Planning & Zoning for Medical Marijuana

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D. Anthony Fields, AICP

Local MMJ Strategy

As planners, we need to balance needs of patients against the health, safety and welfare of the community at large.

Philosophical issue is whether to allow RMD on “main” street versus “hidden” in an industrial district.

Local MMJ Strategy

• 105 CMR 725.105(P)(2) – this regulation shall not be construed to prohibit access to authorized law enforcement personnel or local public health, inspectional services, or other permit granting agents acting within their lawful jurisdiction.

Local MMJ Strategy

• 105 CMR 725.600(A) – RMD and registered persons shall comply with all local rules, regulations ordinances and bylaws.

Local MMJ Strategy

• 105 CMR 725.600(B) – The department does not mandate any involvement by municipalities or local boards of health in the regulations of RMD’s, hardship cultivation registrations, or other aspects of MMJ. However nothing shall be construed so as to prohibit lawful local oversight including fee requirements.

Local MMJ Strategy

• RMD may consist of 2 facilities.
• Cultivation, processing and dispensing can occur at only 1 of the 2 locations.
• Anticipate scenarios that may be retail site and off-site cultivation and processing, or retail and processing site with offsite cultivation, or all 3 at one location.
Local MMJ Strategy

- DPH 2-phase approval process:
  - Process will be used to help ensure geographic diversity. (14 counties – between 1 and 5 per county but not more than 35 total)
  - City/Town required to be notified at conclusion of phase I and invitation to submit Phase II. Notification is to chief administrative official and police chief (and to county sheriff).

Local MMJ Strategy

- Phase II requires compliance with local ordinances and bylaws including some form of proof of support from the municipality.

Local MMJ Strategy

- Floor plans if available – 725.200(C) info about floor layout considered confidential, but commonly required by building departments for issuance of building permits.
- Facilities affected by Homeland Security requirements already kept confidential at local level.

Local MMJ Strategy

- DPH regulations also require address of any "off-site" cultivation or MIP production facility to be kept confidential
- In conflict with local requirements for permitting?

Local MMJ Strategy

- DPH will conduct site visit prior to approval. Recommend cooperative venture with appropriate local officials.
  - DPH Scoring system will include geographic distribution, likelihood of successful siting, presence of a home delivery system, and a review of architectural plans. (Local input on architectural plans recommended.)

Local MMJ Strategy

- DPH may inspect RMD facilities and its vehicles at any time without notice.
- RMD’s subject to annual renewal.
- Cannot relocate, modify, remodel, expand, or reduce, or change name without DPH approval.
Security

105 CMR 725.110

• RMD shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing MJ and theft of MJ

• “No loitering”

Security

• Ensure outside perimeter of RMD is sufficiently lit to facilitate surveillance.

• Ensure trees, bushes, and other foliage do not allow for a person or persons to conceal themselves from sight.

Security

• Unless otherwise locally specified, RMD shall be at least 500’ from school, day care, or any facility in which children commonly congregate.

• 500’ measured from “facility”. Clarify in bylaw if you want to use property line for measurement.

Security

• Video cameras required in all areas that contain MJ, all points of entry and exit, and parking lot.

• Cameras to be directed at all safes, vaults, sales areas, and areas where MJ is cultivated, harvested, processed, prepared, stored, handled, or dispensed. Placement required to yield clear and certain identification of any person entering or exiting.

Security

• Cameras shall operate 24 hours.

• Videos to be maintained for 90 days.

• Must have backup power source to remain operational during power outages.

Security

• System equipment and recordings to be maintained in a secure location.

• ALSO backup security and video system provided by a different company.

• Surveillance area access limited, if on-site, shall be separated from other purposes.

• Equipment to be tested every 30 days.
Signage

- Shall not be illuminated except 30 minutes prior to sundown until closing!
- Neon prohibited!
- Shall comply with local bylaws, but DPH may impose further requirements

Signage

- No display on exterior of building for MMJ or brand names, only name of entity
- No graphics related to MMJ or paraphernalia
- No advertising of prices, only catalog or printed price list inside
- No visible display of MMJ or MIP’s

Signage/Packaging

- No t-shirts or novelty items
- LOGO cannot include medical symbols, or images of marijuana or paraphernalia.
- Plain, tamper proof, child proof containers without pictures – only company logo
- No resemblance to CANDY!
- Each package to include patient name.

RMD Operations

- Interior – all MJ kept in limited access areas, except that locked display cases may display one sample of each product available for sale during business hours.
- Dispensing can only be to registered patient or caregiver. Except for home delivery, patient or caregiver must pick up in person at RMD.

RMD Operations

- No buying from another RMD, except seeds.
- NO free samples.
- Can only sell products that facilitate use of MJ for medical purposes.

Existing MMTC definition

“Medical marijuana treatment center” shall mean a not-for-profit entity, as defined by Massachusetts law only, registered under this law, 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 qualifying patients or their personal caregivers.
RMD Operations
• ADMINISTER – limited to teaching use of vaporizers or demonstration of other products.
• Otherwise on-site consumption of MMJ is prohibited.

Cultivation
• RMD can only grow MJ for itself, except for certain extenuating circumstances.
• 1 cultivation center can serve 3 retail outlets under a common nonprofit.
• Must take place in designated, locked, limited access areas monitored by surveillance cameras.
• Only organic pesticides can be used.
• BMP’s shall be used.

Processing
• MIP facility can produce products for only 1 RMD, but up to 3 retail outlets under a common nonprofit.
• All MMJ shall be tested.
• Excess MMJ shall be returned to the source RMD for disposal.
• Maintain sanitary conditions
• Litter and waste removal/disposal provisions
• Water supply/plumbing for potable use and wastewater

Storage
• Requirements for lighting, ventilation, temperature, humidity, physical space and equipment
• Separate area required for storage of dated, contaminated, mislabeled MMJ
• Free from pests of any kind
• Security requirements apply.

Transport
• Only dispensary agents may transport MJ
• All MJ to be transported shall be videotaped prior to transport.
• If shipment is between RMD facilities, manifest sent to receiving RMD prior to transport.
• Shall be inspected, inventoried and accounted for on video upon receipt.
Transport

- Vehicle to have secure locked storage compartment that is part of the vehicle.
- No visibility of MMJ from the outside
- No markings to indicate that vehicle is used to transport MMJ, nor indicates the name of the RMD

Transport

- NO Dunkin Donuts coffee stops! Only stops for home delivery – otherwise must drive directly to receiving RMD location.
- Vehicle to have GPS actively monitored by RMD during transport. This will require some pre-planning since routes and timing are to be randomized.

Transport

- At least 2 agents per vehicle – 1 shall stay with vehicle at all times
- Each agent shall have 2 way communication with personnel at the sending site.

Waste Disposal

Liquid waste shall meet:
- 314 CMR 3.00 if surface water
- 314 CMR 5.00 if groundwater
- 314 CMR 7.00 if sewer
- OR into industrial wastewater holding tank – 314 CMR 18.00

Waste Disposal

Solid waste:
- Incineration at DEP licensed facility, witnessed by at least 2 dispensary agents
- Disposal at DEP licensed landfill, witnessed by at least 2 dispensary agents
- Grinding with other solid waste to render MJ unusable, then may be disposed of at waste management facility, or composted if all waste is organic.

Waste Disposal

- RMD must accept at no charge unused, excess or contaminated MMJ from a registered patient or caregiver and shall destroy in accordance with the above procedures, maintaining records of such disposal.
Only if:
• Financial hardship, or
• No transportation, or
• No nearby RMD, or
• No RMD that will deliver.

Home Growing

• OR may mean that home growing allowed even if close proximity or delivery, but RMD also required to establish reduced or waived process for qualified patients.
• 105 CMR 725.100(A)(6) – A RMD must have a program to provide reduced cost or free marijuana to patients with documented verified financial hardship.

Home Growing

• Subject to Annual renewal
• May grow only at patient address or caregiver address but not both.
• Requires enclosed locked area
• Not visible from street or public areas

Home Growing

• No selling or distributing of MMJ or paraphernalia
• Subject to random DPH inspection
• Cannot also purchase MMJ from RMD (except seeds)
• Caregiver needs to return unused supplies within 5 days of death of patient.

Home Growing

• Patient and caregiver names considered confidential but may be released to other government agencies acting within their lawful jurisdiction.

Local MMJ Strategy

• What do existing regulations allow?
• agriculture, nurseries, pharmacies, processing plants, retail stores, office, consulting, storage & warehousing, adult entertainment, home occupations
Local MMJ Strategy

• Use Zoning Bylaw to control where one or more facilities would be acceptable.

• Are new definitions needed
  • By right or special permit at local preference
  • Is 500’ separation of uses locally adequate
  • Site security impacts on landscaping, fencing, parking, signage, architecture.

Local MMJ Strategy

• Existing zoning district(s) suitable or new district?

• Are new definitions needed
  • By right or special permit at local preference
  • Is 500’ separation of uses locally adequate
  • Site security impacts on landscaping, fencing, parking, signage, architecture.

Local MMJ Strategy

• If existing district, need to consider all properties with that designation

• What resources exist for oversight and enforcement?
  • Do not assign roles to departments that do not have manpower to implement them.

• Compliance with building code
  • Compliance with DPH regulations
  • Keep fees in special permit or site plan regulations rather than zoning bylaw
  • Emergency Generators

Local MMJ Strategy

• Compliance with building code
  • Compliance with DPH regulations
  • Keep fees in special permit or site plan regulations rather than zoning bylaw
  • Emergency Generators

Local MMJ Strategy

Accessory structures for home growing:
• Size & floor area limitations
• Setbacks
• Lighting
• Heat sources
• Water sources
• Security

• Use General Bylaws or Board of Health Regulations to address operational issues
• Annual business license and fees (just like restaurants or car dealers)
• Proof of non-profit status and DPH registration
Local MMJ Strategy
- Hours of operation
- Compliance with building codes
- Annual inspection requirements
- Signs
- Fines
- Noise (emergency generators)

Local MMJ Strategy
- Nuisance provisions for odors from plants, second hand smoke, trash, noise
- Waste disposal
- Testing protocols for mold or fungal growth

Local MMJ Strategy
Home growing:
- Annual Registration cannot be imposed
- Cite DPH Regulations
- Cite Building Code

Still Unknown
- Disposition of unused MMJ upon death of a patient without a caregiver
- Can local officials confiscate supply deemed to exceed 60 day supply?
- Cultivation on 2+ acres exempt from zoning?
- Special excise tax needed?

Pending MMJ Legislation
Committee on Public Health hearing 5-06-13
- S1030: delay implementation date September 1, 2013
- S1031: MA Medical Marijuana Program (rewrite of 94G)
- H2039: zoning standards for medical marijuana dispensaries with retail storefronts: 1,000' setbacks from schools, houses of worship, civic center, drug free zone, residence, residential district.
- H1897: prohibit smoking in multifamily housing.
- H1917: regulation and oversight of medical marijuana – allow doctors in contiguous states if verified, include MMJ in electronic monitoring system; $1 million for drug enforcement unit.

Pending MMJ Legislation
Municipalities & Regional Government:
Committee on Revenue:
- H 2570: $5 tax per package of rolling papers.
Pending MMJ Legislation

Judiciary Committee:
• H1612: rewrite of 94G
• H1663: towns may prohibit medical marijuana and not be deemed discrimination
• H1664: landlords may prohibit medical marijuana and not constitute discrimination
• H2102: medical marijuana prohibition shall not be discrimination

Pending MMJ Legislation

Judiciary Committee:
• H2101: no smoking on school grounds or public property unless expressly permitted
• H1645: home use of medical marijuana exempt from school zone + sections to address sentences for violations
• H1561: penalties for possession in school zones, schools, youth centers, community centers.
• H1515: possession on certain public property

Pending MMJ Legislation

Judiciary Committee (cont.)
• H1632: legalize marijuana and tax the cannabis industry. New g.L.138A.

If passed, MA would join Washington and Colorado in legalizing recreational use of marijuana

The Beginning?