



Timothy W. Brennan, Executive Director

PIONEER VALLEY PLANNING COMMISSION

MODEL MEDICAL MARIJUANA FACILITY/REGISTERED MARIJUANA DISPENSARY BYLAW (December 2013)

The Pioneer Valley Planning Commission, in response to numerous requests from its member communities and working through a committee of its Valley Development Council, developed the attached Model Medical Marijuana Facility Bylaw.

This proposed model bylaw is designed to work in consort with the regulations adopted by the Massachusetts Department of Public Health (105CMR 725.000: IMPLEMENTATION OF AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA) by addressing local land use issues relative to the siting of such facilities in their community. This Bylaw is offered as a model which may be tailored to meet the unique needs of each individual community and the structure of their Zoning Bylaw/Ordinance.

PVPC would like to thank the members of this working group and acknowledge their significant contribution towards this effort:

- Jessica Allen Easthampton City Planner
- Lynn Arnold, Holland Planning Board/Board of Selectmen
- Jeffrey Burkott Holyoke Principal Planner
- Julie Federman, Amherst Health Director
- Jonathan Tucker, Amherst Planning Director
- Jay Vinsky Westfield Principal Planner
- Alan Vint, Middlefield Planning Board/Selectboard
- Larry Smith, PVPC Senior Land Use Planner (please contact if you have any questions, require additional information or need assistance)

In the development of this Model Bylaw a number of issues were taken into consideration, including:

- Because the Massachusetts Department of Public Health (MDPH) regulations in 105CMR 725.000: IMPLEMENTATION OF AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA refers to “Medical Marijuana Treatment Facilities” as “Registered Marijuana Dispensaries (RMD)”, we will be using that terminology here.
- Because the MDPH regulations permit both a facility that grows/processes/dispenses medical marijuana and an off-site facility that just dispenses the final product, but doesn’t distinguish between the two in its definition of a Medical Marijuana Treatment Facilities/ Registered Marijuana Dispensaries (RMD), we are suggesting that there be a separate definition adopted for each and both would be included in a bylaw’s Table Of Uses as a principal use.
- Only a qualified non-profit can apply for a Registered Marijuana Dispensary (RMD), which includes cultivation, processing and dispensing.
 - The RMD can cultivate, process and dispense on a single site, or can cultivate it on one site and sell it on another site.
 - One qualified non-profit can apply for up to 3 separate RMDs which can share cultivation facilities or each can have its own cultivation site.
 - An RMD can either cultivate and sell, or just sell but must be provide its Medical Marijuana (MM) from another RMD that cultivates which is owned by the same non-profit.
 - One non-profit RMD may not buy cultivated MM from another non-profit’s RMD except in emergencies as specified MDPH regulations.
- MDPH will be approving RMDs geographically (i.e. spread across the state to provide them within easy access to all communities and registered qualifying patients (reducing the need for hardship cultivation) rather than demographically (i.e. where the population concentrations are).
 - RMDs will likely have smaller facilities in areas serving areas with smaller populations and larger facilities when serving the areas of concentrated populations.
- Production of medical marijuana is really an industrialized process that will be taking place in highly secured, climate controlled structures 24 hours/day, 7 days/week, 52 weeks/year. Production is not just cultivating the plants but also processing of the marijuana into various forms for application (smoked, eaten, rubbed on, vaporized, etc.).
 - Production facilities should be directed to areas where you have large (perhaps already vacant) buildings, likely an Industrial or Heavy Business Zone.
- The state Attorney General’s Office has approved a number of local Bylaws/Ordinances that only permit such facilities by Special Permit in certain zoning districts and prohibit them in all others.

- Because the cultivation of medical marijuana is such an industrialized process, we are suggesting (and have included it in the definition of such a facility) that the cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning under Chapter 40A, Section 3. The working group concluded this for a number of reasons:
 - because such facilities were enclosed in structures they would not be dependent on or even utilizing the vast acreages of fertile open agricultural lands contained in our communities and thus didn't need to be located on agricultural lands.
 - most communities don't have an exclusive "Agricultural" zone but rather a "Rural Residential" district which is a mix of farms and low density residential housing (perhaps not necessarily where you'd want to locate medical marijuana cultivation and processing).
 - questions have been raised as to whether existing greenhouses can meet the MDPH regulation's security requirements.
 - unlike most agricultural products, medical marijuana is still a federally regulated Schedule 1 narcotic.
 - the Chapter 40A, Section 3 agricultural exemption would allow such facilities to be located on as little as a two (2) acre parcel in areas not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture uses which would include residential neighborhoods.

It is important to note that the state has not determined if an RMD is exempt as an agricultural use under M.G.L. Chapter 40A, Section 3 so please consult your Town Counsel.

It should also be noted that the Attorney General's Office has approved a number of medical marijuana facility bylaws that have included the following:

- a definition of "Agricultural" that excludes uses associated with medical marijuana,
- excluding marijuana from the listed use of "farm" and specifically excluded medical marijuana dispensaries from their list of "salesroom or stand for the display or sale of horticultural and/or floricultural products..."

but the approval did contain an advisory that you can't regulate "certain agricultural uses" which fall under the provisions of Chapter 40A, Section 3 and Chapter 128, Section 1A, but didn't specifically identify that Registered Marijuana Dispensaries were one of those "certain agricultural uses".

The Attorney General's Office also approved Chelmsford's moratorium and zoning amendment that establishes that Medical marijuana Treatment Centers shall not be eligible as a "Non-Exempt Agricultural Use" or as a "Non-exempt Educational use" and they are only permitted by Special permit in the town's Industrial-Limited and Industrial-Special Districts" without the above advisory.

- Because Medical Marijuana Dispensaries serve an extremely limited clientele (you must be a "Qualifying Patient" registered with the Massachusetts Department of Public Health) and not

the general public, they don't need to be located on Main Street or even necessarily in a commercial zone. They are a specific destination for a specific limited clientele and do not need exposure for attracting impulse shoppers.

- Dispensaries will have to have the same high level of security as production facilities (cameras, fencing, secured windows, etc.) and may not be in character with downtowns and other commercial areas.
- Home Delivery should be encouraged:
 - Requiring Qualified Patients to take public transit to dispensaries could put them at risk (riding on the bus (or even walking) with large amounts of cash/marijuana).
 - Reducing the need for hardship cultivation.
- Some vendors have expressed a desire to integrate other “related” uses in an RMD/OOMD like massage therapy and yoga. We are suggesting that such uses not be physically integrated into an RMD/OOMD for a number of reasons:
 - Only a card carrying registered qualifying patient or personal caregiver are permitted in a facility, so such additional services would not be available to the general public.
 - The MDPH regulations state that “A RMD may not sell any products other than marijuana, including MIPS and marijuana seed, and other products such as vaporizers that facilitate the use of marijuana for medical purposes.”
 - Some concerns have been expressed about the ability to monitor and enforce the activities of an RMD relative to its compliance with MDPH and any local permitting regulations if other uses are allowed to be integrated into it.

While we understand and see the benefit of providing additional palliative and therapeutic care uses, we would suggest that they be offered in a separate facility nearby.

- The MDPH regulations include a provision that, lacking any local requirements, “a RMD may not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.” We are suggesting a somewhat more definitive definition of where “children commonly congregate” and are suggesting an exclusion radius of 300’ (which is consistent with the state of Massachusetts’s Drug Free Zone requirement) to be measured from the property line.
- In adopting a local Medical Marijuana Dispensary Bylaw we strongly advise that you review the Massachusetts Department of Public Health’s regulations in 105CMR 725.000: IMPLEMENTATION OF AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA as some of their regulations address issues normally covered under Zoning:
 - Section 725.105 Operational Requirements for Registered Marijuana Dispensaries
 - (L) Marketing and Advertising Requirements that regulate signage
 - Section 725.110(A) Security requirements for Registered Marijuana Dispensaries
 - (11) Landscaping
 - (14) Location to facilities where children commonly congregate



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MODEL MEDICAL MARIJUANA BYLAW/ORDINANCE

(December 2013)

The following should be added to the DEFINITIONS section of your Zoning Bylaw/Ordinance:

Registered Marijuana Dispensary (RMD): A use operated by a not-for-profit entity registered and approved by the MA Department of Public Health on accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, 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 RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products.

The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning. **[NOTE: The state has not determined if an RMD or OMDD is exempt as an agricultural use under M.G.L. chapter 40A, Section 3, so please consult your town Counsel]**

Off-Site Medical Marijuana Dispensary (OMMD) – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved not-for-profit entity which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered Qualifying Patients or their personal caregivers in accordance with the provisions of 105CMR 725.00.

Permitted Districts

The following should be added as principal uses to your TABLE OF USE REGULATIONS and then specify which Zoning Districts they are permitted in:

Medical Marijuana Treatment Center/Registered Marijuana Dispensary

[We recommend that they be permitted as a By-Right use in Industrial Districts subject to Site Plan Approval. If a community doesn't have an Industrial District (like many small towns) then they should be permitted by Special Permit subject to Site Plan Approval in Commercial Districts. For really small communities that don't have a Commercial District, it is recommended that they create one.]

Off-Site Medical Marijuana Dispensary

[We recommend that they be permitted as a By-Right use in Industrial Districts subject to Site Plan Approval, and as a Special Permit use subject to Site Plan Approval in Commercial Districts.]

The following should be added to the chapter of your Bylaws/Ordinance that contains the additional requirements for your By-Right, Special Permit and/or Site Plan Approval uses.

**Section ____ Registered Marijuana Dispensary (RMD) and
Off-Site Medical Marijuana Dispensary (OMMD)**

1. Purposes.

It is recognized that the nature of the substance cultivated, processed, and/or sold by medical marijuana treatment centers and off-site medical marijuana dispensaries may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as patients seeking treatment. The specific and separate regulation of Registered Marijuana Dispensaries (hereafter referred to as a RMD) as Medical Marijuana Treatment Centers and Off-site Medical Marijuana Dispensary (hereafter referred to as an OMMD) facilities is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town/City of _____.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, and 105 CMR 725.000, Registered Marijuana Dispensaries and Off-site Medical Marijuana Dispensaries will be permitted to provide medical support, security, and physician oversight that meet or exceed state regulations as established by the Massachusetts Department of Health (hereafter referred to as MDPH).

2. Additional Requirements/Conditions

In addition to the standard requirements for uses permitted By-right or requiring a Special Permit or Site Plan Approval, the following shall also apply to all Registered Marijuana Dispensaries and Off-Site Medical Marijuana Dispensaries:

- a. Use:
 - i. RMD and OMMD facilities may only be involved in the uses permitted by its definition and may not include other businesses or services.

- ii. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.
- iii. The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall an RMD or OMMD facility be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
- iv. RMD facilities that can demonstrate that they comply with the agricultural exemption under M.G.L. Chapter 40A, Section 3 must still apply for Site Plan Approval.

b. Physical Requirements:

- i. All aspects of the use/facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
- ii. No outside storage is permitted.
- iii. No OMMD Facility shall have a gross floor area in excess of 2,500 square feet.
- iv. Ventilation – all RMD and OMMD facilities shall be ventilated in such a manner that no:
 - 1. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
 - 2. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.
- v. Signage shall be displayed on the exterior of the RMD and OMMD facility's entrance in plain sight of clients stating that "Registration Card issued by the MA Department of Public Health required" in text two inches in height.

c. Location:

- i. No RMD and OMMD facility shall be located on a parcel which is within three hundred (300) feet (to be measured in a straight line from the nearest points of each property line) of parcel occupied by:
 - 1. a public or private elementary, junior high, middle, vocational or high school, college, junior college, university or child care facility or any other use in which children commonly congregate in an organized ongoing formal basis, or
 - 2. another RMD or OMMD facility, except that this limitation shall not apply in Industrial zones

- ii. No RMD or OMMD facility shall be located on a lot which abuts a residential use (including commercial residential uses such as hotels, motels, lodging houses, etc.) or residential zoning district.
 - iii. No RMD or OMMD facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
- d. Reporting Requirements.
- i. All Special Permit and Site Plan Approval holders for an RMD or OMMD facility shall provide the Police Department, Fire Department, Building Commissioner/Inspector and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.
 - ii. The local Building Commissioner/Inspector, Board of Health, Police Department, Fire Department and Special Permit Granting Authority (in cases where a Special permit or Site Plan Approval was granted) shall be notified in writing by an RMD or OMMD facility owner/operator/manager:
 - 1. A minimum of 30 days prior to any change in ownership or management of that facility
 - 2. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the RMD or OMMD.
 - iii. Permitted RMD and OMMD facilities shall file an annual report to and appear before the Special Permit Granting Authority no later than January 31st, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.
 - iv. The owner or manager is required to respond by phone or email within twenty-four hours of contact by a city official concerning their RMD or OMMD at the phone number or email address provided to the City as the contact for the business.
- e. Issuance/Transfer/Discontinuance of Use
- i. Special Permits/Site Plan Approvals shall be issued to the RMD Operator
 - ii. Special Permits/Site Plan Approvals shall be issued for a specific site/parcel
 - iii. Special Permits/Site Plan Approvals shall be non-transferable to either another RMD Operator or site/parcel

- iv. Special Permits/Site plan Approvals shall have a term limited to the duration of the applicant's ownership/control of the premises as a RMD or OMMD, and shall lapse:
 - 1. If the permit holder ceases operation of the RMD, and/or
 - 2. The permit holder's registration by MDPH expires or is terminated
- v. The permit holder shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration.
- vi. An RMD or OMMD facility shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state Registration or ceasing its operation.
 - 1. Prior to the issuance of a Building Permit for a RMD or OMMD the applicant is required to post with the Town Treasurer a bond or other form of financial security acceptable to said Treasurer in an amount set by the Planning Board. The amount shall be sufficient to cover the costs of the town removing all materials, plants, equipment and other paraphernalia if the applicant fails to do so. The Building Inspector shall give the applicant 45 days' written notice in advance of taking such action. Should the applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 45 days written notice, said bond shall be returned to the applicant.

3. Application Requirements

In addition to the standard application requirements for Special Permits and Site Plan Approvals, such applications for an RMD or OMMD facility shall include the following:

- a. The name and address of each owner of the RMD or OMMD facility/operation;
- b. A copy of its registration as an RMD from the Massachusetts Department of Public Health or documentation that demonstrates that said RMD or OMMD facility, and it's owner/operators, qualify and are eligible to receive a Certificate of Registration and meet all of the requirements of a RMD in accordance with 105 CMR 725.000 of the Massachusetts Department of Public Health.
- c. Evidence that the Applicant has site control and right to use the site for a RMD or OMMD facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement;
- d. A notarized statement signed by the RMD or OMMD organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons;

- e. In addition to what is normally required in a Site Plan, details showing all exterior proposed security measures for the RMD or OMMD 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.
- f. A detailed floor plan identifying the areas available and functional uses (including square footage)
- g. All signage being proposed for the facility.
- h. A traffic study to establish the RMD or OMMD impacts at peak demand times.
- i. A Management Plan including a description of all activities to occur on site, including all provisions for the delivery of medical marijuana and related products to OMMDs or off-site direct delivery to patients.

4. Findings

In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find all the following:

- a. That the RMD or OMMD facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest.;
- b. That the RMD or OMMD facility demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations; and
- c. That the applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw/Ordinance;
- d. That the RMD or OMMD project meets a demonstrated need
- e. That the RMD or OMMD facility provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured.
- f. That the RMD or OMMD facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.