

MEMORANDUM

To: Members of Dublin City Council
Dana L. McDaniel, City Manager

From: Jennifer D. Readler
Thaddeus M. Boggs

Date: April 6, 2017

Re: The Status of Medical Marijuana Rules and Local Legislation in Ohio

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.

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

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 consideration. Because the Zoning Code will need to be revised, the Planning and Zoning Commission must review this legislation and make a recommendation prior to its approval, if Council desires to move forward with the proposed legislation.

TO PROHIBIT MEDICAL MARIJUANA CULTIVATION, PROCESSING, AND RETAIL DISTRIBUTION WITHIN THE CITY OF DUBLIN

WHEREAS, 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 said condition; and

WHEREAS, H.B. 523 was signed into law by Ohio Governor John Kasich and thereafter became effective on September 9, 2016; and

WHEREAS, ORC § 3796.29, enacted by H.B. 523, affirms that municipalities may adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporation limits; and

WHEREAS, pursuant to the City Charter, the Constitution of the State of Ohio, and the Ohio Revised Code, municipalities have the inherent power to enact planning, zoning and business regulation laws that further the health, safety, welfare, comfort and peace of the citizens of the municipality, including restricting, prohibiting and/or regulating certain business uses; and

WHEREAS, H.B. 523 provides that the Ohio Department of Commerce, the Board of Pharmacy, and the State Medical Board shall adopt rules establishing standards and procedures for the medical marijuana control program; and

WHEREAS, these state boards have published their proposed rules governing operation of marijuana dispensaries, cultivators, and processors, the issuance of certificates to physicians wishing to recommend medical marijuana to patients, and the registration of patients and caregivers wishing to purchase medical marijuana pursuant to these recommendations; and

WHEREAS, these proposed rules are in the process of completing the state’s agency rule-review; and

WHEREAS, the City has studied these proposed rules; and

WHEREAS, 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, a crime under federal law; and

WHEREAS, 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; and

WHEREAS, the unbanked status of marijuana businesses results in the businesses and their customers carrying significant amounts of cash; and

WHEREAS, the presence of large amounts of cash invites opportunity for robbery, theft, money laundering, tax evasion, and other crimes constituting threats to the public health, safety, and welfare; and

WHEREAS, due to the above threats to public health, safety, and welfare, having reviewed the State's rules and Federal law's continued classification of marijuana (cannabis) as a Schedule I drug, the City of Dublin determines that cultivation, processing, and retail dispensing of marijuana for medical purposes, or otherwise, shall not be a permitted use within this City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, _____ of the elected members concurring, that:

SECTION 1. That Title XI, Business Regulations, shall be amended by adding Chapter 121, Medical Marijuana, to read as follows:

CHAPTER 121 – MEDICAL MARIJUANA

121.01 DEFINITIONS.

(a) "Academic medical center" has the same meaning as in section 4731.297 of the Ohio Revised Code.

(b) "Marijuana" has the same meaning as marijuana as defined in section 3719.01 of the Ohio Revised Code.

(c) "Medical marijuana" means marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

(d) "State university" has the same meaning as in section 3345.011 of the Ohio Revised Code.

121.02 CULTIVATION, PROCESSING, OR RETAIL DISPENSING OF MEDICAL MARIJUANA PROHIBITED.

(a) The cultivation, processing, or retail dispensing of medical marijuana within the City of Dublin is hereby prohibited.

(b) This section does not prohibit research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity, if otherwise permitted by State law or rule, or local ordinance.

121.99 PENALTY

Whoever violates Section 732.02(a) is guilty of a misdemeanor of the fourth degree. Each day of violation shall constitute a separate offense.

SECTION 2. Chapter 153, Zoning Regulations, shall be amended by enacting Section 153.035, Medical Marijuana Cultivation, Processing, or Retail Dispensing, to read as follows:

153.035 CULTIVATION, PROCESSING, OR RETAIL DISPENSING OF MEDICAL MARIJUANA PROHIBITED IN ALL DISTRICTS.

(a) The cultivation, processing, or retail dispensing of medical marijuana shall be a prohibited use in all zoning districts within the City of Dublin.

(b) Use of property in violation of this section shall constitute a nuisance.

(c) In addition to other penalties provided by law, the Director of Law shall be authorized to institute civil proceedings in a court of competent jurisdiction to enjoin violations of this Section; for monetary damages arising from violations of this Section; and to take all actions necessary to secure enforcement of any injunction and collect upon any damage award, judgment, or fine in contempt levied in relation to a violation of this Section.

SECTION 3. Council hereby finds that all deliberations and votes taken in relation to this Ordinance were done in a public meeting in accordance with Section 121.22 of the Ohio Revised Code

SECTION 4. The provisions of this Ordinance are severable, and if any one or more should be found unenforceable for any reason, the remaining provisions shall remain in full force and effect.

SECTION 5. This ordinance shall take effect at the earliest opportunity allowed by law.

Passed this _____ day of _____, 2017.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

Ohio Cultivates Marijuana Dispensary Rules as White House Sends Smoke Signals of Approval

PROFESSIONALS

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MARCH 20, 2017

Legal Update

President Trump said he was "100 percent" in favor of medical marijuana during his campaign. Last week, Attorney General Jeff Sessions, one of marijuana's most vocal opponents, went as far as to call the 2013 Cole Memo - the Department of Justice guidance deprioritizing the enforcement of federal laws against states that legalized marijuana - "valid." The tea-leaves-reading seems positive for those interested in getting involved in Ohio's medical marijuana industry as the State continues to cultivate a tightly regulated program.

Most recently, Ohio released a new draft of the proposed rules governing dispensaries. The Ohio Board of Pharmacy (the "Board") received over 300 comments to its initial draft of the proposed rules resulting in changes from everything to advertising to home delivery.

Perhaps the most significant change was the increase in provisional dispensary licenses awarded from 40 to 60, signaling the Board's recognition of the greater need for patient access and demand. Furthermore, the Board may have put applicants at some ease by clarifying that it will return the \$5,000 application fee if the Board grants permission to withdraw an application due to a change in federal, state, or local rules or regulations. The comments received also caused the Board to decrease the biennial fee to operate a dispensary from \$80,000 to \$70,000.

There was a personnel change as well. The initial draft rules called for dispensaries to hire a part-time clinical director who was either a physician, pharmacist, or mid-level practitioner with prescribing authority to oversee operations. This requirement proved too onerous and was removed entirely. In response to a Board survey, only a small number of eligible clinicians said they were both willing and had an employer who would allow them to serve as a dispensary's clinical director.

50% more commenters responded against allowing home delivery of medical marijuana so the Board's initial home delivery prohibition remains unchanged. The hours a dispensary can operate were increased from 7:00 a.m.-7:00 p.m. to 7:00 a.m.-9:00 p.m. Another important change was that

Ohio Cultivates Marijuana Dispensary Rules as White House Sends Smoke Signals of Approval

dispensaries are now allowed to offer coupons as long as they are intended only to benefit indigent or veteran patients. Lastly, the Board added prohibitions on advertisements based on public comments - dispensaries are prohibited from advertising with slang terms, marijuana leaves, and clothing.

These changes are reflected in round two of the proposed dispensary rules and more changes are expected since public comments to this draft will be accepted until March 24, 2017. Interested parties should direct their comments to mmcprules@pharmacy.ohio.gov and csipubliccomments@governor.ohio.gov. Dispensary license applicants will need to continuously monitor these rules to ensure their applications are timely and prepared in a detailed fashion to be awarded a spot on the coveted ground floor of Ohio's medical marijuana industry.

For more information on Ohio's medical marijuana law, contact [Brian Higgins](#) or any member of Frost Brown Todd's [Health Care](#) industry team.

Ohio Releases Proposed Rules for Medical Marijuana Processors

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JANUARY 31, 2017

Legal Update

Cultivators will farm it. Dispensaries will sell it. But, how will Ohio's medical marijuana get from soil to store? Processors.

Licensed processors will deliver cultivators' marijuana to dispensaries in one of the plant's legally ingestible forms: oils, tinctures, plant material, edibles and patches. Ohio's proposed rules governing processors are open for public comment through February 10, 2017.

The Application

Ohio proposes issuing up to 40 provisional processor licenses beginning September 8, 2018. Processors must apply for a provisional license with a non-refundable \$10,000 fee. Like the proposed cultivator rules, each of the following application components will be scored to determine who is granted a provisional license. Each component calls for an array of complicated plans, policies and procedures that will ultimately determine which are selected for licensure.

- 1. Business Plan.** The applicant's type of business organization and governing documents, and the proposed physical address of the processor with a map establishing it is not within 500 feet of certain prohibited facilities.
- 2. Operations Plan.** Processing and extraction techniques, facility plans and employment matters to ensure compliance with all of Ohio's medical marijuana laws.
- 3. Quality Assurance Plan.** The intended use and sourcing of extraction equipment, best practices for packaging and labeling, and inventory control plan.
- 4. Security Plan.** The establishment of policies and procedures to prevent theft, loss, or diversion from a processor and protect facility personnel.
- 5. Financial Plan.** Record keeping policies and procedures, a security plan and transportation policies, and a plot plan drawn to reasonable scale designating the processor facility's different areas of operation.

Ohio Releases Proposed Rules for Medical Marijuana Processors

A Provisional License

If chosen, an applicant will be issued a provisional license and given six months to show that its facility is operational. A licensee may demonstrate this by showing that the facility complies with all of the details in its submitted application. Moreover, the licensee must also show that it is "financially responsible" by maintaining insurance coverage with limits required by the state, and either establishing an escrow account, or providing a surety bond in the amount of \$750,000, payable to the state. A processor may have to forfeit this amount to the state if it fails to adhere to its security plan or fails to ensure a consistent and uninterrupted supply of medical marijuana.

Certificate of Operation

A provisional licensee that successfully demonstrates the above will then be granted a certificate of operation, enabling it to process medical marijuana.

The public may comment on these rules by emailing mmcprules@com.state.oh.us. For more information on Ohio's medical marijuana law, contact [Brian Higgins](#) or any member of Frost Brown Todd's [Heath Care Industry Team](#).

**This does not constitute legal advice. Please note that marijuana is still illegal at the federal level and those participating in Ohio's medical marijuana industry may be subject to federal prosecution.*

High Street Releases Proposed Rules for Ohio's Medical Marijuana Cultivators

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JANUARY 23, 2017

Legal Update

Ohio's medical marijuana regulations are budding. Ohio recently released proposed rules for cultivators, those interested in "growing, harvesting, packaging, and transporting medical marijuana." There will be two types of cultivator licenses available. Level I licenses will authorize grow operations in a 25,000-square foot space and applicants will be charged a \$20,000 fee. Level II licenses will authorize grow operations in a 3,000-square foot space and applicants will be charged \$2,000.

The Application

The application must be prepared with an attention to detail because each will be scored to determine which applications are ultimately chosen to be granted a provisional license. Applicants for either Level of application must submit the following:

1. Business Plan. The applicant's type of business organization, and evidence that the proposed cultivator may operate on a particular piece of property.
2. Operations Plan. Agricultural cultivation techniques, and facility staffing and employment matters to ensure compliance with all of Ohio's medical marijuana laws.
3. Quality Assurance Plan. The intended use of pesticides and agricultural products, best practices for packaging and labeling, and disposal standards for medical marijuana wastes.
4. Security Plan. The installation of a security system, and the implementation of record keeping policies.
5. A Financial Plan. The cost breakdown of the applicant's anticipated costs and the source of funding for such costs, along with documentation showing the applicant has at least \$500,000 in liquid assets for Level I cultivators or \$50,000 in liquid assets for Level II cultivators.

A Provisional License

If chosen, an applicant will be issued a provisional license and given nine months to show that its facility is operational. A licensee may demonstrate this by showing that the facility complies with all of the details in its

High Street Releases Proposed Rules for Ohio's Medical Marijuana Cultivators

submitted application. Furthermore, the licensee must also show that it is "financially responsible," or has general and products liability insurance coverage with limits determined by the state, and a surety bond or an escrow account in the amount of \$1,500,000 for Level I cultivators and \$150,000 for Level II cultivators.

A Certificate of Operation

A provisional licensee that successfully demonstrates the above will then be granted a certificate of operation, enabling it to cultivate medical marijuana.

The public will have until the close of business on January 27, 2017, to comment on these proposed rules by emailing mmcprules@com.state.oh.us. For more information on Ohio's medical marijuana law, contact Brian Higgins or any member of Frost Brown Todd's Health Care Industry Team.

**This does not constitute legal advice. Please note that marijuana is still illegal at the federal level and those participating in Ohio's medical marijuana industry may be subject to federal prosecution.*

Highlights of Medical Marijuana Proposed Rules for Ohio Dispensaries and Physicians

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DECEMBER 20, 2016

Legal Update

On December 15, 2016, the Ohio Board of Pharmacy posted its proposed rules governing the operation of medical marijuana dispensaries. The same day, the State Medical Board posted its proposed rules regulating the issuance of certificates to physicians wishing to recommend medical marijuana to their patients. Below are a few key points from each set of proposed rules.

Dispensaries

- 1. Licenses, Applications, Certificates.** Initially, the state will allow up to 40 dispensary licenses until September 8, 2018 when it will consider offering additional licenses based on the state's population, number of patients seeking to use medical marijuana, and the geographic distribution of dispensaries state-wide. The application fee for a dispensary license will be \$5,000 and a certificate to operate the dispensary will be \$80,000. Dispensary licensees must also renew the certificate to operate every two years and pay \$80,000 for each renewal.
- 2. Employee Training.** Each dispensary will have an employee training program and each employee must receive a minimum of eight hours of training per year on topics such as the state's drug database, the state's inventory tracking system, dispensary confidentiality requirements, and instruction on the different medical marijuana strains.
- 3. Clinical Director.** Each dispensary will have to hire a clinical director who is either a licensed pharmacist, or one of the following licensed professionals authorized to prescribe drugs: a clinical nurse specialist or certified nurse practitioner, a physician, or physician assistant. The clinical director will be responsible for implementing a variety of employee trainings and overseeing the dispensary's operations.

Highlights of Medical Marijuana Proposed Rules for Ohio Dispensaries and Physicians

Physicians

- 1. Certificate to Recommend.** Qualifying physicians will not "prescribe" medical marijuana to patients, instead, they will have to receive a certificate that will allow them to "recommend" its use. To receive a certificate to recommend, a physician will be required, amongst other things, to hold an active registration with the Drug Enforcement Agency, complete at least two hours of continuing medical education regarding medical marijuana, and not have any type of compensation arrangement with any medical marijuana licensed entity.
- 2. Standard of Care.** A physician recommending the use of medical marijuana will be required to maintain medical documentation with a patient that includes things like a description of the patient's current medical condition and documented review of the patient's current medication to identify possible drug interactions with opioids.
- 3. Physician's Duties.** A physician recommending treatment with medical marijuana will have to ensure the patient is registered with the Ohio Board of Pharmacy's medical marijuana patient registry and, if the patient is registered and has received a recommendation in the immediately preceding 90 days, no medical marijuana recommendation may be made.

Public comments to the proposed dispensary rules should be directed to medicalmarijuana@med.ohio.gov, and comments to the proposed physician rules should be directed to mmcprules@pharmacy.ohio.gov. Comments will be accepted until 5:00 p.m. EST on January 13, 2017.

For more information on Ohio's medical marijuana law, contact Brian Higgins or any member of Frost Brown Todd's Health Care industry team.