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TOWN CLERK
OFFICE

NORTHBRIDGE PLANNING BOARD

-PUBLIC HEARING NOTICE-

In accordance with MGL CH 40A SEC 5, the Northbridge Planning Board will hold a public hearing **Tuesday, March 14, 2017 (7:05 PM)** in the Selectmen's Room, Northbridge Town Hall, 7 Main Street, Whitinsville, MA 01588 to AMEND the Zoning Bylaw by adopting a Temporary Zoning Moratorium On Recreational Marijuana Establishments. Copy of the proposed is on file with the Town Clerk (7 Main Street –Town Hall) and may be reviewed during normal office hours.

The purpose of this hearing is to provide opportunity for public comment; anyone wishing to be heard should attend said hearing at the time and place designated.

Brian Massey, Chairman
NORTHBRIDGE PLANNING BOARD



Cc: Town Clerk
Town Manager/BOS
Board of Health
FinCom
BLDG DEPT
DHCD / CMRPC
Town of Grafton Planning Board
Town of Uxbridge Planning Board
Town of Mendon Planning Board
Town of Sutton Planning Board
Town of Upton Planning Board
Mr. Daniel J. Puccio
/File

To see if the Town will vote to amend the Zoning Bylaw by adding a new Section entitled, "Temporary Moratorium on Recreational Marijuana Establishments", that would provide as follows, and further to amend the Table of Contents to add said Section, "Temporary Moratorium on Recreational Marijuana Establishments" as follows:

Temporary Moratorium on Recreational Marijuana Establishments

Section _____ Purpose

On November 08, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulations of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018, and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment hereinafter, a "Recreational Marijuana Establishment"), as defined in G.L. c. 94G; §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such 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. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

Section _____ Definition

"Recreational Marijuana Establishment" shall mean a "marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business."

Section _____ 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 a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through November 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

Or take any action relative thereto.



TOWN OF NORTHBRIDGE
PLANNING BOARD
7 MAIN STREET
WHITINSVILLE, MASSACHUSETTS 01588

PHONE: (508) 234-2447

FAX: (508) 234-0814

February 15, 2017

Doreen Cedrone, Town Clerk
Northbridge Memorial Town Hall, 7 Main Street
Whitinsville, MA 01588

RE: 2017 SPRING ANNUAL TOWN MEETING
Temporary Moratorium on Recreational Marijuana Establishments
Planning Board –Zoning Amendment Article

Dear Mrs. Cedrone:

Please be advised at its meeting of Tuesday, February 14, 2017 the Planning Board upon motion duly made and seconded voted (5-0) to SPONSOR the following warrant article for the 2017 Spring Annual Town Meeting.

1. Amend Zoning Bylaw Chapter 173 by adding the following provisions:
 - Temporary Moratorium on Recreational Marijuana Establishments

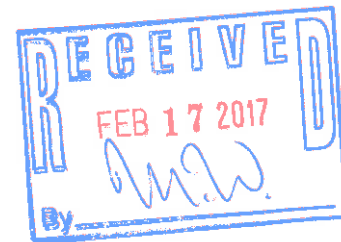
Please find attached for you records a copy of the DRAFT zoning amendment provision offered and prepared by Town Counsel (KP Law).

In accordance with M.G.L. CH. 40A SEC. [Adoption or change of zoning ordinances or by-laws; procedures] the Planning Board shall hold a public hearing in advance of Town Meeting. The Board will provide its Report & Recommendations at Town Meeting scheduled for Tuesday, May 02, 2017.

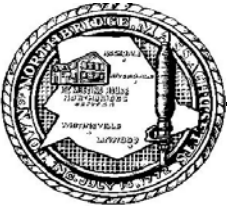
Should you require additional information at this time please contact the Planning office.

Sincerely,

R. Gary Bechtoldt II
Northbridge Town Planner



Cc: Town Manager/BOS
Planning Board
Building Insp.
FinCom
/File



COMMUNITY PLANNING & DEVELOPMENT

R. Gary Bechtholdt II, Town Planner
7 Main Street Whitinsville, MA 01588
Phone: (508) 234.2447 Fax: (508) 234.0814
gbechtholdt@northbridgemass.org

MEMORANDUM

Date: January 31, 2017

To: Theodore D. Kozak, Town Manager
NORTHBRIDGE BOARD OF SELECTMEN

From: R. Gary Bechtholdt II, Town Planner

RE: **REGULATIONS & TAXATION OF MARIJUANA ACT**
Zoning –Local Implementation

COPY

As you know, on November 08, 2016, voters in Massachusetts passed Ballot Question #4 “**Regulation and Taxation of Marijuana Act**” legalizing the recreational use of marijuana (Chapter 334 of the Acts of 2016). The Act, in addition to personal cultivation and recreational use, established benchmarks for the creation of an oversight commission (Cannabis Control Commission), development of regulations governing the issuance of licenses for marijuana establishments and the acceptance of license applications. The Act also authorizes local control of marijuana establishments under specific conditions.

Locally the vote for Northbridge was 4,217-YES and 4,103-NO (*Source: Office of the Town Clerk*).

Attached is a document entitled “The Regulation and Taxation of Marijuana Act: A Guide to the New Law Legalizing Recreational Use of Marijuana” prepared by KP Law (Town Counsel). This guide summarizes the law, establishes timelines and actions a municipality may take to regulate and control marijuana establishments. The guide also summarizes personal use and employment issues associated with the use of marijuana by employees.

The following is a timeline for implementation of the Act:

- **March 15, 2018** –timeline for a three-member Cannabis Control Commission to adopt initial regulations;
- **April 01, 2018** –timeline for the Cannabis Control Commission to begin accepting specific license applications;
- **July 01, 2018** –timeline for the Cannabis Control Commission to adopt final regulations

From a land use and zoning perspective the Act allows for the local adoption of ordinances or bylaws regulating time, place and manner of operations, provided such local provisions are not unreasonably impractical and do not conflict with the Act. An example would be a zoning bylaw regulating where marijuana establishments are allowed and establishing performance standards of approval criteria.

The Act allows additional limits, where upon local ballot question (by vote at an election) a community may *prohibit operations* of one or more types of marijuana establishments within town, *limit the number of marijuana retailers* to fewer than 20% of the number of licenses issued within town for the retail sale of alcoholic beverages under Chapter 138 of the General Laws or *limit the number of any type of marijuana establishments* to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in town.

The Act also provides that a municipality may, upon petition of not fewer than 10% of the number of the voters of the town voting at the State Election preceding the filing of the petition, present to the voters of the town at the next State Election the question of whether to *allow on-site consumption of marijuana* and marijuana products on the premises where they are sold.

Implementation of the Act at the state and local levels has generated significant questions. There are a number of variables and unknowns at this time. Fundamentally the timeline for adoption of the final regulations by the Cannabis Control Commission (July 01, 2018) creates a great unknown for communities looking to adopt local zoning.

The Board of Selectmen will need to make a determination as to how to proceed and should seek input from Town Counsel on the process and procedures for such action and consideration. The Selectmen should also discuss with its Board of Health local controls which may fall under their purview, such as licensing requirements for preparation and sale of edibles, etc. The Board of Health may also have some regulatory oversight of the Act.

If the Board of Selectmen is to consider a temporary zoning moratorium on recreational marijuana establishments the Planning office proposes seeking an 18-month moratorium, as a 12-month moratorium would expire in May 2018, potentially before the Cannabis Control Commission adopts its final regulations.

Attached is a sample ballot question [Prohibition] and a sample temporary zoning moratorium [12-month] on recreational marijuana establishments prepared by Town Counsel (KP Law).

I hope this correspondence is helpful as the Board of Selectmen discusses this issue.

Cc: Planning Board
Board of Health
Building Department
Police Chief
/File

THE REGULATION AND TAXATION OF MARIJUANA ACT

A GUIDE TO THE NEW LAW LEGALIZING RECREATIONAL USE OF MARIJUANA

****REVISED JANUARY 2017****

On November 8, 2016, Massachusetts voters approved Question 4 legalizing the recreational use of marijuana (Chapter 334 of the Acts of 2016). Implementation of the Act is generating significant questions at state and local levels. The Act contains inconsistencies and outright contradictions. In particular, questions and concerns have been raised regarding the timeline for implementation, enforcement, local control, regulation of marijuana products produced by personal growers, amount of the tax, and additional matters. It is not certain whether or when the General Court may address these issues. The legislature has already acted to amend the deadlines for implementation of the law, as shown below. This new law, Chapter 351 of the Acts of 2016, was signed by the Governor on December 30, 2016. Responding to numerous questions from local officials, we have summarized the Act's provisions regarding the implementation timeline, personal use of marijuana, licensing of recreational marijuana establishments, local control mechanisms, and employment implications.

CURRENT TIMELINE

DECEMBER 15, 2016 Effective Date of Law/ Personal Recreational Growing and Use Allowed	"Personal use" of marijuana is now legal for a person at least 21 years old. General Laws c. 94G, §7 provides that individuals, but not businesses, will be permitted to engage in a range of activities as outlined below.
MARCH 15, 2018 Deadline for CCC to Adopt "Initial Regulations"	The Act creates a three-member Cannabis Control Commission ("CCC") to be appointed by and under the jurisdiction of the State Treasurer. The CCC will regulate and issue licenses for recreational marijuana establishments, but not for medical marijuana establishments, regulated by the Department of Public Health.
APRIL 1, 2018 Deadline for CCC to Begin Accepting Specific Licenses	Initial applicants: only businesses with medical marijuana experience are eligible, for a limited number of licenses. The filing of certain applications is staged over the course of the ensuing two years.
JULY 1, 2018 Deadline for Final Regulations, or "Default"	<p>If the CCC has <u>not</u> adopted regulations, "each medical marijuana treatment center" may begin to "possess, cultivate, or otherwise obtain marijuana and marijuana products and may deliver, sell or otherwise transfer" to anyone over the age of 21.</p> <p>If regulations <u>are</u> timely adopted, the CCC will issue licenses within 90 days after applications are received on or after April 1, 2018, to qualified establishments.</p>

PERSONAL USE OF MARIJUANA

- The Act authorizes persons 21 years of age or older to possess, use, purchase, process or manufacture one ounce or less of marijuana, of which not more than five grams can be in the form of marijuana concentrate.
- Within a person's "primary residence", a person may possess up to 10 ounces of marijuana and any marijuana produced on the premises for personal use by not more than six marijuana plants. If there is more than one grower at the residence, there may be up to 12 plants cultivated on the premises.
- A person may give away or transfer without "remuneration" to a person age 21 years or older up to one ounce of marijuana, of which no more than five grams may be in the form of marijuana concentrate, provided that such transfer is not advertised or promoted to the "public".
- A person 21 years of age or older may also possess or manufacture marijuana accessories or sell such accessories to a person 21 years of age or older.
- Local regulations - although personal possession and use is now legal, consumption is still subject to certain restrictions pursuant to G.L. c. 94G, §§ 2 and 13.

LOCAL CONTROL — REGULATION, PROHIBITION

The Act defines a "marijuana establishment" to include, "a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business", and authorizes certain types of "local control".

Ordinances and Bylaws Regulating Time, Place and Manner

The Act provides that municipalities may adopt ordinances or bylaws regulating the time, place and manner of operations of marijuana establishments, provided that such ordinances or bylaws are not "unreasonably impracticable" and do not otherwise conflict with the Act. Standard practices for adoption of ordinances or bylaws will apply.

Further Regulation - Bylaws and Ordinances/Local Ballot Questions

The Act also authorizes imposition by "ordinance or bylaw by a vote of the voters of that city or town" of additional limitations on recreational marijuana establishments. The use of the phrase "by a vote of the voters of that city or town" typically requires a vote at an election, whereas the adoption of an ordinance or bylaw occurs by vote of the local legislative body (city or town council or town meeting). In our opinion, given this reference to voters, rules of statutory construction suggest that any attempt to approve an ordinance or bylaw, requires approval by the voters of the municipality at an election.

The topics that may be regulated under this section are as follows:

- prohibiting the operation of one or more types of marijuana establishments within the municipality;
- limiting the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the municipality for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws; or

- limiting the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the town.

The reference to “one or more types of marijuana establishments”, in our opinion, can be read to allow a municipality to ban marijuana establishments within its borders. However, this language is subject to interpretation, and may be addressed in the CCC regulations.

Under the laws generally governing elections, no question may appear on the ballot unless specifically authorized by law. While the form of the question is typically included in the authorizing law, the Act does not do so. For your information, pursuant to G.L. c.54, §42C, the Board of Selectmen must vote to put the question on the ballot and provide notice to the Town Clerk no less than 35 days prior to the date of the election.

Petition for Question on State Ballot to Permit Marijuana “Cafés”

The Act provides that municipalities may, upon petition of not fewer than 10 percent of the number of the voters of the city or town voting at the state election preceding the filing of the petition, present to the voters of the city or town at the next state election the question of whether it will allow the consumption of marijuana and marijuana products on the premises where they are sold (i.e., so-called marijuana “cafés”). There is no timeline provided in the law for this type of petition, although it is reasonable to anticipate that any such request must be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.

Regulation Prohibited or Strictly Limited

A municipality may not adopt an ordinance or bylaw prohibiting the transportation of marijuana or marijuana products or making such transportation “unreasonably impracticable”.

Similarly, a municipality may not adopt an ordinance or bylaw prohibiting an establishment that “cultivates, manufactures or sells marijuana products in any area in which a medical marijuana treatment center is registered to engage in the same type of activity”. [Emphasis added]. The Act contains no definition of “area”.

The Act provides that no agreement between a municipality and a marijuana establishment may contain a payment that is not “directly proportional and reasonably related” to the costs imposed on the municipality by the operation of the recreational marijuana establishment.

Zoning Moratoria

Municipalities have asked about the ability to adopt a zoning bylaw or ordinance establishing a moratorium on the locating of recreational marijuana establishments to allow time to study the issue and develop appropriate bylaws and ordinances. We expect the Attorney General will likely approve a moratorium for one year (for example, through June 30, 2018), consistent with those approved for medical marijuana and other moratoria. With the recent extension of the deadline in the CCC’s regulation to March 15, 2018, the Attorney General might approve extensions to the moratorium due to expire in Spring of 2018. We expect to have clearer guidance on this in the future. For municipalities with registered medical marijuana facilities, however, a moratorium may not be effective in preventing a recreational marijuana establishment “in any area” in which a medical marijuana treatment center is registered to engage in the “same type of activity.”

Now that the legislature has delayed implementation for six months, there is ample time for municipalities to determine the timing for any local action. Discussions might include whether or not to adopt ordinances or bylaws regulating time, place and manner issues, including moratoria, or to place questions before the voters relative to limitations on the type or number of recreational marijuana establishments that may be located in the municipality. Municipalities wishing to adopt ordinances or bylaws should have these in place before applications are filed on April 1, 2018.

Marijuana Related Uses Not “Agriculture”

Newly enacted Chapter 351 of the Acts of 2016 includes an amendment to the Zoning Act, G.L. c.40A, §3. The new language states that the “growing, cultivation, distribution or dispensation of marijuana” does not qualify for the agricultural exemption under the Zoning Act.

LOCAL OPTION TAXES

Question 4 also includes a new Chapter 64N of the General Laws setting tax rates for the sale of recreational marijuana products. Section 3 allows cities and towns to impose a local sales tax of up to 2%. In our opinion, this will require approval by the municipality’s legislative body.

EMPLOYMENT ISSUES

The new law may also have significant implications for public employers. The relevant portion of the law provides, “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.”

Thus, despite the legalization in Massachusetts of the personal use of marijuana, public employers may continue to prohibit their employees from using or possessing marijuana in the workplace or in public buildings and from working while impaired by marijuana. Drug and alcohol testing and related policies should be reviewed to ensure that such policies will continue to be consistent with the public entity’s desired treatment of marijuana following the change in the law. In some cases, policies may need to be updated or clarified to account for the change in the law.

Be further aware, however, that federal law prohibiting the use of marijuana by employees who possess firearms, such as police officers, and those required to hold a Commercial Driver’s License, will continue to be in full force and effect notwithstanding the change in Massachusetts law. We are aware that some police chiefs are considering issuing a general reminder to all law enforcement personnel that marijuana is still a controlled substance for purposes of federal law and that the use or possession of marijuana is still prohibited.

FURTHER DEVELOPMENTS

We will continue to monitor developments in the law, including possible amendments by the General Court and guidance issued by the offices of the State Treasurer, Attorney General, or Secretary of the Commonwealth’s Elections Division.

In the meantime, if you have any questions concerning regulation of recreational marijuana, please contact Attorneys Joel Bard (jbard@k-plaw.com) or Katherine Laughman (klaughman@k-plaw.com) at 617-556-0007. Members of our Labor and Employment Practice Group are also available to assist with employment-related questions.