

A. Proposed Medical Marijuana Zoning Bylaw Amendment

- I. Williamstown: lumping in w/ recreational marijuana. Retail allowed by-right and SP in commercial districts; production facility allowed by SP, testing facility allowed by-right in specific district.
- II. Amherst requires a Special Permit subject to standards from statute; requires 300' buffer.
- III. Great Barrington: allows by right in specific, commercial districts subject to Planning Board Site Plan Review; must obtain Special Permit if unable to meet buffer requirements (buffer requirements from school, daycare center or other similar facility where minors may commonly congregate. are 200' in their Bylaw), otherwise must comply w/ dimensional requirements of zoning district.
- IV. Stockbridge: Special Permit, buffer of 1,000'
- V. Manchester by the Sea: Allowed in existing "limited commercial district" by Special Permit, buffer requirement of 300' between facility & residential zoning district, 500' of any lot containing a school a school, child care facility, or playground.

B. Proposed Medicinal Marijuana Bylaw Amendment

Amendment to Section 5.2, Schedule of Uses

	R3A	R1A	R30	R15	C3A	C1A	C	I	Reference
Registered Medical Marijuana Dispensary	N	N	N	N	Y	Y	BA	Y	Section 8.12

Section 8.12 Registered Medical Marijuana Dispensary

8.12.1 Purposes

To provide for the placement of Registered Marijuana Dispensaries (RMDs) in recognition of and accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c.94C, and the implementing regulations, 105 CMR 725, in suitable locations in Lenox, in order to minimize potential adverse impacts of RMDs.

8.12.2 Definitions

Registered Marijuana Dispensary (RMD): A use operated by a not-for-profit entity registered, approved, and regulated by the Massachusetts Department of public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, to be known as a registered Marijuana Dispensary (RMD), 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, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A Registered Marijuana Dispensary (RMD) shall include a Medical Marijuana Treatment Center (MMTC).

8.12.3 Site Plan Approval

All proposed uses under this Section, including those that qualify for the agricultural use exemption under G.L. Ch. 40A, s.3, shall be subject to a Site Plan Approval from the Zoning Board of Appeals pursuant to Section 3.5 of the Lenox Zoning Bylaw. Proposed RMDs in the Commercial “C” district shall require a Special Permit pursuant to Section 3.3 of the Zoning Bylaw.

8.12.4 Locational Requirements.

RMDs may be located in accordance with Section 5.2, Schedule of Uses, except as follows:

1. No RMD may be located closer than 200 feet from any school, daycare center, or other similar facility where minors may commonly congregate.
2. The distance is to be measured in a straight line from the nearest point of the property line of the proposed RMD and the nearest point of the property line of the protected uses stated above.
3. The Zoning Board of Appeals may authorize a waiver from this distance requirement if it finds specific circumstances or barriers adequately separate the RMD and a protected use. The burden shall be on the applicant to satisfy the Zoning Board of Appeals that these barriers are adequate to serve the purpose of this.

8.12.5 Physical Requirements.

In addition to pertinent requirements of 105 CMR 725, RMDs shall comply with the following:

1. All aspects of a RMD relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials shall take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
2. No outside storage of marijuana, related supplies, or educational materials is permitted.

8.12.6 Use Regulations.

In addition to pertinent requirements of 105 CMR 725, RMDs shall comply with the following:

1. Uses under this Section may only consist of the uses and activities permitted by its definition as limited by state law, and may not include other businesses or services in the same building.

Commented [GM1]: Marijuana cultivation is not subject to Ag exemptions

Commented [GM2]: FYI: state regs don't preclude RMDs from taking place in mixed-use buildings.

2. No marijuana shall be smoked, eaten or otherwise consumed or ingested on the premises, except as permitted by 105 CMR 725.000.

3. The hours of operations for sales, delivery and dispensing purposes, and that the facility is open to qualifying patients, ~~shall be between the hours of 8:00 AM and 8:00 PM, Monday through Saturday, seven days a week, though hours of operation are limited to between the hours of 8:00 a.m. and 8:00 p.m.~~

4. ~~The agricultural component of an RMD operation may be allowed in any zone on lots of five acres or more, or two acres or more if the sale of products produced from the agricultural use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars, pursuant to the agricultural use exemption under G.L. Ch. 40A, s.3. The dispensing of medical marijuana, however, is permitted only in locations specified in the Table of Use Regulations.~~

5. Additional regulations may be imposed as Site Plan Approval or Special Permit conditions.

8.12.7 Submittal Requirements.

Above and beyond the standard application for Site Plan Review, an application under this section shall include the following:

1. Copies of all required RMD registrations issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
2. Evidence that the applicant has site control and the right to use the site for a facility in the form of a deed, valid lease, or purchase and sale agreement, and a signed statement from the property owner;
3. In addition to what is normally required in a site plan pursuant to Section 3.5, details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.

8.12.8 Discontinuance of Use

1. Any RMD permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia in compliance with 105 CMR 725 prior to expiration of its DPH Registration or immediately following revocation or voiding of its DPH Registration.

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Commented [GM3]: Don't need this language (unless town wants it), ag exemptions no longer apply to marijuana cultivation.

C. Proposed Recreational Marijuana Moratorium

8.13 Temporary Moratorium on the Sale and Distribution of Recreational Marijuana

8.13.1 Purpose: By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. The law provides that it is effective on December 15, 2016 and the Cannabis Advisory Board is required to issue regulations regarding implementation by July 1, 2018.

Currently under the Zoning Bylaw, Recreational Marijuana Establishments and marijuana Retailers are not a permitted use in Town and any regulations promulgated by the State Cannabis Advisory Board are expected to provide guidance to the Town in regulating Recreational Marijuana Establishments and Marijuana Retailers. Further, the ballot measure establishes two important provisions that require allot action by the Town prior to the adoption of zoning. First, the Town must, by ballot, determine whether it will issue licenses for Recreational Marijuana Establishments and Marijuana Retailers and second, by ballot that cannot occur prior to November 6, 2018, the next biennial state election, on whether to allow on-site consumption of marijuana products should the Town decide to allow licenses for such facilities.

The regulation of Recreational Marijuana Establishments and Marijuana Retailers raise novel and complex legal, planning and public safety issues and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and Marijuana Retailers 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 Recreational Marijuana Establishments and Marijuana Retailers and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town of Recreational Marijuana establishments and marijuana retailers 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 adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

8.13.2 Definitions

“Manufacture”, to compound, blend, extract, infuse or otherwise make or prepare marijuana product.

“Marijuana accessories”, equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

“Marijuana cultivator”, an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

“Marijuana establishment”, a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

“Marijuana product manufacturer”, an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

“Marijuana products”, products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

“Marijuana testing facility”, an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

“Marijuana retailer”, an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments to consumer”.

8.13.3 Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments and Marijuana Retailers. The Moratorium shall be in effect through **December 31, 2017**. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Advisory Board regulations regarding Recreational Marijuana Establishments and Marijuana Establishments and Marijuana Retailers, determine whether the town will prohibit on-site consumption at Recreational Marijuana Establishments and Marijuana Retailers and shall consider adopting new provisions of the Zoning Bylaw to address the impact and operation of Recreational Marijuana Establishment and Marijuana Retailers and related uses.

Commented [GM4]: Counsel suggested extending period to give the Town longer to develop guidelines and see what the state's revisions to policy will be. The PB could do June 30, 2018 to give us through the 2018 Annual Town Meeting. Could also always amend moratorium (said Counsel).

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8.13.4 Severability

The provisions of this by-law are severable. If any provision, paragraph, sentence, or clause of this By-law or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.