subdivided to reflect that only certain neighborhoods qualify as *areas of disproportionate impact*.

The 29 areas are Abington; Amherst; Boston (certain neighborhoods to be designated by the Commission); Braintree; Brockton; Chelsea; Fall River; Fitchburg; Greenfield; Haverhill; Holyoke; Lowell (certain neighborhoods to be designated by the Commission); Lynn; Mansfield; Monson; New Bedford; North Adams; Pittsfield; Quincy; Randolph; Revere; Southbridge; Spencer; Springfield (certain neighborhoods to be designated by the Commission); Taunton; Walpole; Wareham; West Springfield; and Worcester (certain neighborhoods to be designated by the Commission).

The Commission will establish a process for revisiting the defined areas of disproportionate impact on an ongoing basis.

In order to qualify for the Social Equity Program based on residence in an area of disproportionate impact, a person's income may not exceed 400% of federal poverty level.

Inclusion of Under-Represented Groups

As part of the Commission's ongoing commitment to promote and encourage broad participation in the regulated cannabis industry, applicants are required to submit, in support of the general suitability requirements certain plans:

- a diversity plan to promote racial and gender equity and include veterans and people with disabilities; and
- a plan for how the business will positively impact communities disproportionately impacted by high rates of arrest and incarceration for drug offenses.

Citizen Review Committee

The Commission approved the appointment of a nine-member review committee in January 2018, which is comprised of people from impacted communities. The committee will make recommendations regarding the equity program and the tax revenue targeted toward community reinvestment under state law.

ACLU, "The War on Marijuana in Black and White," June 2013 < <https://www.aclu.org/report/report-war-marijuana-black-and-white> >.

Beckett, K., Nyrop, K, and Pfingst, L, "Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests". *Criminology*, 44: 105–137. doi:10.1111/j.1745-9125.2006.00044. February 7, 2006 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2006.00044.x/full>>.

Mitchell, Ojmarrh and Michael S. Caudy, "Examining Racial Disparities in Drug Arrests," *Justice Quarterly* Vol. 32, Iss. 2, 2015 <<http://www.tandfonline.com/doi/abs/10.1080/07418825.2012.761721>>.

Provine, Doris Marie. "Race and Inequality in the War on Drugs," *Annual Review of Law and Social Science*, 2011 7:1, 41-60 <<http://www.annualreviews.org/doi/10.1146/annurev-lawsoesci-102510-105445>>.

"Punishment and Prejudice: Racial Disparities in the War on Drugs," Human Rights Watch. 2000 <https://www.hrw.org/legacy/reports/2000/usa/Rcedrg00.htm#P54_1086>.

Rothwell, Jonathan. "How the War on Drugs Damages Black Social Mobility," Brookings. September 30, 2014 <<https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>>.



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PATRICK J. SULLIVAN

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STAFF REPORT

REPORT DATE

July 5, 2018

PLANNING BOARD MEETING

July 11, 2018

ZONING FOR MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA TREATMENTS CENTERS

Proposal: Adoption by City Council of an ordinance amendment to Chapter 9, Comprehensive Zoning, Section 4900A, inserting new sections (Sections 4110B 4180B) that would allow state-licensed marijuana establishments and medical marijuana treatment centers to operate in the City of New Bedford in accordance with applicable state laws and regulations. The Planning Board's recommendation in this matter is requested by the Council.

Overview: In the November 2016 general election, Massachusetts voters approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes. Regulations governing the licensing of commercial activities for such purposes will be generated by the Commonwealth's "Cannabis Control Commission" (CCC). Cities have the right to enact zoning bylaws for themselves to regulate the time, place and manner of recreational marijuana under the existing law. However, there is no opportunity for cities like New Bedford to weigh in with the CCC on the awarding of licenses, if the applicant is in compliance with local zoning.

In 2017, the New Bedford City Council established a special Committee on Licensing and Zoning for Cannabis. The Committee has been working with various City Departments in developing zoning bylaws to regulate the location and permitting process for cultivation, manufacturing, testing, and retail sale of marijuana in New Bedford.

In 2017, the state established, and Governor Baker signed, legislation governing Recreational Marijuana into law as Chapter 55 of the Acts of 2017 and codified at Mass General Laws Part I, Title XV, Chapter 94 G.

At its April 12, 2017 meeting, the Planning Board was asked to consider a temporary moratorium to afford the city time to develop the proposal before you now. In a unanimous vote, the Planning Board voted *"to recommend to the City Council that the City of New Bedford establish a temporary moratorium on recreational marijuana establishments."* Subsequent to this recommendation, however, the City Council did not vote to impose the temporary moratorium. In light of this, the City Council Special Committee on Licensing and Zoning for Cannabis began meeting to discuss the development of regulations.

On December 21, 2017, the CCC filed a first draft of regulations for the purpose of implementing the legal adult use of marijuana. The draft, 935 CMR 500.000, was finalized on March 23, 2018 and established procedures to begin licensing marijuana establishments (including marijuana retailers) as early as June 2018.

At its March 18, 2018 meeting, the Planning Board was asked to again consider a moratorium. In a unanimous vote, the Planning Board voted *“to recommend to the City Council that the City of New Bedford establish a temporary moratorium on recreational marijuana establishments.”* This time the moratorium was favorably acted upon by the City Council and as a result, the moratorium will be in place until September 30, 2018 or until such time an ordinance is adopted.

Ordinance Summary

The City of New Bedford’s zoning ordinance does not specifically address non-medical marijuana land uses nor does it provide for facilities engaged in the production and/or sale of recreational marijuana. Because of this, and in light of the impending reality that such facilities may look to locate in New Bedford, it is important to decide the “where, how, and to what extent” such facilities will be allowed within the city.

The proposed ordinance has been drafted to allow state-licensed marijuana establishments and medical marijuana treatment centers to operate in the City of New Bedford in accordance with applicable state laws and regulations. The ordinance is intended to do so by:

- ❑ Minimizing the adverse impacts that marijuana establishments and medical marijuana treatment centers might have on adjacent properties, residential neighborhoods, dwellings, schools, substance abuse treatment centers, churches, and other sensitive land uses;
- ❑ Providing standards for the placement, design, siting, safety, security, and monitoring.
- ❑ The city, in accordance with state law, will adopt the option limiting the number of marijuana retailers to no less than twenty (20%) of the number of "off-premises" alcohol licenses allotted to the City which, would limit the number of marijuana establishments to eight (8).

Proposed Location Requirements and Restrictions

Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC). Under the proposed ordinance, no Marijuana Establishment or Medical Marijuana Treatment Center shall be located within 500 feet of any public or private school providing education in kindergarten or any grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, substance abuse treatment facility, marijuana establishment, or medical marijuana treatment center; or within 200 feet of any dwelling or dwelling unit.

Proposed Operational Requirements and Restrictions

The draft ordinance stipulates that hours of operation for any marijuana establishment or medical marijuana treatment center dispensing to the public cannot be open between the hours of 7 p.m. and 10 a.m., Monday –Sunday. Drive-through services will not be allowed, nor will on-site consumption, including at social clubs where marijuana is not sold to consumers on site, and no outside storage. In addition, the proposed ordinance provides that proper ventilation be developed to ensure that no odor from marijuana or its processing can be detected by a person with an unimpaired sense of smell. Similarly, the proposed draft cites that no pesticides, insecticides, or other chemicals be dispersed into atmosphere.

Special Permit

In order to operate, Marijuana Establishments and Medical Marijuana Treatment Centers must first obtain a Special Permit from the Planning Board which would act as the Special Permit Granting Authority for this use. Special Permits may be conditioned upon on the proposer’s site and operational plans, traffic and transportation analysis plans, security plans, odor control plans, emergency response plan, and the proposed host community agreement.

For Board Consideration

The introduction of the sale of recreational marijuana has been decided by the Commonwealth's electorate; its governance relative to awarding licensing for recreational marijuana establishments will be determined by the CCC. Because it is the City of New Bedford's responsibility to impose reasonable safeguards regulating the time, place and manner of such establishments within the city, it is critical that New Bedford adopt a strong ordinance to ensure clarity and consistency. The Planning Board is now responsible for offering its recommendation to this end to the City Council.