



City of New Bedford

Department of Planning, Housing & Community Development

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STAFF REPORT

PLANNING BOARD MEETING

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ZONING TEXT AMENDMENT: Temporary Moratorium on Recreational Marijuana Establishments

Proposal: Adoption by City Council of an amendment to Chapter 9, Comprehensive Zoning, Section 5700, inserting new sections (Sections 5720 – 5723) that would effectively establish a temporary moratorium on recreational marijuana establishments in the City of New Bedford. The Planning Board’s recommendation in this matter is requested by the Council.

Overview: In the November 2016 general election, Massachusetts voters approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes. Regulations governing the licensing of commercial activities for such purposes will be generated by the Commonwealth’s “Cannabis Control Commission” (CCC). Cities have the right to enact zoning to regulate the time, place and manner of recreational marijuana under the existing law for themselves. However, there is no opportunity for cities like New Bedford to weigh-in with the CCC on the awarding of licenses, if the applicant is in compliance with local zoning.

Through the CCC, the Commonwealth has until March 15th of 2018 to issue “initial” regulations governing its award process for recreational marijuana licensing. Although regulations must be issued by that date, it is highly likely that they will be temporary and will undergo further revision. Despite their preliminary nature, these regulations must be put forth on 3.15.18 because the CCC must begin accepting applications from “experienced marijuana establishments” in just under one year from now (April 1.2018).

So why a temporary moratorium? The City of New Bedford’s zoning ordinance does not specifically address non-medical marijuana land uses nor does it provide for facilities engaged in the production and/or sale of recreational marijuana. Because of this, and in light of the impending reality that such facilities may look to locate in New Bedford, it is important to decide the “where, how, and to what extent” such facilities will be allowed within the city. As the proposed Section 5721 notes, “the regulation of recreational marijuana introduces new legal, planning and public safety issues...” Such issues necessitate time to study and consider how the city might best “address these issues and the potential impact of State regulations on local zoning...” A temporary moratorium on recreational marijuana establishments will afford New Bedford the opportunity to appropriately plan for such uses for the long term.

Why not just draft a zoning amendment right now instead of adopting a temporary moratorium? Why wouldn’t the City of New Bedford simply draft an ordinance right now so that it is adopted and in place by April of next year? Unfortunately, because no regulations have yet been established by the Commonwealth and there is nothing yet on the books as to *how* this will be governed at the state level, staff would argue that it would be a premature exercise to try and develop the city’s own land use regulations at this point since there’s no clarity on

what might be coming before it once the licensing opens up. However, with a temporary moratorium in place, the city would be protected against having facilities come in without having first had the opportunity to enact appropriate land use measures.

What is being proposed? After significant research, meetings and due diligence with state officials as to the implications for the city given the results of the November 2016 referendum, the Mayor’s Office and Solicitor’s Office have proposed a zoning text amendment that would temporarily prohibit the establishment of any recreational marijuana facilities. This measure would serve as a "pause" button and allow the City time to study and consider whether to adopt additional regulations related to recreational marijuana. The prohibition would be temporary in nature, running only until September 30, 2018 or until the city adopts new ordinance language addressing this use, whichever comes first.

On establishing a moratorium...

Zoning moratoriums are a legal mechanism to prevent development until after a municipality has established rules. The United States Supreme Court has upheld the government's authority to implement temporary moratoria. In determining the reasonableness of a moratorium, courts typically review whether:

- the moratorium advances a legitimate governmental interest
- the governmental action represents diligence and good faith
- the moratorium is applied equally and fairly
- the moratorium does not deprive the property owner/s of all reasonable use for too long a time

With respect to the proposed moratorium: the city’s interest in addressing land use and public safety considerations would be furthered, the action reflects a careful assessment of existing and anticipated conditions, the moratorium would apply city-wide and it would only be a temporary means to an end.

For these reasons, staff finds that the moratorium as proposed does meet these tests of reasonableness.

On the temporary nature of the moratorium...

Many courts have consistently held that temporary restraints of property rights are a valid exercise of police power. In this way, a temporary zoning moratorium is a valid stopgap or interim measure that the city can invoke to consider comprehensive zoning changes. The MA Attorney General’s Office approved a temporary moratorium on recreational marijuana businesses as recently as this past January in the town of West Bridgewater, citing that the moratorium was “consistent with the Town’s authority to impose reasonable time limitations on development so that the Town can engage in legitimate planning study.”² In this proposal, the moratorium would end September 30, 2018 (or on the date a new zoning ordinance addressing recreational marijuana is adopted and effective if earlier), and will ensure that once the Commonwealth’s “interim” licensing regulations are in place and a subsequent “final” licensing regulation is adopted (as is anticipated), the city will have sufficient time to properly develop its new zoning in a way that appropriately reflects state regulations.

For this reason, staff finds that the temporary nature of the moratorium to be within the scope allowed by the courts.

Staff recommendation: While the introduction of the sale of recreational marijuana has been decided by the Commonwealth’s electorate, and the governance on the awarding of licensing for recreational marijuana establishments will be determined by the CCC, it is the City of New Bedford's responsibility to impose reasonable safeguards regulating the time, place and manner of such facilities. Doing so thoughtfully and retrospectively in light of final state regulations to be promulgated next year, will afford the city the time it needs to comprehensively approach and adopt new zoning. As such, staff recommends that the Planning Board recommend the adoption of the proposed temporary moratorium to the City Council.

¹ (Tahoe-Sierra Preservation Council, Inc. et al. v. Tahoe Regional Planning Agency et al., 535 U.S. 302).

² MA Municipal Association (MMA) <https://www.mma.org/ag-ok%E2%80%99s-local-temporary-moratorium-recreational-marijuana-businesses>