



Braintree Town Council

ORDER NO: 13 029

DATE FILED: JUNE 14, 2013

REQUEST OF: MAYOR

UPON THE REQUEST OF HIS HONOR THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDAINED:

That the Town vote to amend its Zoning By-laws and Zoning Ordinances, dated May 1940, as most recently amended, by adopting a new Article XVII entitled "Moratorium Regarding Medical Marijuana Treatment Centers," the full text of which is attached hereto and filed in the office of the Town Clerk on June 14, 2013.

YEAS: Clifford, Dingee, Joyce, Kokoros, Mullaney, Powers, Ryan

NAYS: NONE

PASSED IN COUNCIL: September 17, 2013

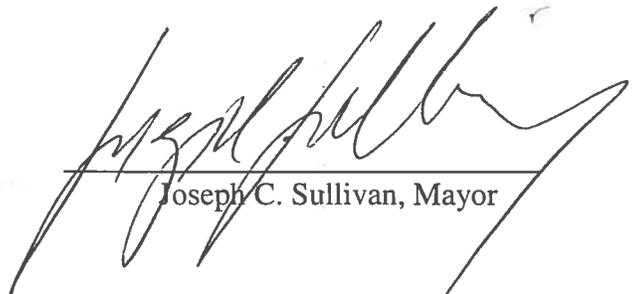
PRESENTED TO MAYOR: September 18, 2013

A True Record, Attest:

September 19, 2013
Date Approved



Joseph F. Powers, Town Clerk



Joseph C. Sullivan, Mayor

Office of the Mayor

One JFK Memorial Drive
Braintree, Massachusetts 02184



Joseph C. Sullivan
Mayor

781-794-8100

To: Charles Kokoros, Council President
Town Councilors
Town Clerk
Clerk of the Council

From: Joseph C. Sullivan, Mayor

JCS

Date: June 13, 2013

RE: Proposed Zoning Ordinance - Medical Marijuana Moratorium

RECEIVED TOWN CLERK
BRAINTREE, MA
2013 JUN 14 AM 8:45

You may recall that the citizen initiative petition endorsing the medical use of marijuana was approved by the voters in November 2012 and took effect on January 1, 2013 with the requirement that the Department of Public Health ("DPH") promulgate regulations for licensing these facilities by May 1, 2013. Shortly after the November election, on December 7, 2012, I sent a memorandum to the Council regarding this new law and urging that the Town refrain from acting too hastily in response to this law by either banning such medical marijuana treatment centers or enacting an ordinance that would allow such centers in our Town before we knew what regulations DPH would issue.

Since December, our Town Solicitor, Carolyn Murray, has monitored the experiences of other communities, such as Wakefield, that a total ban on a medical marijuana treatment facility has been determined to be contrary to law per the Attorney General. We have also learned that a temporary moratorium or a limited ban on such medical marijuana treatment centers, such as the one adopted in Burlington, is permissible per the Attorney General. Further, on May 8, 2013, the DPH approved regulations pertaining to these facilities, which provides municipalities and medical marijuana treatment centers with some insight as to what will be required of an applicant to operate such a facility.

With these experiences in mind, I hereby submit a proposed ordinance which would implement a temporary moratorium on medical marijuana treatment centers in Braintree until one year from the date that the ordinance is finally adopted by the Town Council. The purpose of this moratorium is to allow the Town sufficient time to carefully consider the proper placement, permitting requirements, and impacts of a medical marijuana treatment facility in our Town. Since this is a proposed Zoning Ordinance, both the Planning Board and the Town

A True Copy Attest

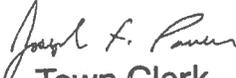
Joseph F. Pomeroy
Town Clerk

Council are required to advertise and conduct a public hearing on this proposal. I trust that this thoughtful measure will be supported by both boards as being in the best interests of the Town of Braintree. A motion approving this proposed ordinance is as follows:

MOTION: That the Town vote to amend its Zoning By-laws and Zoning Ordinances, dated May 1940, as most recently amended, by adopting a new Article XVII entitled "Moratorium Regarding Medical Marijuana Treatment Centers," the full text of which is attached hereto and filed in the office of the Town Clerk on (insert date filed).

The Town Solicitor has advised that this measure requires a two-thirds vote of the Council to be enacted.

A True Copy Attest


Town Clerk

Proposed Zoning Amendment

That the Town vote to amend the Zoning Bylaws/Ordinances by adding the following new Article XVII, Entitled:

TEMPORARY MORATORIUM REGARDING MEDICAL MARIJUANA TREATMENT CENTERS**§135-1701. Purpose.**

An Initiative Petition for a Law for the Humanitarian Medical Use of Marijuana was approved by the voters of the Commonwealth of Massachusetts and took effect beginning January 1, 2013, and that law required the State Department of Public Health to promulgate regulations regarding implementation of the law within 120 days after the law's effective date. Currently, under the Town of Braintree Zoning By-laws/Ordinances, a medical marijuana treatment center is not a permitted use within the Town, and regulations to be promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating such facilities. The regulation of medical marijuana treatment centers raises many novel and complex legal, planning, and public safety issues, and the Town needs time to study the anticipated regulations from the Department of Public Health and to address the potential impacts of these regulations on local zoning. Given that the State Department of Public Health has yet to promulgate final regulations by which facilities that produce or dispense medical marijuana shall be registered and administered, a restriction on the establishment of such facilities in the Town of Braintree shall provide the Town adequate time to consider whether to allow the establishment of such facilities associated with the medical use of marijuana, and, if so, where and under what conditions. Such restriction shall also provide the Town the opportunity to study the potential impacts of such facilities on adjacent uses and on general public health, safety, and welfare, and to develop zoning and other applicable regulations that appropriately address these considerations consistent with statewide regulations and permitted procedures.

§135-1702. Definition.

A Medical Marijuana Treatment Center shall mean any not-for-profit entity, as defined under Massachusetts law only, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers, which is properly licensed and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.

§135-1703. Interim Moratorium.

Medical Marijuana Treatment Centers shall not be permitted in any zoning district in the Town of Braintree as long as this Article XVII is effective, as set forth in §135-1704 (Expiration) below. No building permit, special permit, variance, site plan or other permit may be issued under this zoning ordinance, and no use of land or structures shall be allowed for the purpose of

A True Copy Attest

Joseph F. Pomeroy
Town Clerk

establishing a medical marijuana treatment center or associated activities for the duration of this Interim Moratorium.

§135-1704. Expiration.

Medical Marijuana Treatment Centers shall not be permitted in any zoning district in the Town of Braintree until one (1) year from the date that this ordinance is finally adopted by the Town Council.

§135-1705. Exclusion of Other Marijuana Uses.

Any establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers, shall not be permitted if such establishment has not been properly registered and licensed in accordance with applicable state and local laws and regulations, or is not operated as a not-for-profit entity, or otherwise fails to meet the definition of a Medical Marijuana Treatment Center.

§135-1706. Exclusion of Accessory Uses.

In no case shall the acquisition, cultivation, possession, processing, transference, transportation, sale, distribution, dispensing, or administration of marijuana products containing or derived from marijuana, or related products be considered accessory to any use.

A True Copy Attest

Joseph F. Pomeroy
Town Clerk



Department of Planning and Community Development

Melissa M. Santucci Rozzi, Principal Planner
90 Pond Street, Braintree, Massachusetts 02184
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Melissa B. McDonald, Member

Letter of Mutual Agreement
for
Continuance of Public Hearing

Medical Marijuana Zoning Moratorium

RECEIVED TOWN CLERK
BRAintree, MA
2013 AUG 14 AM 11:44

File: (T.C.O. 13-029)
Address: **Town of Braintree, MA**
Applicant: **Mayor Sullivan**

At the mutual request and agreement of the following individuals, the public hearing for this project is hereby continued to SEPTEMBER 10, 2013 @ 8:45 P.M.

Applicant or Attorney/Agent

Planning Board

Christine S. Kelly

Joseph H. Eng
James Eng
M.B. McDonald
Darryl Mikami

Date of Signing August 13, 2013

This form must be filed forthwith and, in any event, before the end of the statutory time frame allotted for this hearing, to the Town Clerk of the Town of Braintree.

A True Copy Attest

Joseph F. Powers
Town Clerk



Department of Planning and Community Development

Melissa M. Santucci Rozzi, Principal Planner
90 Pond Street – Braintree, Massachusetts 02184
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Melissa B. McDonald, Member

To: Charles Kokoros, President - Braintree Town Council

From: Robert Harnais, Chair - Braintree Planning Board

Date: September 13, 2013

Re: Recommendation on Zoning Ordinance Request
Town Council Order # 13-029 (Medical Marijuana)

The Braintree Planning Board held a public hearing on September 10, 2013 for the proposed zoning ordinance seeking implementation of a temporary moratorium on medical marijuana treatment centers as proposed by Mayor Joseph C. Sullivan.

After significant review and discussion, the Planning Board voted (3:2) on September 10, 2013 to recommend **favorable action** to the Town Council on the proposed zoning ordinance #13-029.

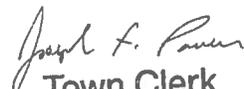
The vote for favorable action is recorded as follows:

	<u>In favor of the Motion</u>	<u>Against the Motion</u>
Robert Harnais, Chair	X	
Joseph Reynolds, Vice-Chair	X	
James Eng, Clerk		X
Darryl Mikami, Member		X
Melissa MacDonald, Member	X	


Christine Stickney, Director
Planning and Community Development

CC: Mayor Sullivan
Town Solicitor
File

A True Copy Attest


Town Clerk



Braintree Town Council

September 30, 2013

To Whom It May Concern:

Please be advised that on September 17, 2013 the Town Council approved Order Number 13 029 and further that the Honorable Joseph C. Sullivan, Mayor of Braintree, approved said Ordinance on September 19, 2013.

A copy of said Order was posted on the official town bulletin board for a period of ten (10) days in accordance with the provisions of the Braintree Town Charter §2-9(c) and Chapter 2-320, §2.320.0020, subsection O.

A TRUE RECORD ATTEST:

Joseph F. Powers
Town Clerk