

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

WEDNESDAY, NOVEMBER 13, 2013

Present: Ald. Johnson (Chairman), Danberg, Baker, Kalis, Yates, Swiston and Sangiolo

Absent: Ald. Lennon

Also Present: Ald. Hess-Mahan, Albright and Harney

Others Present: James Freas (Chief Planner, Long Range Planning), Amanda Stout (Senior Planner, Long Range Planning), Robert Muollo (Housing Planner), John Lojek (Commissioner, Inspectional Services), Dori Zaleznik (Commissioner, Health and Human Services), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

Planning & Development Board Present: Scott Wolf (Chairman), Roger Wyner, Peter Doeringer, Candace Havens, Alice Walkup (Planning Dept. Staff)

Public hearing was held on the following item:

#295-13 ALD DANBERG proposing amendment to **Sec. 30-24(f)** Inclusionary Zoning by deleting paragraph (11) *Hotels* in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing. [08/26/13 @ 12:30PM]

PUBLIC HEARING CLOSED

ACTION: APPROVED 6-0 (Ald. Kalis not voting)

NOTE: Amanda Stout, Senior Planner for Long Range Planning addressed the Committee. There have been two other discussions of this item and so she summarized the item. She noted that the Economic Development Commission (EDC) and the Newton Housing Partnership (NHP) formed a working group to improve inclusionary zoning in Newton. They discovered that no new hotels had been built in Newton. They felt that the condition in inclusionary zoning of requiring new hotel developments to make a 10% payment to the City was a disincentive for development. They felt it was unfair to single out this one use for this condition and it sent a negative message to the business community. No other city or town in Massachusetts has this provision. Hotels bring great benefit to the City while using few resources. The Planning Department is recommending to delete the entire paragraph on hotels from the ordinance. Any new hotel developments would come before the Board in the special permit process.

Ald. Johnson opened the public hearing:

Jack Leader, California Street, representing the EDC as a member supported this amendment. He noted that it would cost a developer 10% more to build a hotel in Newton than in any other community in Massachusetts. He hoped the Committee to approve the amendment.

Phil Herr, member of the Newton Housing Partnership supported this amendment as well. He said the City has never collected any money at all from this provision and has been an impediment to development.

Ald. Johnson closed the public hearing.

The Planning & Development Board reported that they voted unanimously to approve the amendment. Their report will follow and was not available at this time.

The Committee voted to approve this amendment.

Public hearing was held on the following item:

#64-12(2) ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the existing inclusionary zoning preference provisions for initial occupancy of units, and to create a new preference for eligible households displaced by the development of those units.

PUBLIC HEARING CLOSED

ACTION: APPROVED 6-0 (Ald. Kalis not voting)

NOTE: Amanda Stout reviewed this item. It has been discussed in Committee in previous meetings. She explained that Newton Fair Housing Committee has guidelines for resident selection for housing that has oversight by the City. The proposal is to revise the inclusionary zoning ordinance to match those guidelines and minimize the effects of displacement. If a development results in the displacement of households, this recommends giving first preference to displaced applicants. If a development has features for people with disabilities, the recommendation is to give first preference to applicants who have been displaced and who need those features. There is already an order of preference for applicants in the ordinance. This would add language to put displaced households as described at the front of the line in the sequence of preferences.

Ald. Johnson opened the public hearing:

Phil Herr, member of the Fair Housing Committee supported this amendment. He felt it was fair to put the displaced persons and displaced persons with disabilities in first priority. The lottery process that is now in place would stay in place. This amendment would just put these households as the priority of those drawn in the lottery. It is a simple change and is spelled out very carefully in the new language. The largest displacement occurs with relatively small structures and is very disruptive to a family's life.

Ald. Johnson closed the public hearing.

The Planning & Development Board reported that they voted unanimously to approve the amendment. Their report will follow and was not available at this time.

The Committee voted to approve this amendment.

Public hearing was held on the following item:

#309-13(4) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, to create new zoning regulations allowing the use of land, structures and buildings for registered marijuana dispensaries in certain business and mixed use zoning districts within the City by special permit, and to establish minimum standards and criteria for the granting of such special permits.

PUBLIC HEARING CLOSED

ACTION: HELD 7-0

NOTE: James Freas, Chief Planner, Long Range Planning addressed the Committee. Massachusetts voter legalized the cultivation and sale of marijuana for medical purposes. This has called for new regulations to ensure the safe and legal use of the drugs. It has also created the need for zoning to allow siting of Registered Marijuana Dispensaries (RMDs) in the City. The state Attorney General made the determination that municipalities cannot ban RMDs. It can, however, regulate how and where they are developed. State regulations are extensive and make it the most regulated drug in the state. Massachusetts DPH learned from the mistakes and success of other states to legalize RMDs. The regulations are meant to strictly control the distribution of the drug and to avoid the promotion of marijuana use other than for medical purposes. The Committee has heard much testimony of the medical benefits of marijuana.

The RMD must be registered through the state through a rigorous process. Only 5 will be allowed in Middlesex county and DPH will geographically disperse them as best as possible. There will only be one, if any, in Newton. Transportation of the marijuana is being done by strict security requirements and every plant is being tracked from being grown to distribution or being destroyed. The product would only be provided to those with a legitimate prescription from a doctor. Strict control is necessary to ensure the success of the RMDs.

The amendment is recommending three zoning districts for siting and they would only be allowed by special permit. The districts are Business 2, Business 5 and the Mixed Use 1 districts. These encompass an area along the Washington Street corridor, along the Needham Street corridor and some scattered areas in Nonantum, Four Corners and few other places. There is a minimum 500-foot buffer from schools, houses of worship, daycare centers and any other areas where children might generally congregate. This language is being drawn directly from the state regulations. Any proposed revision is to allow the Board of reduce that buffer zone should the applicant be able to demonstrate ample buffering from the vulnerable uses. The buffer zone would be measured from the edge of the property lines. A context map of 1000 feet around the proposed site would be required to review all uses that lie within that zone. A transportation study would also be required to estimate their customer base and where they might be coming from. The transportation plan would also have to cover their requirements for transporting and distributing the product under the state regulations. There is also a requirement to submit all registration materials and copies all their materials to the City and keep them up-to-date.

The standard special permit criteria would apply and includes ensuring no adverse impacts on surrounding area; that the proposed site is accessible to regional roads and public transit; and

ensuring that the proposed site is located so it can be readily monitored by local law enforcement.

Ald. Johnson opened the public hearing:

Katherine Adams, 84 Whiting Way, representing Schlesinger and Buchbinder addressed the committee. She offered support for the amendments. She introduced Peter Weil, President of Botanica Dispensary which as applied to operate as an RMD in Newton, Duncan Rose, the COO of Botanica, and Daniel Weil the Director of Logistics. She asked for clarification on the 500-foot buffer. There was concern that the ability of the board to have discretion over that buffer zone might make an application difficult as the applicant would not know if they could or could not choose a site. A site might be ideal but might need a waiver and she felt the applicant could not then list it as a top choice on the state application. She suggested that the Committee consider lowering the buffer zone to 100 feet while still allowing discretion by the Board. She said Botanica has found one site that conforms to the 500-foot buffer zone, but a more optimal site that falls within the 500-foot buffer zone.

Peter Weil, 53 Bonad Rd., Newton, said he represents the Mass Military Veterans Assistance Group (MMVAG). He is a long time resident of Newton and is providing 100% of the funding for Botanica, which is a subset of MMVAG and is a 501 C(3) Their goal is to provide assistance to veterans through all of their operations with the MMVAG.

Duncan Rose, Watertown resident, said they weren't prepared to use the name Botanica and they are the MMVAG at this point. They are applying for an RMD in Newton only and it's the only community they are interested in. Watertown has a moratorium which will not be lifted anytime soon. He is a medical provider in Harvard Square. He noted that the genetics and science have evolved and the medical product does not produce a "high" but provides an analgesic affect. This is a disincentive to secondary use. The product will arrive to the RMD in a sealed container and is not allowed to be opened on the premises. It is dispensed to the patient and they open it after they leave the property. He said they will have a security guard to be sure that happens. State law requires that RMDs are non-profit organizations. Since marijuana is still illegal on the federal level, they will be taxed as for-profit organizations however. It's a complicated business model. He said that any money that is made on this venture will be spent on veteran's assistance. They are approved through Phase 1 by the state.

John Madfis, 95 Central Street, Newton reiterated his views from the last public hearing on this item. His son is a medical marijuana patient with Crohn's disease and the medication has been extremely helpful for him. Mr. Madfis encouraged relaxing the buffer zones and other parts of the ordinance that would unduly limit the siting of an RMD in Newton. He felt that RMDs should be allowed to locate in Business 1, Business 4, Manufacturing and Mixed Use 2 districts. He did not think childcare and houses of worships should be included in the buffer zone restrictions. He submitted a memo from the Massachusetts Patient Advocacy Alliance, **which is attached.**

Janet Serman, 120 Church Street, Newton said she supported the need for an RMD in Newton. Medical marijuana has been proven to be very beneficial for MS and other diseases. She has MS

and has been involved in many issues relative to the disease. As long as this is regulated and distributed legally and safely, she felt an RMD should be located in Newton for the convenience of its residents and those in the general area.

Ald. Johnson closed the public hearing.

The Committee assembled in working session.

Ald. Baker provided a copy of a draft regulation from the City of Boston that is intended to ensure safe access to medical marijuana (**attached**). He would like the Board to consider some of these in addition to what is being proposed in the ordinance without unduly interfering with the operation of a bona fide and qualified dispensary. The proposed regulations would impose an annual licensing requirement by the City of Boston in addition to whatever zoning opportunity is available. An annual permit fee of \$100 and an annual operating fee of \$500 is being proposed and the revenues would be used to assist in the monitoring and enforcement of the operation of the RMDs. An annual community meeting is also being proposed to keep residents up-to-date. They also want to be sure they are doing all they can to provide the patients with good and reliable access so these are not just limiting regulations. Ald. Baker noted that he docketed an item in Programs & Services Committee to try and scope these issues out a bit. He would like to know if there is any way these may be appropriate as part of zoning, or if these are unique to a City like Boston and perhaps not appropriate here in Newton.

Commissioner Zaleznik pointed out that Boston does independent licensing of facilities and businesses that no other city or town seems to do and is different from the state. Newton has not followed that model on other facilities and does not have that precedent as Boston does. She is not in favor of that idea. The fee would imply that Newton is going to regulate and oversee the facilities and the state is taking that role, not the City of Newton. There are other state regulated medically related businesses in Newton that are not separately licensed by the City.

Ald. Baker noted that the issue around non-profit status has to be further explored and understood. He didn't know if this was a special permit issue or a zoning issue. He was also wondering about the potency of the medication as it was brought up in the public hearing testimony. He has heard concerns about diversion and not about medical uses so wonders if this can somehow be included. Commissioner Zaleznik noted that Massachusetts is the only place to require independent laboratory testing to determine the quality and the chemical nature of the substance. The Commissioner said she would look into the potency issue and whether or not the product would produce a "high" that would entice non-medical users. Ald. Johnson asked if there had been much opposition from residents. It was reported that the Mayor received 6 concerned emails, Ald. Yates received 2. Ald. Johnson had one inquiry but the person did not understand that RMDs were already legalized in Massachusetts. This indicates there may not be a groundswell of concern.

Some Committee members expressed that the role of the City and of the Committee is to determine appropriate zoning and that potency of the drug and the business model is not under

their purview. All of these issues are being strictly regulated and overseen by the Mass Department of Public Health.

It was suggested that a fact sheet would be helpful for anyone who has concerns about RMDs as there are perhaps some misconceptions.

The Committee reviewed once again leaving in or taking out the houses of worships restriction for the 500-foot buffer but did decide to keep it on the ordinance. There was also discussion about removing the discretion on the 500-foot buffer but they decided to leave that in as well. There was also some thought about being careful about threshold criteria for an application and conditions of a special permit and making sure they are all in the right place to be clear. Commissioner Lojek said there needed to be care about over-regulating the RMDs in issues such as hours of operation and to keep that in mind as well and be mindful of the state regulations.

As mentioned, Ald. Baker and Danberg have an item before the Programs & Services Committee to discuss non-zoning regulations using the Boston regulations as a sample on November 20th. It is a scoping session and will unlikely be ready to adopt any specific language. If something related to zoning is identified in that discussion, Ald. Johnson would like to hear back from Programs & Services at the November 25th Zoning & Planning Committee meeting. She asked that the Committee come prepared with any concerns at that meeting and to be careful about proposing anything that might trigger another public hearing. That would take the item past the December 31st moratorium deadline. Ald. Sangiolo asked that any proposals be made available in advance of the Programs & Services meeting on November 20th to allow proper review.

The Planning and Development Board reported that they agreed on adoption of the ordinance but suggest removing places of worship as a restriction. The Board voted 3-1-0 in favor of maintaining 500 foot buffer. Their report will follow and was not available at this time.

The Committee voted to hold this item.

#64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities.

[03-14-12 @8:54AM]

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: This is the primary item to #64-12(2) which was approved so it is no longer relevant. The Committee voted No Action Necessary.

#309-13 DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton. [09/11/13 @ 4:12PM]

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: This was the original item on the medical marijuana dispensary ordinance amendment. The Committee is now working from the public hearing item #309-13(4) so this item is no longer relevant. The Committee voted No Action Necessary.

#423-12 ALD. JOHNSON AND SANGIOLO requesting that the Director of Planning & Development and the Commissioner of Inspectional Services review with the Zoning & Planning Committee their analysis of the FAR regulations and assessment of the possible impact on housing construction and renovation in the City. [12/03/12 @ 9:14 AM]

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: James Freas addressed the Committee. This is an update on the continued tracking of the impact of the FAR numbers that were adopted last October. The total number of new home permits continue to increase each year by approximately 10 units from 2010-2013. There is a recovery in the housing market and building permits for new homes are increasing in the City. Since November 1st there are 70 special permits that were decided on by the Board of Aldermen. There has been an increase in the number of special permits that are just for the purposes of FAR, but overall that represents about 20% of the total special permits. Basically, 1% of all new home construction in the City requires a special permit for FAR. The Planning Memo which was attached to the agenda provides detailed numbers of the charted changes for single-family, two-family and multi-family units and how Newton tracks with the region (which seems to be on par for the most part.)

The Planning Department recommends that any consideration of changes to FAR be considered in the context of comprehensive zoning reform Phase 2. It was noted that the Land Use Committee is also discussing ways to improve their ability to review projects through policy or rule changes as well.

Committee members stated that it seems that there is no easy correlation, much less causation between the FAR rules and the production of housing. They agreed that it was best to clear this item and take up this issue in Phase 2 zoning reform. The Committee voted No Action Necessary.

#328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: As the items are related, the Committee voted No Action Necessary on this item as well. See note above.

Respectfully Submitted,

Marcia T. Johnson



Massachusetts
Patient Advocacy
Alliance

Advocating for safe access to medical marijuana.

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November 13, 2013
Newton Zoning and Planning Committee
Planning Development Board

In support of #309-13 Medical Marijuana Dispensary Regulations
Matthew J. Allen, Executive Director, Massachusetts Patient Advocacy Alliance

BACKGROUND

The Massachusetts Patient Advocacy Alliance (MPAA) is a coalition of medical marijuana patients, their family members, medical professionals, and public health groups advocating for safe access to medical marijuana for patients with a doctor's recommendation. MPAA backed the 2012 medical marijuana ballot initiative, and has since been working to ensure that patients have a voice in implementation.

MPAA represents patients in Newton suffering from multiple sclerosis, severe chronic pain, cancer, and other serious illnesses who have voiced the need for a medical marijuana dispensary in the community, so that they can safely access their medicine.

STATE REGULATIONS

The medical marijuana law in Massachusetts includes extensive controls at the state level in order to relieve municipalities from the burden of regulating the day to day operations of registered marijuana dispensaries (RMDs). Patients must:

- obtain a recommendation from a doctor with whom they have a bona fide patient-physician relationship,
- register with the state and receive a state issued identification card,
- renew the recommendation and card annually.

The state Department of Public Health is required to:

- verify doctors' recommendations,
- maintain a database of all patients who have received and doctors who have written recommendations,
- license no more than five dispensaries per county by January 2014, meaning no community will host more than one dispensary.

RMDs are required to:

- follow strict security plans including state-of-the-art video surveillance,
- track inventory from seed to sale,

Submitted by John Marfisi c P. H.

**A REGULATION TO ENSURE SAFE ACCESS TO MEDICAL MARIJUANA
IN THE CITY OF BOSTON**

Whereas, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for medical purposes through Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana; and

Whereas, nothing in that Act or its implementing regulations at 105 CMR 725 supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes; and

Whereas; the prevention of the illegal sale and use of marijuana, particularly by the city's youth, is a public health priority; and

Whereas; Registered Marijuana Dispensaries and similar clinics in other jurisdictions have been found to present unique and challenging threats to public health and safety; and

Whereas, the state regulation at 105 CMR 725.600 allows for lawful local oversight and regulation, including fee requirements; and

Whereas, reasonable and effective local oversight of the cultivation, processing, distribution, sale and use of marijuana for medical purposes is needed to protect community health and safety while ensuring legitimate patient access;

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Boston residents, particularly the most vulnerable, and pursuant to the authority granted to it under M.G.L. c 111 § 31, the Board of Health enacts a Regulation to Ensure Safe Access to Medical Marijuana in the City of Boston as follows:

GUIDELINES

1. The Boston Public Health Commission ("Commission") may issue guidelines for the implementation of these regulations, including but not limited to definitions of terms used in these regulations and in the guidelines. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulations shall control.

PERMITTING

1. Any proposed Registered Marijuana Dispensary ("RMD") shall obtain an Operating Permit in the form and manner prescribed by the Office of Environmental Health of Boston Public Health Commission, as may be further set forth in the Guidelines.

2. An annual Operating Permit fee of \$500.00, as may be amended from time to time through Guidelines issued by the Boston Public Health Commission's Executive Director, shall be assessed annually.
3. The RMD operator shall post the Operating Permit in a clear and conspicuous manner.
4. No Dispensary Agent shall sell or otherwise distribute marijuana or marijuana products within the city of Boston without first obtaining a Dispensary Agent Permit issued annually by the Commission. For purposes of this regulation, Dispensary Agent will include board member, director, employee, executive, manager, or volunteer of a Registered Marijuana Dispensary, who is at least 21 years of age and who has received approval from the state under 105 CMR 725.030. Employee includes a consultant or contractor who provides on-site services to a Registered Marijuana Dispensary related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.
5. As part of the Permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation.
6. Each applicant is required to provide proof by means of a valid government-issued photographic identification containing the bearer's date of birth that the applicant is 21 years old or older.
7. Each applicant is required to provide proof of a current Dispensary Agent registration, issued by the Commonwealth of Massachusetts, before a Permit can be issued.
8. The fee for a Permit shall be \$100, and may be amended at the discretion of the Executive Director.
9. All Dispensary Agent and Operating Permits expire annually on December 31st and shall be valid for a maximum term of one year, renewable annually on January 1st.
10. No permit issued under this regulation may be transferred to any other person or entity.

REQUIREMENTS AND PROHIBITIONS

1. The cultivation, processing, distribution, sale and use of marijuana for medical purposes shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not be limited to compliance with Food Service Health Permit requirements, Weights and Measures requirements, Regulations for the Control of Noise in the City of Boston, Public Nuisance Properties Ordinance, Clean Air Works Workplace Smoking and E-Cigarette Regulation, and any and all requirements associated with zoning and permitting.
2. In no instance shall an Operating Permit be issued to any RMD that is within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.
3. The cultivation, processing, distribution, or sale of marijuana for medical purposes shall not exempt any person or entity from complying with all federal, state and local laws,

- ordinances, regulation or policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein.
4. The issuance of an Operating Permit under this regulation shall be conditioned on Registration approval by the Massachusetts Department of Public Health as required by state law and regulation. Any revocation of an RMD's state registration shall result in an automatic suspension of that RMD's Operating Permit.
 5. RMDs shall submit a security plan for review to the Boston Public Health Commission detailing all security measures taken to ensure patient and community safety and eliminate unauthorized access to the premises. The Boston Public Health Commission may issue guidelines or other procedure setting forth specific security requirements. Unless specified by any other state or local requirement or agreement as to the hours of operation of a RMD, the Executive Director, in consultation with Boston Police Department, City of Boston Inspectional Services Department, neighborhood associations, community organizations and residents, may set limitations on the hours of operation of any RMD.
 6. Each RMD must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the RMD's operating practices, policies and plans.
 7. RMDs must offer a secure patient or personal caregiver home delivery system that serves every address within Boston's city limits and provides patient or personal caregiver home delivery service to any patient or personal caregiver residing in the city of Boston who suffers a physical incapacity to access transportation as described by 105 CMR 725.035(A)(2).
 8. A RMD shall submit a plan for review to the Boston Public Health Commission detailing its plans to provide reduced cost or free marijuana to patients with documented verified financial hardship as required by 105 CMR 725.100(A)(6). If said plan is deemed insufficient to ensure adequate patient access, no Operating Permit shall be issued.
 9. The Executive Director may set further limitations on signage and advertising of RMDs, and may require the distribution of educational materials. Signage limitations may include, but need not be limited to those set forth in 105 CMR 725(105)(L), including restrictions on the use of images related to marijuana or marijuana paraphernalia, size and visibility of marijuana displays from outside a RMD. Educational materials to be distributed may include a "patients' bill of rights" along with information on addiction and treatment resources.
 10. A RMD may not sell any products other than marijuana. For purposes of this subsection, "marijuana" may include Marijuana Infused Products, marijuana seeds, and other products that facilitate the use of marijuana for medical purposes, such as vaporizers. RMDs may not sell any tobacco product, or other nicotine delivery product, including e-cigarette cartridges or liquids that contain nicotine.

11. RMDs shall submit data and reports to the Boston Public Health Commission in a form and manner determined by the Executive Director.
12. The issuance or renewal of an Operating Permit may be conditioned up the approval of any plan or compliance with this Regulation or any guideline or requirement issued under the authority of this Regulation.
13. Issuance and maintaining a Dispensary Agent Permit shall be conditioned on an applicant's on-going compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
14. A Dispensary Agent Permit will not be renewed if the Permit Holder has failed to comply with any corrective action plan and/or has not satisfied any outstanding Permit suspensions.
15. Dispensary Agents must present their state Registration Card and Dispensary Agent Permit to any law enforcement official or municipal agent who questions the agent concerning their marijuana-related activities.
16. Inhaling, exhaling, burning or carrying any lighted or vaporized substance in any manner or form, including marijuana used for medical or any other purpose in a workplace shall constitute a violation of this regulation and shall be subject to the fines and penalties stated in the Clean Air Works Workplace Smoking and E-Cigarette Use Regulation.

ENFORCEMENT AND PENALTIES

1. Authority to inspect RMDs for compliance and to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or designees, the City of Boston Inspectional Services Department, and the Boston Police Department.
2. Any person may register a complaint under this Regulation to initiate an investigation and enforcement with the Boston Public Health Commission, its subsidiary programs or designees. Unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.
3. Any fines or fees collected under this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to the regulation of medical marijuana.
4. It shall be the responsibility of the RMD Occupancy Permit holder and/or individual in charge of the RMD to ensure compliance with all applicable sections of this regulation. Any RMD found to be in violation of any of the provisions of these regulations may receive a written warning citation, Operating Permit suspension, Dispensary Agent Permit suspension, Operating Permit revocation, or Dispensary Agent revocation. For any violation, the Commission or its designee may order the RMD permit holder appear for a hearing and/or enter into a corrective action plan to address any and all violations and prevent future violations.
5. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Boston Public Health Commission or a City of Boston department or

agency from suspending or revoking any license or permit issued by and within the jurisdiction of such department or agency for repeated or egregious violations of this regulation.

6. Boston Public Health Commission may file a complaint in any court of competent jurisdiction and/or pursue any other remedy as warranted by law to enforce the provisions of this regulation.

APPEALS

1. Any RMD Operating Permit holder, Dispensary Agent, or any person or entity charged with violation of any provision of this regulation shall receive a citation from a designated agent of the Commission. Such citation and any subsequent hearing notification shall be deemed a Notice of Action within the meaning of 801 CMR 1.02(6).
2. Unless waived, the Commission shall conduct an Administrative Hearing before a designated hearing officer and in accordance with procedures approved by the Commission's Executive Director, to determine the facts of the violation, the appropriate corrective action measures, term of suspension, if any, and/or issue a permit revocation order.
3. Any RMD Operating Permit holder, Dispensary Agent, or any person or entity cited for violation of this regulation wishes to appeal the findings or rulings of the Hearing Officer he/she shall file a written appeal, and any supporting memoranda and documents, within twenty-one (21) days of the date the Hearing Officer's decision is issued. The Commission shall file any response to the appeal within fifteen (15) days of the date of receipt of the appeal is filed.
4. The Commission's Executive Director or his/her designee shall review the appeal and may hear oral argument. The Executive Director or his/her designee shall make a written finding and recommendation. The Executive Director's decision shall be the final decision of the Commission.
5. Failure to comply with any corrective action plan, suspension or revocation, shall result in automatic suspension of the permit.

RETALIATION

1. No person, retailer, or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

SEVERABILITY

1. If any provision, clause, sentence, paragraph or word of this Regulation or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provisions or application and to this end the provisions of this Regulation are declared severable.

EFFECTIVE DATE

1. This regulation shall take effect immediately upon passage by the Board of Health.

AUTHORITY

M.G.L. c. 111, 31; M.G.L. c. 111, App. §§2-1, 2-3, 2-6(b) and 2-6(j), 2-7(a)(1) and 2-7(a)(15).

DRAFT