



**KOPELMAN AND PAIGE, P.C.**  
*The Leader in Municipal Law*

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September 18, 2013

**Lauren F. Goldberg**  
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Ms. Heidi Anderson  
Metropolitan Area Planning Council  
60 Temple Street, 6<sup>th</sup> Floor  
Boston MA 02111

Re: Response to Request for Information regarding Legal Services  
on the Regulation of Medical Marijuana

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Dear Ms. Anderson:

The law firm of Kopelman and Paige, P.C. is pleased to provide the following response to the Metropolitan Area Planning Council's (MAPC) Request for Information regarding Legal Services for Medical Marijuana Regulation.

1. Describe the extent of your firm's knowledge related to MGL Chapter 369, An Act for the Humanitarian Medical Use of Marijuana, and 105 CMR 725.000: Implementation of An Act for the Humanitarian Medical Use of Marijuana, and any other statutes and/or regulations in Massachusetts that may govern the use, sale, cultivation, storage, distribution, sale, processing, or any activity related to medical marijuana, as such knowledge may relate to the development of local ordinances or bylaws related to said statute and implementing regulations; or comparable knowledge acquired in other states.

Kopelman and Paige is the largest municipal law firm in the Commonwealth, representing approximately one-third of the state's cities and towns. In that capacity, and as special counsel to many others, our attorneys provide a full range of legal services to municipalities, including the drafting of general and zoning bylaws or ordinances.

In response to the enactment of the Humanitarian Medical Use of Marijuana Act, Chapter 369 of the Acts of 2012 (the "Act"), and the regulations promulgated by the Department of Public Health ("DPH"), 105 CMR 725.000, in association with the Act, our firm has counseled clients with respect to the drafting and enactment of bylaws and ordinances regulating medical marijuana by preparing a "model" moratorium bylaw, "model" overlay district bylaw, and reviewing and commenting on numerous draft zoning bylaw amendment proposing to regulate medical marijuana. In addition, Attorney Katharine Doyle has presented seminars on the regulation of medical marijuana for the Citizens Planner Training Collaborative, the Massachusetts Association of Planning Directors, the Boston Bar Association. Attorney Patricia Cantor has written an article entitled, "Medical Marijuana Law - What We Know Since the November Election", which was

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published in the June 2013 issue of the Massachusetts Lawyers Journal, a publication of the Massachusetts Bar Association.

2. Describe your firm's experience in developing local ordinances and/or bylaws related to the Massachusetts Medical Marijuana Act, or comparable experience acquired in other states.
  - a. Please cite specific ordinances and/or bylaws written, and for whom
  - b. Please note whether the ordinance and/or bylaw was related to zoning or general legislation
  - c. Whether such ordinances and/or bylaws have been adopted

In response to the enactment of the Humanitarian Medical Use of Marijuana Act, Chapter 369 of the Acts of 2012 (the "Act"), and the regulations promulgated by the Department of Public Health ("DPH"), 105 CMR 725.000, in association with the Act, Kopelman and Paige, as noted, has counseled clients on the drafting and enactment of bylaws and ordinances regulating medical marijuana by preparing a model bylaws with respect to imposition of a moratorium, model moratorium bylaw, a model overlay zoning district bylaw, and reviewing and commenting on numerous draft zoning bylaw amendment proposing to regulate medical marijuana. As noted, Kopelman and Paige represents approximately one-third of the municipalities in the Commonwealth and circulated the model moratorium bylaw, the model overlay zoning district bylaw, as well as advisories regarding medical marijuana regulation to a circulation list of municipal clients. Our model medical marijuana moratorium has been adopted in numerous client communities, including Acushnet, Burlington, Chelmsford, Pembroke, Lakeville, Norfolk, Norton, Plainville, Plympton, Stoughton, Wareham, Watertown and Westport amongst others.

3. If you were consulting with a community related to the provisions of the Massachusetts Medical Marijuana Act, what types of measures would you recommend that a community consider to address the scope of the act and the potential business activities that may be eligible under the Act? What types of legislative tools should be considered by a community?

We would recommend the community determine whether it wished to adopt a moratorium or proceed directly to zoning for medical marijuana. In evaluating how to zone medical marijuana dispensaries, the community should consider how to regulate dispensaries that are located on the same site as cultivation and how to regulate separate dispensary and cultivation sites. Communities should also select the distance for the buffer requirements authorized under 105 CMR 725.110 or whether they wish to remain silent on the matter and retain the default 500 feet established by the regulations. In so selecting, a community will want to ensure that the buffer requirements in conjunction with the district(s) selected or overlay district adopted do not effectively prohibit medical marijuana dispensaries. With regard to hardship cultivation, the communities should

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consider the comments issued by the Attorney General's Office in response to proposed bylaw/ordinance amendments advanced by municipalities to impose restrictions on hardship cultivation. The Attorney General determine that the following measures conflict with the Act or DPH regulations. A general bylaw/ordinance or Board of Health regulation may be better suited to regulate public health, safety and welfare concerns related to hardship cultivation.

4. In general, what types of zoning measures do you believe a community should consider to address the scope of the Massachusetts Medical Marijuana Act?

We recommend that a municipality consider a temporary moratorium while it evaluates the appropriate zoning bylaw/ordinance amendments for medical marijuana related uses. Once the municipality has performed the appropriate amount of study and is ready to zone medical marijuana, it should determine whether it wishes to zone medical marijuana dispensaries as an authorized use in an existing zoning district or districts, and if so, what controls it wishes to utilize, if any, including site plan review or the special permit process established by G.L. c.40A §9. It should further analyze if it wishes to sites that include both a dispensary and cultivation differently from sites that only dispense or only cultivate. The municipality should determine the distance for the buffer requirements from protected uses under 105 CMR 725.110. We further recommend that a municipality examine its zoning for agricultural uses, as a number of prospective dispensary operators have announced that they believe any site that includes cultivation should be exempt from zoning regulations pursuant to G.L. c.40A §3. As previously mentioned, the ability to impose zoning controls upon hardship cultivation is limited due to potential conflicts with the Act or DPH regulations and other means of regulation may prove more useful both to the community and patients to ensure that any hardship cultivation operation is done in compliance with applicable state Codes, such as the Building Code, Sanitary Code, Fire Code and Electrical Code.

5. How would you approach working with a community to establish the legislative tools and associated recommendations to address the scope of the Massachusetts Medical Marijuana Act and any other legislation related to medical marijuana? Please be specific related to how your firm would approach such project conceptually, how it might recommend engaging the public, how information might be disseminated regarding the project, an estimated timeline for such a project, the resources of your firm (in general terms) would dedicate to such a project, and any other information that would provide a community with a clear understanding of the thoughtful approach you would use.

Our firm's attorneys would engage with the planning staff or other designated officials to discuss the particular communities concerns and objectives with regard to medical marijuana regulation. We would tailor model documents that we have developed for such purposes to the particular community's needs and present the documents to the planning staff or designated officials for review before pursuing the G.L. c.40A §5 zoning amendment process. In addition to the notice required

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pursuant to G.L. c.40A §5, we would recommend that the bylaw be posted on the Town website, together with maps and explanatory summaries, which would you assist in preparing at the direction of the municipality. Due to the depth of our level of experience in the area, the initial planning of a draft bylaw/ordinance should be brief and performed in two weeks to a month, prior to the initiation of the zoning bylaw amendment process set forth in G.L. c.40A §5. An attorney would be assigned to assist the municipality to the level desired throughout the entire process.

6. What differences might you anticipate regarding approach, timeframe and cost when engaged in a project for small, moderate and large population communities? Would there be a difference between rural, suburban and urban communities?

Timeframes and cost are reduced when a community has a professional planning staff that can evaluate the planning needs of the community and assist counsel in drafting a medical marijuana bylaw/ordinance that meets the community's planning objectives while simultaneously serving the interests of the Act and DPH Regulations. As for approach, counsel would confer either with planning staff or designated volunteers at the direction of the municipality.

With regard to the difference between rural, suburban and urban communities, greater attention should be paid to the agricultural issues associated with medical marijuana in the more rural communities, but such issues should be evaluated in every community. Rural and suburban communities may be more attractive to RMD operators who are looking for pure cultivation sites, whereas urban communities will be attractive to operators looking for a stand-alone dispensary location with a cultivation site elsewhere. We would discuss the characteristics of the community, the proximity to medical care, the presence of mass transit, and other issues in evaluating the community's potential to attract medical marijuana related uses.

7. Please provide any additional information that might aid a potential client community in making a decision regarding retaining your firm to address their concerns over the scope of the Massachusetts Medical Marijuana Act and other laws dealing with medical marijuana.

We have approximately 40 years of experience in public law, with over 98% of our practice devoted primarily to representing municipalities and public agencies. The firm's reputation in public sector law is exemplified by the ratings and accolades it has received from independent industry sources. Martindale-Hubbell Law Directory has assigned the firm an AV rating and includes us in the Bar Register of Preeminent Lawyers. The "A" signifies a firm of the highest level of legal ability, and the "V" denotes "very high" adherence to professional standards of conduct, ethics, reliability, and diligence. The Bar Register only contains the few AV-rated lawyers that Martindale-Hubbell believes are preeminent in their field. Additionally, Kopelman and Paige's attorneys have been named "Massachusetts Super Lawyers" in the area of Government/Municipal Law as chosen by their peers and through the independent research of Law & Politics. Both Massachusetts Lawyers

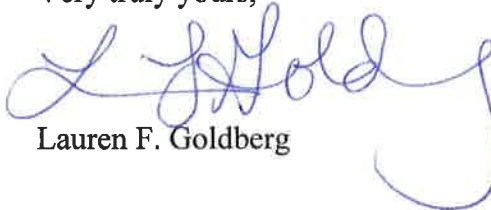
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Weekly and the National Law Journal have listed Leonard Kopelman as one of the state's most influential attorneys and he has been profiled in "Who's Who in American Law". The culture of excellence and dedication to municipal clients is exemplified by all the attorneys of the firm.

If you have any further questions regarding our response to the request for information, please contact Attorney Kay Doyle or me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "L. F. Goldberg", with a large, stylized flourish extending from the end of the signature.

Lauren F. Goldberg

LFG/ja  
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