



Municipal Client Advisory
January 2014

**The Regulation of Medical Marijuana by Massachusetts
Municipalities**
The Story Continues...

In May 2013, the Department of Public Health (“DPH”) issued Final Regulations addressing the administration and implementation of Ballot Question 3 from the November 6, 2012 election, also known as the “Humanitarian Medical Use of Marijuana Act,” M.G.L. c. 94C, App. § 1-1 et seq. These regulations, appearing at 105 CMR 725.000, specifically address: Registered Marijuana Dispensaries (also referred to as Medical Marijuana Treatment Centers); certifying physicians; dispensary agents; qualifying patients and their personal caregivers; and enforcement.

Notably, the DPH regulations authorize, but do not require, municipalities to regulate the medical use of marijuana, including but not limited to Registered Marijuana Dispensaries and qualifying patients with hardship cultivation registrations. 105 CMR 725.600(B). Among other areas of regulation, the DPH regulations specifically embrace “lawful local oversight and regulation” and “fee requirements,” provided that there is no conflict with the operation of the DPH regulations. 105 CMR 725.600(B). All persons registered with the DPH in connection with the medical use of marijuana must comply with all applicable local requirements, including rules, regulations, ordinances and bylaws. 105 CMR 725.600(A).

The DPH regulations include a number of provisions pertinent to municipalities, such as:

- As a default requirement in 105 CMR 725.110(A)(14), Registered Marijuana Dispensaries cannot be located within a radius of five hundred (500) feet of a school, daycare center, or facility in which children commonly congregate. This default setback is measured using a straight line from the closest point of the Registered Marijuana Dispensary (including any off-site cultivation area) to the closest point of the protected facility. However, a municipality may enact a different setback requirement instead of using the default setback contained in the DPH regulations.
- Trees, bushes and other foliage outside of a Registered Marijuana Dispensary cannot allow for the concealment of individuals. 105 CMR 725.110(A)(11). This requirement is relevant to site plan and other local zoning requirements.



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- Cultivation of marijuana can occur outside, subject to a surveillance camera system and other security requirements. 105 CMR 725.110(D)(1)(d)-(i).
- Registered Marijuana Dispensaries must connect their alarm to local public safety or law enforcement. 105 CMR 725.110(D)(1)(c).
- Registered Marijuana Dispensaries must report the following to local law enforcement: hours of operation and after-hours contact information (if requested) (105 CMR 725.110(D)(1)(c)); diverted marijuana (105 CMR 725.105(A)(15)(a)); any unusual inconsistency in weight or inventory of transported marijuana (105 CMR 725.110(E)(2)(c)); and, within twenty-four (24) hours of occurrence, motor vehicle accidents, diversions of marijuana, losses, and other reportable incidents (105 CMR 725.110(E)(10), (F)(1)).
- Dispensary agents must maintain their DPH-issued registration card at all times when involved with the transportation of marijuana, and provide this card to local law enforcement upon request. 105 CMR 725.110(E)(i).

Municipalities have broad flexibility in enacting zoning and general bylaws, ordinances, rules and regulations to address the medical use of marijuana, with certain limitations. These limitations continue to be defined on an ongoing basis, as the Office of the Attorney General Municipal Law Unit reviews local bylaws related to the medical use of marijuana:

- Municipalities cannot prohibit Registered Marijuana Dispensaries from opening and operating within their borders. A blanket prohibition frustrates the purposes of the Humanitarian Medical Use of Marijuana Act. See Municipal Law Unit Case # 6601 (Town of Wakefield).
- Municipalities cannot prohibit or require a discretionary special permit for a hardship cultivation at the primary residence of a qualified patient or a personal caregiver. Such a prohibition or requirement conflicts with 105 CMR 725.035(B)(4) and (D), which require the hardship cultivation to occur at, and be identified as, the address of the primary residence of the registered qualifying patient or his or her personal caregiver. This also conflicts with the DPH's registration authority. See Municipal Law Unit Case # 6630 (Town of Westborough).



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- Municipalities cannot prohibit the off-site delivery of marijuana for medical use. Such a prohibition conflicts with 105 CMR 725.105(C)(2), which requires a Registered Marijuana Dispensary to have its marijuana tested at an independent laboratory. See Municipal Law Unit Case # 6630 (Town of Westborough).
- Municipalities cannot prohibit, unreasonably regulate, or require a special permit when the cultivation of marijuana and related activities constitutes protected “commercial agriculture” under the Dover Amendment (M.G.L. c. 40A, § 3). See Municipal Law Unit Case # 6988 (Town of Walpole).
- Municipalities may enact moratoriums for Registered Marijuana Dispensaries. See Municipal Law Unit Case # 6930 (Town of Milton). Currently, the Office of the Attorney General has approved moratoriums through December 31, 2014. See Municipal Law Unit Case # 6919 (Town of Clinton).

The decision of whether and how to regulate a Registered Marijuana Dispensary and other activities ultimately turns on the needs and interests of each municipality. Special attention should be placed upon balancing these considerations against the protections for the medical use of marijuana under Massachusetts law.

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For questions about the Humanitarian Medical Use of Marijuana Act, please contact Attorneys James A. Toomey or Brandon H. Moss at (617) 479-5000, or your attorney. Murphy, Hesse, Toomey & Lehane, LLP is experienced with advising municipalities with issues related to the local regulation of marijuana for medical uses, including drafting zoning and general bylaws. Additionally, the firm is experienced with drafting and defending the municipal regulation of uses and activities protected by federal and state law. The firm maintains a full-service practice, with offices in Quincy, Boston, and Springfield, Massachusetts.

For a discussion of these and other issues, please visit the update on our website at www.mhtl.com. To receive legal updates via email, contact information@mhtl.com.

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