

## MEMORANDUM

To: Dublin Planning and Zoning Commission

From: Jennifer D. Readler, Law Director  
Philip K. Hartmann  
Thaddeus M. Boggs

Date: May 4, 2017

Re: Proposed Medical Marijuana Legislation

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### INTRODUCTION

On May 25, 2016, the Ohio General Assembly passed Substitute House Bill 523 (“H.B. 523”), which allows individuals with a qualifying medical condition, on the recommendation of a physician, to apply to the State, and upon approval of their application receive an identification card allowing them to obtain, possess, and use medical marijuana for the treatment of the specified condition. H.B. 523 was signed into law by Ohio Governor John Kasich and thereafter became effective on September 9, 2016. Final rules implementing the bill’s medical marijuana program must be completed on or before September 8, 2017, and the Medical Marijuana Control Program must be operational on or before September 8, 2018.

Staff brought this issue to City Council at its April 10, 2017, meeting; at that meeting, Council directed staff to move forward with the proposed ban on medical marijuana cultivators, processors, and dispensaries. The proposal would amend the zoning code to prohibit these uses in all Dublin zoning districts, and therefore it is before the Planning and Zoning Commission for its consideration.

### LAW AND ANALYSIS

Pursuant to the Ohio Constitution’s Home Rule Amendment, municipalities have the inherent power to enact planning, zoning, and business-regulation laws that further the health, safety, and welfare within the municipality, provided that they do not conflict with state law. Additionally, H.B. 523 enacted Section 3796.29 of the Revised Code, which expressly affirms that municipalities may adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporate limits.

#### A. Proposed rules for medical marijuana

Since the bill’s effective date, the State’s Department of Commerce, Board of Pharmacy, and Medical Board have been working to draft rules setting standards and procedures for the

medical marijuana control program. In the meantime, many other municipalities—including Grove City, Upper Arlington, and Grandview Heights, among others—have enacted temporary moratoria on any medical marijuana manufacture, distribution, and dispensing. These moratoria vary in length, but they are united in their desire to see what these state boards propose before making a final decision on the presence of medical marijuana in their communities.

Since the beginning of the year, proposed rules have been released for processors, dispensaries, and cultivators. Under these proposed rules, Ohio will license 60 dispensaries, 24 cultivators (with potential for more based on growth in patient population), and 40 processors across the state. Each of these functions has its own licensing and fee structure, along with requirements for security plans and other disclosures. The rules also would require patients and caregivers to register with the state before purchasing medical marijuana, and medical marijuana could only be sold pursuant to a recommendation from a physician who is certified to recommend marijuana under the state's rules. Initial versions of the rules included a requirement that all dispensaries hire a part-time clinical director (either a physician, pharmacist, or mid-level practitioner) to oversee dispensary operations; this requirement was removed from the final proposed rules, however. Legal updates on the rulemaking process are attached to this memorandum for additional reference.

#### B. Actions taken by other municipalities

Many cities' moratoria have not expired, but others have already begun the process to ban medical marijuana cultivators, processors, and dispensaries in their territories. Worthington's city council recently had a first reading of an ordinance that would prohibit medical marijuana; Plain City has discussed a ban as well. The City of Hamilton, in Butler County, and the Village of Evendale, near Cincinnati, have enacted bans. Sidney, near Dayton, has extended its moratorium to October 2017. The City of Troy has struggled with the issue, having extended its moratorium through July while proposals for a small number of medical marijuana dispensaries have bounced between the city council and planning commission. Meanwhile, the Village of Johnstown approved a resolution stating its intention not to prohibit medical marijuana facilities in the village, and the City of Richmond Heights (near Cleveland) has passed an ordinance incorporating medical marijuana uses in its zoning code. The majority of jurisdictions acting on the issue, however, have either tended toward banning medical marijuana uses or extending moratoria for further study when the administrative rules become final in coming weeks and months.

#### C. The impact of marijuana's continued prohibition under federal law

The State's proposed rules have not addressed—and cannot address—a vital component of medical marijuana businesses: the continued illegality of marijuana under federal law. Marijuana (cannabis) remains classified as a Schedule I controlled substance under the Federal Controlled Substances Act, rendering the manufacture, distribution, dispensation, and the possession of marijuana with intention to manufacture, distribute, or dispense, criminal under federal law. A consequence of the continued prohibition of marijuana by the federal government is that financial services providers such as banks and credit card companies are unable to do business with marijuana enterprises because it is illegal under federal law to transmit funds known to have been derived from marijuana. The unbanked status of marijuana businesses

results in the businesses and their customers carrying significant amounts of cash and this, in turn, invites opportunity for robbery, theft, money laundering, tax evasion, and other crimes constituting threats to the public health, safety, and welfare. This has been a problem in states that have legalized medical and recreational marijuana (the banking issue applies for medical as well as recreational uses).

### **CONCLUSION AND RECOMMENDATION**

This legislation has no impact on the use of medical marijuana that complies with Ohio law and the rules that are currently under consideration. However, because of the continued illegality of marijuana, including medical marijuana, under federal law, and the consequences of that illegal status, it is the Law Director's recommendation that the City enact a ban on medical marijuana cultivators, dispensaries, and processors. A draft proposed ordinance is attached for discussion and recommendation by the Planning and Zoning Commission.

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