

**MINUTES OF THE TOWN COUNCIL
ORDINANCE COMMITTEE
Town Hall Council Chambers
March 4, 2013 - Monday**

Present: Michael Smart, Chairman
Jane Hackett, Vice Chairman
Kenneth DiFazio, Councilor
Ed Harrington, Councilor
Arthur Mathews, Councilor

Also Present: George Lane, Town Solicitor
James Clarke, Director, Planning & Community Development

Recording Secretary: Mary Barker

Chairman Smart called the meeting to order at 6:30 PM.

13 011- Proposed Zoning Amendment-Moratorium on Medical Marijuana Treatment Centers

Council President Mathews invited Vice President O'Connor to the table to present the measure. Vice President O'Connor had provided the members with a packet which included his remarks, an FAQ from the Department of Public Health, commentary on an overview of Question 3 from the proponents, a commentary on medical marijuana with a delay support from Rick Collins-Chief of Staff for the Joint Chairman of Public Health, Question 3 overview by the supporters of the project, and the text of the initiative petition.

“When Massachusetts voters went to the ballot box on November 6, 2012, they voted in favor of legalization, in the form of a ballot question, that legalized medical marijuana as well as medical marijuana dispensaries. The language associated with Question 3 that is now law is very vague. If you actually look at the initiative petition attached to this, it is a template provided by the Marijuana Policy Project, essentially sent to states in the hopes of getting legislation passed. Once the legislation is passed, they put the entire onus on the Department of Public Health of those specific states, to come up with these regulations. The timeframe which they give the DPH, with all they’re going through, is 120 days.

A few weeks before Question 3 passed, I sat down with my fellow Councilor, Michael Smart to discuss options our community had to make sure we’re protected, We looked into zoning changes, similar to the adult entertainment facilities. We looked into what other cities and towns, and states that have passed similar legislation such as Colorado and California have done, and we looked into a moratorium. We addressed our concerns to the Mayor, and she wholeheartedly agreed we needed to do something. We came to the conclusion that the risk of not doing anything in the face of the unknown is far too great.

The Mayor spoke with other communities, and also addressed this concern with the Massachusetts Municipal Association. The consensus was that other communities were looking for protection, and the MMA was urging other communities to look for such protection.

As the new legislative session began at the State House this past January, state senators and state representatives across the Commonwealth filed dozens and dozens of pieces of legislation dealing with medical marijuana dispensary zoning. It was at this time that we accelerated the process, and with a 10 taxpayer petition, filed an ordinance to this body to place a moratorium on medical marijuana dispensaries in the Town of Weymouth until one year after regulations have been set by DPH. Regulations are due by May 1st from the Department of Public Health. They have already expressed concerns that they are really up against the clock in trying to get these regulations in place. This moratorium would last until May 1, 2014.

This is not a stance for or against medical marijuana. It is simply giving the Town of Weymouth time to digest the unwritten DPH regulations. I have no doubt that these regulations will be changed multiple times and we must be proactive to make sure our community is not a guinea pig of the DPH in these rushed regulations. One of the regulations that we know of is the license for dispensaries are going to be distributed county-based. There are going to be 35 licenses given out throughout the state, with a maximum of 5 per county. It's my opinion that Suffolk County will be the most desirable, and second most desirable will be Norfolk County. We also don't know what the future holds for medical marijuana and marijuana itself in the Commonwealth. With first the decriminalization a few years ago and now the legalization for medical purposes, one could assume that Massachusetts is on a path towards full legalization. The medical dispensaries that are in this legislation are nonprofit organizations and would not pay taxes to the community.

There are a lot of unknowns and we need to protect our community. This moratorium will give us time to make sure that, if this is going to be done it's going to be done right. It gives us the chance to digest the regulations that are still unwritten, strategize with local and state officials and come up with a common sense, well thought out plan to make sure the quality of life for our residents are not affected by the passage of this ballot question. I thank you all for the time and consideration of this measure."

Councilor DiFazio thanked Councilor O'Connor and asked if there are legal ramifications to the town by imposing the moratorium. Councilor O'Connor noted that other towns are taking the same stand. Solicitor Lane has reviewed and determined that addressing from a zoning standpoint, there are too many unknowns: placement and regulations; what is considered a 60-day supply; caregiver certification; determination for recipients; police regulation, and impact to schools, churches and day care centers. He also noted that this is not the first time a zoning moratorium was used in Weymouth. The legality of a moratorium was upheld in *WR Grace vs. City of Cambridge* in 2002. The moratorium must address the particular issue, the reason for adoption, be limited in time- a reasonable duration in relation to the zoning. It is different than adult entertainment. There also will

be the need to study other factors- the cultivation of crop might introduce contamination. He urged the town not to rush to judgment to prohibit. These circumstances call for a moratorium. He advised looking to see what the state is doing and plan alongside. He recommended adoption of the moratorium.

Chairman Smart asked if it is within the town's rights to impose a moratorium. Solicitor Lane responded in the affirmative. State regulations are due by May 1st. Chairman Smart asked if they will be perceived as rushing to judgment before the states sets the regulations. Solicitor Lane responded that the town need not be held up by the lack of state regulations. The issue needs to be addressed as soon as possible to look at reasonable regulations that will align with the state.

Councilor O'Connor noted that the deadline for the state is 120 days. The regulations will be rewritten many times. Councilor Hackett noted that other communities are taking a similar stand and she asked if Solicitor Lane is comfortable that it will withstand a legal challenge and that this is the best, safest legal course of action. Solicitor Lane responded yes, that they are dealing with a different quantity than that of adult entertainment. There are many unknowns- registration, cultivation, and many others.

Councilor Hackett asked if the ordinance would tie in to the distribution and cultivation, as an entire package. Solicitor Lane responded that in generic study, a proposed ordinance makes a lot of sense. James Clarke reviewed the options a moratorium presents; it specifies that it is not allowed today and is in place for a period of one year. The town can go forward before the one year period expires if they come up with regulations they are comfortable with. In the case of the building moratorium, the full year was not needed. He also noted that some communities are doing nothing, some are prohibiting outright, and others are following Weymouth's suit and imposing a moratorium. It's on many community agendas at upcoming town meetings.

Chairman Smart noted that the Board of Public Health has written a letter in support of the moratorium. Solicitor Lane noted Lyn Frano has provided excellent information for use with their presentation.

Councilor Harrington asked if the position will be defensible given that the legalization is a mandate by 2/3 of the voters, but he does agree that time should be spent crafting regulations. There was a brief discussion regarding the information to be voted at Council; full text of the ordinance will be read into the record.

A MOTION was made by Vice Chairman Hackett to forward item 13 011- Proposed Zoning Amendment-Moratorium on Medical Marijuana Treatment Centers to the full Town Council with a recommendation for favorable action “ *that the Town of Weymouth Zoning Ordinance be amended as follows:*

A. *Amend the Table of Contents by adding:*

Article XXVIII

Moratorium – Medical Marijuana Treatment Centers

- B. *Amend the Zoning Ordinance text by adding the following as Article XXVIII:*

Article XXVIII

Moratorium – Medical Marijuana Treatment Centers

120-130. Purpose

The Massachusetts Medical Marijuana Initiative, also known as Ballot Question Three, was approved by voters at the Massachusetts State election on November 6, 2012. The law regulates the cultivation, distribution, possession, and use of marijuana for medical purposes. The law is effective on January 1, 2013 and the State Department of Public Health is directed to promulgate regulations regarding implementation of the law within 120 days after the law's effective date.

Under the current Zoning Ordinance, a medical marijuana treatment center is not defined and is not a permitted use in the town. The Department of Public Health regulations should provide guidance to communities regulating medical marijuana treatment centers at the local level. As this is a new type of land use in the state, there will be unique and new aspects to the use that could require oversight and regulations. These local impacts, which could be legal, land use, public safety, and public health, should be evaluated and addressed in a comprehensive manner in the Zoning Ordinance prior to the permitting of a medical marijuana treatment center. The moratorium, of a finite duration, will allow the town to carefully study the potential impacts, both primary and secondary, of such centers and, through a directed planning process, recommend zoning ordinance amendments to address the town's concerns in the context of the Master Plan and other Town planning goals and objectives.

120-131. Definition

“Medical Marijuana Treatment Center” shall mean a “not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oil or ointments), transfer, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.”

120.132. Establishment and Duration

- A. *No building permit, special permit, variance, site plan or other permit may be issued under this zoning ordinance, and no use of land or structures shall be allowed for the purpose of establishing a medical marijuana treatment center or associated activities.*
- B. *The moratorium shall be in effect through and including May 1, 2014, or until such time as zoning amendments are adopted that address medical marijuana treatment*

centers and associated activities, whichever shall be sooner.

120-133. Applicability

This Article shall be effective in all zoning districts in the town, including overlay districts.”

Motion was seconded by Councilor Mathews. Vice Chairman Hackett thanked Councilor O’Connor, Chairman Smart and Mayor Kay and everyone who worked on this. She asked Mr. Clarke if the imposition of a one-year moratorium prevents the town from earlier adoption of the regulations. Mr. Clarke responded no.

UNANIMOUSLY VOTED.

At 7:09PM, there being no further business, a motion was made by Vice Chairman Hackett to adjourn, seconded by Councilor Mathews. UNANIMOUSLY VOTED.

Respectfully submitted by Mary Barker as Recording Secretary

Approved by Michael Smart as Chairman of the Ordinance Committee