

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

CROWN COLONY PLAZA
300 CROWN COLONY DRIVE
SUITE 410
QUINCY, MA 02169

75-101 FEDERAL STREET
BOSTON, MA 02110

ONE MONARCH PLACE
SUITE 1310R
SPRINGFIELD, MA 01144

TEL: 617-479-5000 FAX: 617-479-6469
TOLL FREE: 888-841-4850

www.mhtl.com

Arthur P. Murphy
James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
Donald L. Graham
Andrew J. Waugh
Geoffrey P. Wermuth
Robert S. Mangiaratti
Kathryn M. Murphy
Alisia St. Florian

Doris R. MacKenzie Ehrens
Lorna M. Hebert
Clifford R. Rhodes, Jr.
Karis L. North
Thomas W. Colomb
Bryan R. Le Blanc
Brandon H. Moss
Michael J. Maccaro
Kevin F. Bresnahan
Kathleen Y. Ciampoli
Brian P. Fox
Lauren C. Galvin
Tami L. Fay
Kier B. Wachterhauser
Sarah A. Catignani

Please respond to Quincy

September 18, 2013

VIA EMAIL (handerson@mapc.org)

Heidi Anderson
Manager, Municipal Procurement Services
Metropolitan Area Planning Council
60 Temple Place
Boston, MA 02111

***Re: Request for Information for
Municipal Medical Marijuana Bylaw and Ordinance Legal Services***

Dear Ms. Anderson:

We are writing to express our strong interest in assisting members of the Metropolitan Area Planning Council ("MAPC") in developing regulations to appropriately locate registered medical marijuana dispensaries and for other purposes under Massachusetts law. Our firm serves as legal counsel to over three hundred public and private entities in the Commonwealth, of which more than 150 are public entities. We currently represent over thirty municipalities and state agencies.

For your information, we have enclosed our specific responses to the Request for Information. To date, we have advised six municipalities with a variety of issues arising under the Massachusetts Medical Marijuana Act and its Regulations. We have also enclosed a client advisory that we previously issued concerning the implications of the enactment of the Massachusetts Medical Marijuana Act. Our attorneys are at the forefront of the latest developments in regulating the medical use of marijuana in Massachusetts.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Heidi Anderson
Manager, Municipal Procurement Services
Metropolitan Area Planning Council
September 18, 2013
Page 2

We frequently counsel public entities in all phases of land use, including development, drafting, and review of bylaws and regulations. For example, we have advised municipalities with the zoning moratoriums for medical marijuana treatment centers, as well as other regulating uses subject to special protection under federal and/or state law. We also regularly prepare and analyze municipal bylaws and regulations involving the exercise of the municipal police power, such as bylaws related to the consumption of marijuana on public property.

We have worked with municipalities to address adverse secondary effects of uses. The Medical Marijuana Act presents a particular need for experienced legal counsel to represent a municipality, through developing bylaws, ordinances, and regulations, and as necessary through the permitting process. We are cognizant of the need to address the constitutional and statutory protections for the disabled under Massachusetts law, and the implications of these protections upon the exercise of the municipal powers over public health, safety and welfare.

Moreover, we are a premier law firm in the field of public sector labor and employment law, representing public employers in negotiations, collective bargaining, grievances, and employment policies. The Medical Marijuana Act and Regulations present a unique challenge involving the private use of medical marijuana by municipal employees.

We are confident that we can successfully represent MAPC member communities with preparing local legislation, regulations, and employment policies involving medical marijuana, and the permitting of medical marijuana treatment centers and related uses. Our firm is particularly experienced in all aspects of municipal law while providing exceptional legal services efficiently and cost-effectively. We charge an hourly rate for our services. Our fees will depend on the complexity of alternatives proposed for the community, the meetings involved, and the potential for litigation.

Murphy, Hesse, Toomey & Lehane, LLP is a partially women-owned business. Five of the firm's partners are women. Attorney Katherine A. Hesse serves on the firm's management committee. In addition, half of the firm's associate attorneys are female.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Heidi Anderson
Manager, Municipal Procurement Services
Metropolitan Area Planning Council
September 18, 2013
Page 3

Our firm would be extremely pleased to assist MAPC members with regulating the use of medical marijuana within their borders. Thank you for your consideration of our firm. Please contact us if we can be of service or provide any additional information to you.

Very truly yours,



Brandon H. Moss
Katherine A. Hesse
Michael C. Lehane

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

CROWN COLONY PLAZA
300 CROWN COLONY DRIVE
SUITE 410
QUINCY, MA 02169

75-101 FEDERAL STREET
BOSTON, MA 02110

ONE MONARCH PLACE
SUITE 1310R
SPRINGFIELD, MA 01144

TEL: 617-479-5000 FAX: 617-479-6469
TOLL FREE: 888-841-4850

www.mhtl.com

Arthur P. Murphy
James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
Donald L. Graham
Andrew J. Waugh
Geoffrey P. Wermuth
Robert S. Mangiaratti
Kathryn M. Murphy
Alisia St. Florian

Doris R. MacKenzie Ehrens
Lorna M. Hebert
Clifford R. Rhodes, Jr.
Karis L. North
Thomas W. Colomb
Bryan R. Le Blanc
Brandon H. Moss
Michael J. Maccaro
Kevin F. Bresnahan
Kathleen Y. Ciampoli
Brian P. Fox
Lauren C. Galvin
Tami L. Fay
Kier B. Wachterhauser
Sarah A. Catignani

Please respond to Quincy

RESPONSE TO REQUEST FOR INFORMATION
FOR MUNICIPAL MEDICAL MARIJUANA BYLAW AND ORDINANCE
LEGAL SERVICES

- 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.***

By enacting Ballot Question 3 from the November 2012 state election, codified as Chapter 369 of the Acts of 2012 ("Medical Marijuana Act"), the voters in Massachusetts legalized the medical use of marijuana under certain circumstances. This legalization is unique because medical use is permitted under Massachusetts law, even though it is on Schedule I of the Federal Controlled Substances Act and is therefore prohibited under federal law. The "medical use" of marijuana is broadly defined by Section 2(I) of the Medical Marijuana Act and includes acquiring, cultivating, possessing, processing, transferring, transporting, selling, distributing, dispensing and administering products with marijuana or related supplies to qualifying patients or the personal caregivers of such patients.

Pursuant to the Medical Marijuana Act and its Regulations, 105 CMR 725.000 ("Medical Marijuana Regulations"), the Department of Public Health ("DPH") is required to register marijuana dispensaries/medical marijuana treatment centers ("RMD" or "MMTC"), dispensary agents, and qualifying patients and their caregivers.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 2

Section 9(c) of the Medical Marijuana Act mandates a maximum of thirty-five (35) MMTCs within the Commonwealth, with between one (1) and five (5) MMTCs in each county, subject to potential future adjustment. The Medical Marijuana Act and its Regulations also allow hardship cultivation registrations for qualifying patients.

The Medical Marijuana Act and its Regulations have substantial impacts upon municipalities throughout the Commonwealth. In particular, the Medical Marijuana Act does not address the specific method for siting medical marijuana treatment facilities and therefore reserves such decisions to municipalities through the exercise of their zoning power. Additionally, Phase 2 of the RMD registration process considers the support or non-opposition of a proposed RMD by the host municipality. The Medical Marijuana Regulations also establish independent testing laboratories, separate uses that also may be sited in accordance with the municipal zoning power.

A recent decision from the Office of the Attorney General, issued to the Town of Wakefield, invalidated an attempt to prohibit MMTCs. While this decision is pending judicial review in Suffolk Superior Court, it appears, based upon this decision, that towns cannot presently enact bylaws that outright prohibit MMTCs within their borders.

In addition to zoning, there are a number of other potential considerations for the medical use of marijuana. Section 7(D) of the Medical Marijuana Act implicates municipalities, as it does not require the accommodation of any on-site medical use of marijuana in the workplace, on a school bus, on school grounds, in a youth center, or smoking of medical marijuana in a public place, and leaves these areas as possible grounds for local enforcement. The Medical Marijuana Act also raises issues involving the private use of medical marijuana by public employees.

Phase 2 of the RMD registration application process considers the support and non-opposition of a host municipality. This support may be manifested through local regulation, such as permissive zoning, and any host-type agreements between a host municipality and an RMD.

The Medical Marijuana Regulations also require an RMD and other registered persons to comply with local bylaws, ordinances, and regulations. Aside from zoning, such sources of municipal oversight and regulation may include local boards of health. The Medical Marijuana Regulations specifically authorize local oversight

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 3

and regulation, including assessment of fees, although a community must remain cognizant of the requirements for assessing a permissible fee.

Our firm is at the forefront of advising municipalities under the Medical Marijuana Act and Regulations. Following voter approval, we issued a Client Advisory summarizing the provisions and implications of the Medical Marijuana Act. We have also advised municipal clients addressing zoning and public consumption issues involving medical and non-medical use of marijuana. Attorney Karis L. North was a speaker at Suffolk Law School's "Medical Marijuana: Navigating the Law and the Science" conference in April 2013.

Moreover, our firm's experience is bolstered by our vast experience in municipal, labor, and employment law. We are cognizant of the framework of constitutional and statutory protections in Massachusetts for disabilities, and the correlation to the medical use of marijuana for treatment. Our knowledge transcends local regulation by businesses, and related workplace issues involving public employees, including collective bargaining agreements and employment policies.

Not only have we assisted municipal clients with issues arising under the Medical Marijuana Act and Regulations, but we also have a strong background advising municipalities with regulating matters subject to special protection under federal and/or state law. For example, we have advised a number of municipalities confronting the regulation of adult entertainment establishments, which are similarly subject to protection. Because municipalities cannot simply ban such establishments, we have collaborated and advised municipal clients seeking to regulate these protected uses and activities and minimize the resulting adverse secondary effects.

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.*

Our firm has assisted the Towns of Scituate, Hanover, Danvers, Norwood, Milton, and Natick with temporary zoning moratoriums involving medical marijuana treatment centers. Our firm has assisted the Town of Natick with a general bylaw involving medical marijuana treatment centers. The general bylaw for the Town of Norwood involved the public consumption of

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 4

marijuana in light of the Medical Marijuana Act. We have also advised the Town of Norwood with the applicability of a temporary zoning moratorium towards an independent testing laboratory under the Medical Marijuana Regulations.

- b. Please note whether the ordinance and/or bylaw was related to zoning or general legislation.*

See above.

- c. Whether such ordinances and/or bylaws have been adopted.*

The bylaws discussed above were adopted.

- 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?*

A municipality should consider its ability to regulate MMTCs under its zoning, general, and public health powers. To do so, a municipality will need to adopt appropriate general and/or zoning bylaws or ordinances through its legislative body. Additionally, the authority of a local board of health to enact regulations, absent the approval of the local legislative body, furnishes another method for regulating MMTCs.

From a zoning standpoint, a municipality should consider regulating RMDs by restricting their location to a range of appropriate sites, affording a reasonable opportunity to be situated in a municipality while at the same time limiting the potential for adverse secondary effects upon residential, commercial, industrial and other uses. The process involved with zoning enactments allows public input through the public hearing (with required public notice) conducted by a planning board, city council, or designated committee, pursuant to Section 5 of the Zoning Act. This public hearing process allows interested persons to be heard and to provide public input in order to address concerns and anticipated impacts specific to the local community for MMTCs as a general measure.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 5

Moreover, a board of selectmen or city council can also conduct a public process to create general bylaws or ordinances. For example, a general bylaw or ordinance could address the consumption of medical marijuana in public places, such as public buildings or the grounds of an MMTC. In a town, another public input process may exist through town meeting.

A board of health can issue regulations involving the smoking of marijuana in a public place. Also, a board of health can regulate edible marijuana-infused products, via its authority over food permits, or noxious or nuisance activities from the cultivation or processing of marijuana. A board of health can address the concerns of interested persons through its public hearing process as part of adopting regulations.

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?*

Consistent with other types of uses that have the impact to the fabric of a community, a municipality should consider the traditional tools of zoning for MMTCs, specifically special permit and site plan review. Both of these zoning processes have the potential to obtain public input via the hearing process, including from parties-in-interest to the proposed site, tailored to a specific application for an MMTC. A special permit or site plan review process allows a municipality to obtain vital information about a proposed operation from the applicant, ensuring that the MMTC is operated properly. A municipality can also require an applicant to provide advance funding, via M.G.L. c. 44, § 53G, for peer review of possible impacts, in order to defray the cost of evaluating a proposal.

A special permit can be restricted to a specific applicant and limited to a defined term, in order to ensure that the applicant does not operate an MMTC in a manner detrimental to the local community. Similarly, special permits can have appropriate conditions to ensure that the applicant remains in good standing with all applicable state and local requirements, and to identify circumstances where a special permit can be revoked. A special permit should also address the actions to be taken by an applicant in the event the MMTC ceases operations, or appropriate security to be furnished by the applicant to address such a future event.

Further, a special permit procedure creates the opportunity for judicial review in the event of a challenge to a decision to grant, deny or condition an MMTC. A local

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 6

zoning authority should have the discretion to grant, deny or condition a proposed MMTC, but should be careful to avoid any perception that the approval process is illusory. The give-and-take process of site plan approval also enables the local zoning authority to attempt to adjust an MMTC proposal using typical zoning considerations, such as aesthetics, crime, property values, blight, impact on business and commercial establishments, traffic, parking, and the like.

In connection with a special permit and/or site plan review, a municipality should consider the appropriate dimensional and other restrictions for an MMTC, such as setbacks from property lines and other sensitive uses (*e.g.*, residences, places of worship, or schools), parking, building size, building appearance, hours of operation, lighting, security, staffing, and frontage. Such considerations should take account for addressing potential adverse secondary effects from MMTCs. For example, an hour of operation limitation may be related to preventing crime or the competing demands of law enforcement elsewhere in the community.

A municipality should consider whether a dispersal or concentration approach is appropriate, by locating an MMTC in a specific defined area to minimize negatively affecting the business climate or to separate an MMTC from medical or other uses. In restricting the location, special attention should be placed upon providing potential, but nonetheless appropriate, locations for an MMTC to operate, so as to not amount to an effective ban on MMTCs.

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.***

We will work in concert with the board of selectmen or city council and town manager or town administrator in client communities to identify potential concerns, discuss local knowledge about the community, and outline a series of approaches to addressing MMTCs and their related secondary effects. We recommend an initial

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 7

meeting, and then work with appropriate department heads within areas of their expertise, such as a town planner, health agent, or chief of police.

Following the identification of possible concerns and targeted approaches, we will then prepare or assist with local bylaws or ordinances and regulations. If necessary, we can also assist with retaining possible outside consultants to ascertain specific anticipated impacts from an MMTC.

We also will attend any public meetings or hearings, including those before local boards, committees, or town meeting. Proposed bylaws, ordinances or regulations should be made available to the community, whether on file with the municipal clerk, published in a local newspaper, or available on the municipal website. To the extent that zoning controls are adopted, we can assist the local zoning authority throughout a specific application process, from receipt of the initial application through preparation of a decision. A public hearing process creates a legislative record to enable a bylaw, ordinance or regulation to withstand judicial challenge, a necessary consideration given the involving of statutory and constitutional protections for persons with disabilities and the intent of the Medical Marijuana Act.

Our approach would be a personalized approach with Town officials and, as necessary, outside consultants. We would work directly with Town officials to prepare and implement an appropriate strategy. We anticipate the consideration and adoption of bylaws, ordinances and regulations to require two (2) to six (6) months of preparation, depending on complexity and the number of public hearings.

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?

We anticipate the same general processes for identifying and addressing possible impacts, with a comparable approach, time and cost regardless of the population size of a community or type of community (*i.e.*, rural, suburban or urban). The variations in population or type of community may result in different types of adverse secondary effects or different considerations for where to locate a potential MMTC, but the possibility for such impacts would remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Metropolitan Area Planning Council
Response to RFI
September 18, 2013
Page 8

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.*

Our firm's longstanding focus in the types of land use, public health, safety, and welfare issues involving the day-to-day affairs of Massachusetts municipalities makes us particularly well suited to advising and representing municipalities with issues arising under the Medical Marijuana Act and related laws. We understand Massachusetts municipalities because municipal law has been a hallmark of our practice. Our approach is cost-effective and efficient, because of our vast experience in municipal law generally and with advising municipalities under the Medical Marijuana Act since the passage of Ballot Question 3 in November 2012.

In our approach, we are sensitive to local needs, and have cultivated synergy working with local officials to address actual or problem issues that may arise. We are aware of potential liability and statutory and constitutional limitations, and against that context, work closely with municipal officials to develop approaches to withstand judicial scrutiny. This is particularly a concern under the Medical Marijuana Act, given the involvement of statutory and constitutional protections to individuals with disabilities and the preemption of conflicting local legislation. We welcome the opportunity to working with Metropolitan Area Planning Council members in crafting real solutions to address the potential adverse secondary effects from MMTCs and related uses.

748527v1



MURPHY HESSE TOOMEY & LEHANE LLP

Attorneys at Law

Municipal Client Advisory January 2013

WHITHER MEDICAL MARIJUANA USE IN MASSACHUSETTS

For a discussion of these and other issues, please visit the update on our website at www.mhhl.com/law. To receive legal updates via e-mail, contact information@mhhl.com.

At the November 6, 2012 election, the voters in Massachusetts approved Ballot Question 3, which authorizes medical marijuana and related uses. Ballot Question 3, now codified as Chapter 369 of the Acts of 2012 (the Law), became effective on January 1, 2013. The purpose and intent of the Law is: "The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana, as defined in the Law."

In essence, the Law authorizes, under certain circumstances, the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, dispensing, administration and use of marijuana for medical purposes. A medical marijuana treatment center must be registered by the Massachusetts Department of Public Health (the Department). In addition, the Department may register the cultivation of marijuana for medical use by a medical marijuana treatment center, a qualified patient, or a qualifying patient's personal caregiver.

Any person who meets the requirements under the Law shall not be penalized under Massachusetts law, or denied any right of privilege for such actions. The Law, however, does not trump federal law regarding the use of marijuana. Marijuana remains a Class I substance under the federal Controlled Substances Act. Therefore, it remains illegal under federal Law to cultivate, possess, use, or sell marijuana, even for medical purposes.

A. Department of Public Health Regulations

Implementation of the Law is dependent upon issuance of regulations by the Department, which must be issued by May 1, 2013. Those regulations shall:

1. Address how to implement four (4) sections of the Law:
 - a. Registration of nonprofit medical marijuana treatment centers (Section 9 of the Law);

Phone 617-479-5000

Fax 617-479-6469

www.mhhl.com



MURPHY HESSE TOOMEY & LEHANE LLP

Attorneys at Law

Municipal Client Advisory January 2013

- b. Registration of medical treatment center dispensary agents (Section 10 of the Law);
 - c. Cultivation registrations issued to a qualified patient or personal caregiver to cultivate up to a sixty (60) day supply of marijuana for medical use, or to a medical marijuana treatment center for growing marijuana for medical use (Section 11 of the Law); and
 - d. Medical marijuana registration cards for qualifying patients and designated caregivers (Section 12 of the Law).
2. Define the quantity of marijuana that reasonably could be presumed to be a sixty (60) day supply for qualifying patients, based upon the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's medical use.

B. What Does the Law Mean Now?

What can be done before the Department issues regulations?

1. Written certification by a physician shall constitute a medical marijuana registration card for a qualifying patient.
2. A certified mail return receipt showing compliance with the application requirements, and a photocopy of the application, shall constitute a medical marijuana registration card for that qualifying patient's personal caregiver.
3. The written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration, which allows the qualifying patient or that patient's personal caregiver to cultivate a limited number of plants, sufficient to maintain a sixty (60) day supply of marijuana. The Department has until May 1, 2013 to issue regulations that define a sixty (60) day supply.

What cannot be done until the Department issues regulations?

1. The Department may not issue a registration to a nonprofit medical marijuana treatment center.



MURPHY HESSE TOOMEY & LEHANE LLP

Attorneys at Law

Municipal Client Advisory January 2013

2. A nonprofit medical marijuana treatment center may not acquire, possess, process, transfer, transport, sell, distribute, dispense or administer marijuana for medical use.
3. The Department may not issue to a nonprofit medical marijuana treatment center, to a qualifying patient, or to a personal caregiver a cultivation registration for growing marijuana for medical use.
4. The Department may not issue a registration to a medical marijuana treatment center dispensary agent.
5. The Department may not issue medical marijuana registration cards for qualifying patients and designated caregivers

C. Medical Use of Marijuana at the Local Level

Medical use of marijuana may have broad impacts upon municipalities. An immediate consideration is the impact on law enforcement, given the potential possession and use of medical marijuana upon acquisition of the applicable registration (*e.g.*, qualifying patient, personal caregiver, medical marijuana treatment center, or dispensary agent).

The scope of a municipality's ability to regulate medical marijuana treatment centers faces an uncertain landscape in Massachusetts at this time, because there are no federal or Massachusetts cases directly on point, because of the conflict between federal law and the Law, and because the Department has not issued regulations on medical use of marijuana. Municipalities should keep in mind the protection of handicapped/disabled individuals under Massachusetts law, including Article 114 of the Amendments to the Massachusetts Constitution and Massachusetts General Laws Chapter 93.

An outright prohibition of medical marijuana treatment centers would raise an issue of whether there has been discrimination against handicapped persons or persons with a disability.

It appears that Massachusetts municipalities have the authority to adopt a temporary moratorium on medical marijuana treatment centers and/or cultivation of marijuana for medical use, such as for studying the impact on local land use. In that event, the Department regulations may be issued before any regulatory provisions are in effect in that municipality.



MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

**Municipal Client Advisory
January 2013**

Massachusetts municipalities have the authority to adopt zoning requirements to reasonably restrict medical marijuana treatment centers and related uses, and/or the cultivation of marijuana for medical uses, such as by reasonably restricting the location of such a local use. Potential zoning considerations include the location of medical marijuana-related uses, whether zoning approval is required, and other reasonable regulation of such uses traditionally reserved to the exercise of municipal zoning regulation (e.g., building size, hours of operation, setbacks, etc.).

However, the landscape remains uncertain at this time. The to-be-issued regulations from the Department may affect this analysis.

* * * * *

If you have any questions or concerns with regard to the implementation of the Law, please contact John P. Flynn, Karis L. North, Brandon H. Moss, or the attorney assigned to your account.

This alert is for informational purposes only and may be considered advertising

©2013 MHTL

Phone 617-479-5000 4 Fax 617-479-6469
www.mhtl.com