

*Town of Andover, MA  
Tuesday, January 5, 2016*

## Article VIII. Zoning By-Law

### SECTION 8.0. SPECIAL DISTRICT REGULATIONS

#### 8.9. MEDICAL MARIJUANA OVERLAY DISTRICT (MMOD).

[Added 5-12-2014 ATM, Art. 34.]

##### 8.9.1. Establishment.

The Medical Marijuana Overlay District ("MMOD") is established as an overlay district. The boundaries of the MMOD are shown on the Zoning Map on file with the Town Clerk. Within the MMOD, all requirements of the underlying district(s) remain in effect, except where these regulations provide an alternative to such requirements. Land within the MMOD may be used either for (1) a Registered Marijuana Dispensary ("RMD"), in which case the requirements set forth in this section shall apply; or (2) a use allowed in the underlying district in which case the requirements of the underlying district shall apply. If the provisions of the MMOD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control.

##### 8.9.2. Purpose.

To provide for the placement of RMDs, in accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c.94C, App. § 1-1, et seq., in locations suitable for lawful medical marijuana facilities and to minimize adverse impacts of RMDs on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security, and removal of RMDs.

##### 8.9.3. Definitions.

Where not expressly defined in the Zoning Bylaws, terms used in the MMOD Bylaw shall be interpreted as defined in the Humanitarian Medical Use

of Marijuana Act, G.L. c.94C, App. § 1-1, et seq. and the Department of Public Health Regulations promulgated thereunder, 105 CMR 725.001, et seq., and otherwise by their plain language.

Registered Marijuana Dispensary: Also known as a Medical Marijuana Treatment Center, means a not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing ("MIPs"), 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. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

## 8.9.4. Location.

- a. RMDs may be permitted in the MMOD but only pursuant to a Special Permit.
- b. RMDs may not be located within 500 feet of the following:
  - (1) School, including a public or private elementary, vocational, or secondary school or a public or private college, junior college or university;
  - (2) Child Care Facility;
  - (3) Library;
  - (4) Playground;
  - (5) Public Park;
  - (6) Youth Center;
  - (7) Public swimming pool; or
  - (8) Similar facility in which minors commonly congregate.
- c. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Section 8.9.4.b. to the nearest point of the property line of the proposed RMD.

## 8.9.5. Signage.

All signage shall conform to the requirements of the Andover Zoning Bylaw. The Planning Board may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts.

## 8.9.6. Procedure.

The Planning Board shall be the Special Permit Granting Authority (SPGA) for an RMD special permit.

- a. Application: A Special Permit shall be submitted to the Andover Planning Board pursuant to the submission requirements and procedures contained in Section 9.4. and Section 9.5.3. of the Zoning Bylaw. In addition to the above requirements the applicant shall include 12 copies of the following:
  1. A copy of its registration as an RMD from the Massachusetts Department of Public Health (“DPH”);
  2. A detailed floor plan of the premises of the proposed RMD that identifies the square footage available and describes the functional areas of the RMD, including areas for any preparation of MIPs;
  3. Detailed site plans that include the following information:
    - a. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings and all other provisions of this Bylaw;
    - b. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
    - c. Convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;
    - d. Adequacy as to the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises, including designated parking for home delivery vehicle(s), as applicable;
    - e. Design and appearance of proposed buildings, structures, freestanding signs, screening and landscaping; and
    - f. Adequacy of water supply, surface and subsurface drainage and light.
  4. A description of the security measures, including employee security policies, approved by DPH for the RMD;
  5. A copy of the emergency procedures approved by DPH for the RMD;
  6. A copy of the policies and procedures for patient or personal caregiver home-delivery approved by DPH for the RMD;
  7. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by DPH;
  8. A copy of proposed waste disposal procedures; and
  9. A description of any waivers from DPH regulations issued for the RMD.
- b. The SPGA shall refer copies of the application to the Building Division, Fire Department, Police Department, Board of Health, Conservation Commission and the Department of Public Works. These boards/departments/divisions shall review the application and shall submit their written recommendations to the Planning Board. Failure to make recommendations within 45 days of referral of the application shall be deemed lack of opposition.

- c. After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other Town boards and departments, the SPGA may act upon such a permit.

### 8.9.7. Special Permit Conditions on RMDs.

The SPGA shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's RMD, the SPGA shall include the following conditions in any Special Permit granted under this Bylaw:

- a. Hours of Operation.
- b. The permit holder shall file a copy of any Incident Report required under 105 CMR 725.110(F) with the Building Inspector, Police and Fire Departments and the SPGA within 24 hours of creation by the RMD. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
- c. The permit holder shall file a copy of any cease and desist order, quarantine order, suspension order, order limiting sales, notice of a hearing, or final action issued by DPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Building Inspector and SPGA within 48 hours of receipt by the RMD.
- d. The permit holder shall provide to the Building Inspector, Fire Chief and Chief of the Police Department, the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
- e. The Special Permit authorizing the establishment of an RMD shall be valid only for the specific registered entity to which the Special Permit was issued, and only for the site on which the RMD has been authorized by Special Permit. If the registration for the RMD has been revoked by the DPH or if the RMD registration is to be transferred to another controlling entity, or is to be relocated to a different site within the Medical Marijuana Overlay District, a new Special Permit shall be required.
- f. An RMD shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations.
- g. The Special Permit shall lapse upon the expiration or termination of the applicant's registration by DPH.
- h. The permit holder shall notify the Building Inspector, the Chiefs of the Police and Fire Departments and the SPGA in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with DPH.
- i. The Police Department, Fire Department, Building Inspector and Board of Health shall have the right to inspect the subject premises to assure compliance with the special permit.

### 8.9.8. Exemption from RMD Special Permit Requirement.

RMDs that demonstrate that they are protected pursuant to the agricultural exemption under G.L. c.40A § 3 are not required to obtain a Special Permit but shall apply for Site Plan Approval pursuant to Section 9.5 of the Zoning Bylaw.

### **8.9.9. Prohibition Against Nuisances.**

No use shall be allowed in the MMOD which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

### **8.9.10. Severability.**

The provisions of this Bylaw are severable. If any provision, paragraph, sentence or clause of this Bylaw 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.