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DRAFT MEMORANDUM

DATE: January 20, 2021
TO: Select Board
FROM: James Freas, Director of Community & Economic Development
RE: Marijuana Establishments Review Process - Updates & Options
Meeting Date: January 27, 2021

The Marijuana Establishments RFI Review Group (Review Group) submitted its recommendations to the Select Board on the selection of Retail Marijuana establishments in October 2020 and, this month, the Cannabis Control Commission has finalized two new license classifications. The intent of this memo is to present options for the Select Board's consideration on moving forward with the selection of Retail Marijuana Establishments with which to open negotiations of a Host Community Agreement (HCA) and to update the Board on the new license classifications and make recommendations with regard to how the Town may address these changes.

Retail Marijuana Establishment Selection

According to the process laid out in the Marijuana Establishments RFI (RFI), the process for selecting Retail Marijuana Establishments with which to begin negotiations of an HCA is now in the hands of the Select Board. At this point in time, with more than three months since the publication of the comments and recommendations of the Review Group, it is reasonable to assume that respondents to the RFI may have actions or ideas to address the staff concerns raised. Consideration of such modifications to the original submittals would potentially be of benefit to the Town. In light of that possibility, the Select Board has a number of options for how to proceed with the selection process.

The RFI gives the Select Board the authority to select two, one, or zero respondents with which to negotiate an HCA. Further, the Select Board may, consistent with the RFI, conduct interviews and accept additional information from respondents. Within this framework, staff proposes the following options and recommendation:

1. **Select Respondents Now** – As directed by the Select Board, the Review Group conducted a thorough evaluation of all respondents. All responses were scored and those scores revealed a clear ranking in which there were three groupings amongst the eight respondents. Based on that work, the Board could select one or two of the

respondents from the top tier group and vote to authorize the Interim Town Administrator to form an HCA negotiation committee. This option advances the process expeditiously and leads most quickly to the Town collecting revenue.

2. Extend the Selection Process – The Select Board could request that respondents prepare presentations and submit materials to expand on or modify their previous submissions. In this scenario, staff recommends that the Board adopt guidelines, such as those offered in Attachment A, to shape the submissions and presentations to the Board. Further, staff recommends that each respondent conduct a community meeting before presenting to the Board. Following this process, the Select Board would select one or two respondents and vote to authorize the Interim Town Administrator to form an HCA negotiation committee. Depending on the number of respondents interviewed, this option would likely add three to five months to the selection process.
3. Re-issue the RFI – The Select Board could decide to re-issue the RFI, effectively beginning the process over again. This option would open the process to other potential respondents but would also extend the process another six to eight months.

Recommendation

Staff recommends a combination of options 1 and 2 as these together would both expedite some new revenue coming to the Town while also allowing the Select Board an opportunity to consider potentially improved submissions to the benefit of the Town.

Under option #1, staff recommends selecting Cypress Tree Management. The Review Group ranked this respondent number 1, taking into account the quality of the management team, the business structure, and their location off Speen Street. In addition, given the policy embodied in the RFI criteria of spreading out the two retail marijuana establishments so that they are not located in the same area, Cypress Tree is the only top ranked respondent not located at the eastern end of Worcester Street. All but one of the remaining respondents are clustered in that same location so, if the Board would like further consideration of any of these submittals, they cannot select to advance a submittal from this area under option #1.

Staff recommends option #2 for selecting a second submittal. Option #2 gives the Select Board an opportunity to hear directly from respondents, consider any potential modifications of their submittals, and consider further community input while limiting the extension in the decision-making timeframe.

New License Types

The Cannabis Control Commission (CCC) has created two new adult-use marijuana establishment license types – Marijuana Courier and Marijuana Delivery Operator (collectively Delivery Licenses). The introduction of Delivery Licenses changes the field as Natick considers its policies and regulations for marijuana establishments. More specifically, the Town will need to update its zoning bylaws to reflect this change. Neither delivery license type is considered a retail license and therefore does not affect the Town's cap of two retail licenses.

The two delivery licenses are defined as:

1. Delivery Courier: This type of licensee is allowed to deliver marijuana products from a licensed marijuana retailer to customers. A delivery courier is not authorized to actually sell marijuana products to consumers—only to deliver from retailers, who make the sales themselves.
2. Delivery Operator: This type of licensee is authorized to purchase marijuana products at wholesale, to warehouse the products, label them (but not repackage them), sell them and deliver them. It may not operate a storefront retail operation; all sales must be through delivery.

Notably, both delivery license types are allowed to deliver in Natick, wherever the store or base of operations is located. A Delivery Courier could pick up from a Framingham retail establishment to deliver in Natick or a Delivery Operator could locate in Framingham and deliver in Natick. Tax revenue and any other proceeds in the above scenarios would go to Framingham. Natick only gets revenue from these delivery license types if the business is located in Natick.

Natick's current zoning effectively bans these two new delivery licenses because a marijuana delivery type use is not listed as one of the allowed uses in the use table found in section III-K.2.5. Under the State requirements, the Town may only ban a marijuana establishment license type through a Town-wide referendum. As no such referendum has been done, the zoning bylaw needs to be updated to reflect the new license types. A first draft of potential zoning changes can be found in Attachment B. The Planning Board will sponsor a warrant article.

It is unclear now what the implications may be for retail marijuana establishments with the introduction of these delivery services. Delivery may cut into retail sales, which may be a challenge for retail establishments. On the other hand, delivery options may reduce the queuing and parking challenges experienced by some retail locations, making parking less of an issue.

Select Board Retail Marijuana Selection Guidelines

Responses by Retail Marijuana Establishments to the Adult-Use Marijuana Establishments RFI were due June 6, 2020. The Review Working Group completed its work and submitted its recommendations to the Select Board on October 14, 2020. The process established by the Select Board in the RFI allows for the Select Board to accept further submission materials and presentations from respondents as they prepare to make a decision. The following defines such submissions and presentations for the Select Board's decision process as of January 27, 2021.

Submission Materials

1. Submission materials for Retail Marijuana Establishments must reflect proposed locations and Retail Marijuana companies already reviewed by the RFI Review Working Group.
2. The proposed Retail Marijuana Establishment may not be substantially larger than that proposed in a company's original RFI response.
3. If a company has not previously conducted a Community Meeting for the proposed location, the company is encouraged to contact the Community & Economic Development Department. The Community Meeting should be consistent with CCC requirements.
4. Other than those requirements above, new submission materials may reflect changes to a Retail Marijuana Establishment company's original RFI response.
5. Submitted materials are limited to no more than five pages, inclusive of illustrations, plans, or any other materials. Respondents are encouraged to be concise.
6. Materials are due by close of business on March 31, 2021.

Presentations

1. Each respondent invited to present to the Select Board will be given up to 15 minutes to present, exclusive of questions by the Board.
2. The respondent must submit any presentation slideshow by close of business on the day one week before their scheduled date of presentation.

Section III-K: Marijuana Establishments

A. Purpose

~~This moratorium is intended to provide restrictions that will allow the Town of Natick (“Town”) adequate time to consider whether and/or how to allow or prohibit marijuana establishments and related uses, in accordance with applicable state laws and regulations, and to undertake a planning process as described herein. By vote at the Massachusetts state election on November 8, 2016, the voters of the Commonwealth approved “The Regulation and Taxation of Marijuana Act,” which was subsequently codified as Chapter 334 of the Acts of 2016, and subsequently amended, in part, by Chapter 351 of the Acts of 2016, entitled “An Act Further Regulating the Cultivation of Marijuana and Marihuana,” and by Chapter 55 of the Acts of 2017, entitled “An Act to Ensure Safe Access to Marijuana” (collectively, the “Acts”). Among other requirements, pursuant to the Acts, the Cannabis Control Commission is charged with promulgating future regulations regarding administration and implementation of the Acts. Regulations to be promulgated by the Cannabis Control Commission are expected to provide guidance in the licensing and regulation of marijuana establishments.~~

~~The regulation of marijuana establishments raises novel and complex legal, planning, and public safety issues, among others. In turn, the Town needs time to study and consider the regulation of marijuana establishments and other related uses, so that it will have the opportunity: to address such novel and complex issues; to study and consider the potential impacts of such establishments and other related uses on adjacent uses and on the general public health, safety and welfare; to consider and address the potential impact of the Acts, and any future regulations on local zoning; and to undertake a planning process to appropriately address these considerations through zoning bylaws and other applicable bylaws and regulations, consistent with state laws and future regulations. A temporary moratorium on the use of land and structures in the Town for marijuana establishments and related uses will allow the Town sufficient time to engage in a planning process to address zoning issues and the effects of such establishments and uses in the Town, and to enact bylaws in a manner consistent with sound land use planning goals and objectives, the Acts, and future regulations.~~

B. Temporary Moratorium

~~The use of land and/or structures for marijuana establishments as defined in Massachusetts General Laws Chapter 94G, Section 1 and as may otherwise be defined by Massachusetts law or regulation, to include, without limitation, all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers, on-site consumption of marijuana at a marijuana retailer location, any other types of licensed marijuana-related businesses, and the conducting of any such activity for commercial purposes by whichever name used, and any related use, shall not be permitted in any zoning district in the Town so long as this moratorium is effective, as set forth in Section C below. Use variances shall be strictly prohibited. During this moratorium, the Town shall undertake a planning process consistent with the purposes set forth herein.~~

C. Expiration

~~For the reasons set forth above and to ensure Natick has a comprehensive Zoning By-Law on Adult Use Marijuana in place and notwithstanding any other provision of the Natick Zoning~~

~~Bylaws to the contrary, the temporary moratorium set forth in Section B above shall be in effect through June 30, 2019, unless extended, modified or rescinded by a subsequent action of Town Meeting. (Art. 3, Fall STM#2, 10/4/2018)~~

~~D. Conflict of Laws~~

~~In the event of any conflict between the provisions of this Bylaw and any other applicable state or local law, regulation, by law, or approval by the voters, the stricter provisions shall control.~~

~~E. Severability:~~

~~The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of this Bylaw is found to be invalid, such invalidity shall not affect the other provisions or application of this Bylaw, to the extent permitted by law.~~

~~(Art. 26, Fall A.T.M., 10/17/17)~~

Section III-K.2: Adult Use Marijuana Establishments

1. Purpose.

In addition to Section 100, the purpose of this Section is to regulate the time, place and manner of Adult Use Marijuana Establishments. The zoning will serve to preserve the character of the community and create a place for the public to have access to legal marijuana while mitigating community impact. This Bylaw shall provide regulations and criteria that will support the public's right to access legal marijuana, protect the public health, safety, and well-being and expand new growth for the tax base.

2. Relationship to underlying districts and regulations

2.1 The Adult Use Marijuana Overlay Districts shall overlay all underlying districts so that any parcel of land lying in an Adult Use Marijuana Overlay District shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in this Zoning Bylaw.

2.2 All regulations of the underlying zoning districts shall apply within the Adult Use Marijuana Overlay Districts, except to the extent that they are specifically modified or supplemented by other provisions of the applicable Adult Use Marijuana Overlay District.

3. Scope.

This Section III-K relates only to Marijuana Establishments authorized by General Laws, Chapter 94G, and not to Registered Marijuana Dispensaries authorized by General Laws, Chapter 94I; the location and operation of which is governed by Section III.323.8 of these Bylaws, nor to marijuana-related businesses not required to be licensed by Chapter 94G, except as otherwise provided for herein.

4. Definitions.

The terms used herein shall be interpreted as defined in the regulations governing Adult Use of Marijuana (935 CMR 500.00) and otherwise by their plain language, and shall apply only to this Section III-K.2

Commission: The Cannabis Control Commission established by M.G.L. c.10, s.76 with authority to implement the state marijuana laws, including, M.G.L. c.94I, and M.G.L. c.94G, and all related regulations, including 935 CMR 500.00, 935 CMR 501.00 and 935 CMR 502.00.

Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand marijuana or marijuana products and to transport marijuana to Marijuana Establishments, but not to consumers.

Delivery Courier: An entity licensed by the Commission to deliver marijuana products from a licensed marijuana retailer to customers. A delivery courier is not authorized to actually sell marijuana products to consumers—only to deliver from retailers, who make the sales themselves.

Delivery Operator: An entity licensed by the Commission to purchase marijuana products at wholesale, to warehouse the products, label them (but not repackage them), sell them and deliver them. It may not operate a storefront retail operation; all sales must be through delivery.

Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

Host Community Agreement: An agreement, pursuant to M.G.L. c.94G, s.3(d), between a Marijuana Establishment and a municipality setting forth additional conditions for the operation of a Marijuana Establishment, including stipulations of responsibility between the parties.

Independent Testing Laboratory: A laboratory that is licensed by the Commission in accordance with 935 CMR 500.00.

Manufacture: To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

Marijuana Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, preparing and maintaining soil and other media and promoting the growth of marijuana by a marijuana cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for marijuana cultivation. Such use is not agriculturally exempt from zoning.

Marijuana Cultivator: An entity licensed by the Commission to cultivate, process and package marijuana, to transfer marijuana to other Marijuana Establishments, but not directly to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a Medical Marijuana Treatment Center (Registered Marijuana Dispensary).

Marijuana Microbusiness: A Marijuana Establishment that can be either a Marijuana Cultivator or Product Manufacturer or both, licensed in accordance with the requirements of 935 CMR 500.00.

Marijuana Products: Marijuana and its products unless otherwise indicated. These include products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana or marijuana products and to transfer these products to other Marijuana Establishments, but not directly to consumers.

Marijuana Retailer: An entity licensed to purchase and transport marijuana or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering marijuana or marijuana products to consumers and from offering marijuana or marijuana products for the purposes of onsite social consumption on the Premises of a Marijuana Establishment.

Third Party Marijuana Transporter: An entity, that is licensed to purchase, obtain, and possess marijuana or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not directly to consumers.

Premises: Any indoor or outdoor location over which a Marijuana Establishment or its agents may lawfully exert substantial supervision or control over entry or access to the property or the conduct of persons.

Process or Processing: To harvest, dry, cure, trim and separate parts of the marijuana or marijuana plant by manual or mechanical means, except it shall not include manufacturing of marijuana products as defined in 935 CMR 500.002.

Marijuana Research Facility: An entity licensed to engage in marijuana research projects by the Commission.

Third Party Marijuana Transporters	SP	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Independent Testing Laboratories	SP	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Marijuana Retailers	N	SP	N	N	N	N	N	N	N	N	N	N	N	N	N	N

5.2 Intentionally left blank

5.3 No Marijuana Establishment shall be located within a building containing residential units, including transient housing and group housing.

5.4 No Marijuana Retailer shall be located within 500 feet of another Marijuana Retailer. Distance shall be measured by a straight line from the nearest point of the building in question to the nearest point of the building where the Marijuana Establishment is or will be located.

5.5 With the exception of a licensed Marijuana Transporter, no Marijuana Establishment shall be permitted to operate from a moveable, mobile or transitory location.

5.6 Home Occupation: Marijuana Establishments are not permitted as a Home Occupation, as defined within the Zoning Bylaw.

5.7 Use Variances: Notwithstanding any other provision of this Bylaw, no use variances shall be allowed for any Marijuana Establishment in the Town of Natick.

6. Time and Manner.

6.1 Odor: No Marijuana Establishment shall allow the escape of odors or gases from the cultivation, processing, storage, or manufacturing of marijuana or marijuana products. Every Marijuana Establishment shall incorporate odor control technology, to the extent necessary, to ensure that emissions do not violate M.G.L c. 111, s. 31 C.

6.2 Signage: All signage shall comply with the requirements of 935 CMR 500, and Section V of this Zoning Bylaw.

6.3 Intentionally left blank.

6.4 Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the Marijuana Establishment is located and Marijuana Establishments shall comply with the requirements of 935 CMR 500 with respect to visibility of marijuana and marijuana products. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen and the SPGA shall consider the surrounding landscape and viewshed to determine if an artificial screen would be out of character with the neighborhood.

6.5 Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding the Premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, excessive pedestrian or vehicular traffic, littering, loitering, illegal parking, loud noises, excessive citation for violations

of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public or private way (sidewalks and streets).

6.6 Security: The applicant shall submit a security plan to the Police Department to demonstrate that there is limited undue burden on the Town public safety officials as a result of the proposed Marijuana Establishment. The security plan shall include all security measures for the site and transportation of marijuana and marijuana products to and from off-site locations to ensure the safety of employees and the public and to protect the Premises from theft or other criminal activity. A letter from the Natick Police Department to the Planning Board acknowledging receipt and approval of such a security plan shall be submitted as part of the Special Permit application.

Safety plans should mitigate any potential harm to the employees and the public including ensuring all customers are at least 21 years of age.

7. Adult On-Site Social Consumption.

7.1 On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments unless permitted by a local ballot initiative process, as allowed by M.G.L. c.94G s.3(b). The prohibition of on-site social consumption shall include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the Premises, regardless of whether the product is sold to consumers on site.

8. Criteria for Issuance of Special Permit.

8.1 Host Community Agreement: No Special Permit shall be granted without first having an executed Host Community Agreement with the Town of Natick.

8.2 Community Outreach Meeting: No Special Permit application shall be deemed complete until a Community Outreach Meeting in accordance with 935 CMR 500 has occurred.

8.3 State Law: Marijuana Establishment operations shall conform at all times to M.G.L., c.94G, and regulations issued thereunder.

8.4 License requirements:

8.4.1 The applicant shall submit proof that the application to the Commission has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as part of the application to the SPGA, and no Special Permit application shall be deemed complete until this information is provided.

8.4.2 No Special Permit shall be granted by the SPGA without the Marijuana Establishment first having been issued a Provisional License from the Commission pursuant to 935 CMR 500.

8.4.3 No person shall operate a Marijuana Establishment without having a license in good standing from the Commission.

8.5 Energy Use: All Marijuana Cultivators shall submit an energy use plan to the SPGA to demonstrate best practices for energy conservation. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.

8.6 Line Queue Plan: The applicant shall submit to the SPGA a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along the public right of ways will not be obstructed.

8.7 Traffic Impact Statement: Any Marijuana Establishment open to the general public shall submit a detailed Traffic Impact Statement to the SPGA.

8.8 Parking: The Site Plan shall be in accordance with Section V-D Off-Street Parking and Loading Requirements

8.9 Permitting: The Planning Board shall be the Special Permit Granting Authority (SPGA). In addition to this section, the Special Permit shall also be governed by the requirements of Section VI-DD, Special Permit Procedures and Site Plan Review of the Zoning Bylaw. A special permit granted under this Section shall have a term limited to the duration of the applicant's control and/or use of the Premises as a Marijuana Establishment. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit.

8.10 Hemp: For the purposes of this Bylaw, the cultivation of hemp shall require a Site Plan Approval from the Planning Board in accordance with Section III-A.7 "Regulation of Land or Structures for Purposes Otherwise Exempted from Permitting" and comply with all applicable sections herein.

Use of land or buildings for hemp processing and/or product manufacture shall be subject to such zoning controls as apply to other (non-marijuana) processing and product manufacture operations.

8.11 Notice of Enforcement Order: A Marijuana Establishment shall file notice with the Town Administrator, Director of the Health Department, Police Chief, and the Building Commissioner within 24 hours of receipt of any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state agency (including, but not limited to, the Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment or the Marijuana Establishment's Cannabis Control Commission license.

8.12 Annual Inspection: Any operating Marijuana Establishment within the Town shall be inspected annually by the Building Inspector, the Fire Chief, the Police Department, or their designee(s), to ensure compliance with this Section and with any conditions imposed by the SPGA as a condition of the Special Permit approval.

9. Severability.

If any provision of this Section III-K is found to be invalid by a court of competent jurisdiction, the remainder of Section III-K shall not be affected but shall remain in full force. The invalidity of any provision of this Section III-K shall not affect the validity of the remainder of this Zoning Bylaw.

(Art. 2, STM#2, October 4, 2018)