

**Conditions Proposed to Be Recommended by the Licensing Review Committee of the Town of Brookline to the Town's Board of Selectmen Regarding a Registered Marijuana Dispensary ("RMD") License for New England Treatment Access, Inc. ("NETA")**

*Public Hearing, March 25, 2015, 7 p.m., by the Licensing Review Committee  
Selectmen's Hearing Room, 333 Washington Street, 6<sup>th</sup> Floor*

**PROPOSED CONDITIONS**

**Compliance with Law/Certificate of Registration/Changes in Membership and Appointments**

1. The licensee shall comply with applicable State and local laws, regulations, by-laws and codes, including, but not limited to, 105 CMR 725, the Town of Brookline's Registered Marijuana Dispensary (RMD) Regulations, the Town of Brookline's By-Laws, the Town of Brookline's Zoning By-Laws, all applicable building, fire prevention, health and sanitary codes, and any conditions imposed on licenses and permits held by the licensee, including, but not limited to, the DPH Certificate of Registration, the Town RMD license and the Town's Zoning Board of Appeals special permit.
2. The licensee shall maintain a valid, current RMD Certificate of Registration in good standing from the Massachusetts Department of Public Health (DPH). Any revocation or suspension of the RMD's DPH registration shall result in an automatic suspension of the Town's RMD license pending hearing or the opportunity therefore afforded to the licensee and pending further determination by the Board.
3. An RMD must obtain Board approval for a change in or addition of a Member, Director, Officer, Manager, and Alternate Manager, who shall be qualified according to the criteria set forth in Section 3 of the Town's RMD Regulations. Along with its request for approval, the licensee shall submit a duly-executed CORI Acknowledgment Form and certification that it has supplied to the person signing the CORI Acknowledgement Form a hard or electronic copy of the Town's "CORI Policy: Licensing" and given that person the opportunity to review it prior to executing the Form.

**General Operational Requirements**

4. The licensee shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the property that is the subject of the Town RMD license.

5. The licensee's operations shall not result in illegal redistribution under State or local law of medical marijuana obtained from the licensee, or in use of medical marijuana in any manner that violates State or local law.
6. The licensee's operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of peace, open public consumption of cannabis, excessive pedestrian or vehicular traffic, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests. The Town reserves the right to impose on the licensee a service-by-appointment-only condition in the event that the licensee's operations create nuisance conditions on the premises or the surrounding area.
7. The licensee shall ensure that its (a) hours of operation, and its (b) hours and methods of transportation of product, shall not be a detriment to the surrounding area and nearby uses.
8. The licensee shall implement and comply with the Transportation Demand Management Plan dated \_\_\_\_\_, 2015, and approved in its final form by the Director of Transportation and Engineering on \_\_\_\_\_, 2015, which may include, as the Director of Transportation and Engineering shall determine:
  - (a) the commitment to find off-site private parking for any employees driving to this site;
  - (b) sheltered bicycle parking;
  - (c) a specific minimum percentage of MBTA subsidy for employees;
  - (d) performance monitoring and records of any required remedial actions, with traffic studies to be conducted approximately 3 months, 9 months, and 15 months following receipt of a certificate of occupancy.

If performance goals are not met, additional mitigation measures shall be implemented subject to the review and approval of the Director of Transportation and Engineering and the Assistant Director of Regulatory Planning.

9. The licensee shall equip the Town RMD and otherwise conduct its operations in such a manner that no (a) pesticides or other chemicals or products are dispersed into the

outside atmosphere, and (b) no odor of marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the RMD or at any adjoining use or property.

10. Home deliveries shall not originate from the Town RMD.

#### Security-Specific Requirements

11. The licensee shall maintain compliance with a Town Police Department-approved security and public safety plan, including specification of video and lighting locations, and any other security measures as may be required at any time by the Police Department. Such measures may include, but are not limited to, measures relating to lighting, alarms, fencing, gates, delivery procedures, and police details.
12. The licensee shall immediately notify the Town's Police Department of any known or suspected violations of criminal law that has taken place on or near the location of the Town RMD. This is to include any criminal behavior related or unrelated to the business of the Town RMD.
13. The licensee shall promptly copy the Town's Chief of Police on any notifications and submissions it makes to the Massachusetts Department of Public Health pursuant to 105 CMR 110(F) relating to the Town RMD ("Incident Reporting").
14. The licensee shall facilitate the immediate access and transfer of video footage from any video surveillance system of the Town RMD's interior or exterior when so requested by the Town's Police Department (which request may be made when the Police Department has a reason to believe that such footage may be of assistance in an ongoing investigation related or non-related to the business of the RMD).
15. The licensee shall connect its alarm system to a third party monitoring system, and notify the Town's Chief of Police about said third party monitoring system.

#### Public Health-Specific Requirements

16. The licensee shall maintain a Town Health Department-approved protocol for quality control and comply with such protocol and with any quality control protocols established by DPH.
17. All edibles for sale shall be produced in accordance with DPH requirements and with the RMD's DPH-approved protocol for testing for contaminants, and either in

accordance with Article 10 of the State Sanitary Code or produced by a source that is approved by the Town's Health Department or the DPH.

18. Any edible for sale is subject to random testing to check for contaminants and/or proof that testing has occurred.
19. There shall be no production or manufacture of any products at the Town RMD. This does not pertain to repackaging of cannabis products produced or manufactured off-site.
20. The licensee shall maintain a Town Health-Department approved annual evaluation plan for measuring efficacy (outcome measures).
21. The licensee shall conduct a patient satisfaction survey every 6 months.
22. The licensee shall have at least one staff member trained in CPR/AED on the Town RMD site during all hours of operation, and there must be one working AED on site at all times.

#### Facility-Specific Requirements

23. The licensee shall maintain a designated patient/handicap drop off space/zone within its parking lot.
24. The licensee shall conspicuously post signage at all entrances indicating that entry into the premises of the RMD by persons not possessing a valid Registration Card is prohibited. The notice shall be no smaller than 8.5" by 11."

#### Community Relations-Specific Requirements

25. The licensee must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the RMD's operating practices, policies and plans.
  - (a) Community meetings shall be advertised in the Brookline local newspaper between two (2) and four (4) weeks in advance of the meeting and announced on the licensee's website beginning at least four (4) weeks in advance of the meeting and through the meeting.

- (b) The Licensee shall notify the Town Administrator of community meetings and supply a copy of the Brookline TAB advertisement.
- (c) As part of the Town RMD license renewal process, the licensee shall submit a report outlining the number of attendees, a summary of comments received, and proposed responses and plans to address comments.

Access to Premises and Information/Reporting/Record-Keeping

- 26. The licensee shall consent to unannounced, unscheduled, periodic inspections of the Town RMD by the Board and its agents (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the licensee's compliance with applicable State and local laws, regulations and codes and with conditions on the DPH Certificate of Registration, the Town RMD license, and the Town's ZBA Special Permit. Inspections may be made at other times to investigate complaints or non-compliance issues. Inspections may include all areas occupied, used or controlled by the licensee. Facilities requiring re-inspection are subject to applicable re-inspection fees.
- 27. The licensee shall cooperate and comply with requests for information made by the Board and its agents.
- 28. The licensee shall submit requested data and reports to the Board and its agents in the form and manner that they may determine, which shall include:
  - (a) As part of the annual Town RMD license renewal process, an annual report the accuracy and completeness of which is attested to under penalties of perjury detailing information that shall include:
    - (i) Names and 24-hour site contact information for all Executive Management Team members, Managers and Assistant Managers;
    - (ii) the percent of the Town's RMD's customers who qualify for a subsidy;
    - (iii) the number and geographical distribution of patients/caregivers visiting the Town RMD by month, and the number of home deliveries conducted per month and the originating location of them;
    - (iv) Performance monitoring and records of any required remedial actions as detailed in the approved Transportation Demand Management Plan
    - (v) Confirmation that all employees who drive to the Town RMD site are parking in an off-site private parking facility.
    - (vi) With the exception of the information requested in Section 3(f) and Section 6 of the Town's RMD license application (regarding the licensee's personnel who had previously submitted a CORI Acknowledgement Form to the Town),

a description of changes or additions to the information the licensee had previously provided to the Town as part of its application for a new RMD license as that information may have been previously updated by the RMD.

- (vii) A copy of the RMD's complete application for renewal to DPH of the DPH Certificate of Registration. The RMD may identify information within such documents that it believes is non-public record, for the Town's consideration.
- (viii) Evidence of the licensee's continued implementation and compliance with the performance goals of the Transportation Demand Management Plan for the life of the Town's Zoning Board of Appeals special permit.

29. Within twenty-four (24) hours of receipt of receiving notice of it, the licensee shall:

- (a) file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a Certificate of Registration, denial or a renewal of a Certificate of Registration, or final action issued by a state or federal agency (including, but not limited to, DPH) regarding the licensee or the licensee's Certificate of Registration; and
- (b) inform the Town Administrator if any of the licensee's Dispensary Agent's state dispensary agent registration is revoked, if a renewal application is denied, or if the Dispensary Agent is subject to any pending administrative process or legal action.

30. The licensee shall provide the Town Administrator, Chief of Police, Fire Chief, Health Director, Planning Director, and Building Commissioner with an up-to-date list of the names, 24-hour telephone numbers and email addresses of all Executive Team Members, Managers, Alternate Managers, and key holders to whom the Town may communicate if necessary during business hours and after business hours.

31. Executive Management Team Members, Managers and Alternate Managers shall respond within twenty-four (24) hours of contact by a Town official.

32. The licensee shall maintain on its premises in a readily-accessible location one or more binders containing **(a)** all operating policies and procedures required by 105 CMR 725.105, **(b)** an up-to-date list of all products sold at the Town RMD, including the strains and forms in which medical marijuana is sold, and the products sold to facilitate its use, along with prices charged, **(c)** the

licensee's entire application for a new RMD license to the Town and updated information it supplied to the Town; **(d)** the licensee's entire Phase 2 application to DPH for a Certificate of Registration, **(e)** a Town Health Department-approved pest control and a rubbish and litter plan, **(f)** a copy of Registration Cards of the applicant's Dispensary Agents staffing or supervising staff of the Town RMD, and **(g)** proof of a general liability insurance policy or escrow account as required by 105 CMR Part 725.105(Q). Upon the request of the Board or its agent, the licensee shall make the binder(s) available for inspection.

### **EXPLANATION**

On November 6, 2012, Massachusetts voters (and 70% of Brookline voters) approved an initiative petition titled "Law for the Humanitarian Medical Use of Marijuana," which legalized medical marijuana in Massachusetts and authorized the Massachusetts Department of Public Health (DPH) to license "Registered Marijuana Dispensaries" (RMDs). In 2013, DPH enacted detailed regulations establishing the licensing scheme and regulating all aspects of RMDs' operations, including policies and procedures, security, quality control and numerous other matters. *See* 105 CMR 725. In 105 CMR 725.600, DPH specifically permitted municipalities to enact "lawful local oversight and regulation ... that does not conflict or interfere with the operation" of DPH's regulations.

The November 2013 Special Town Meeting approved three (3) By-Laws pertaining to the Town's regulation of RMDs. **First**, it approved changes to the Town's Zoning By-Law that included a new Section 4.12 (entitled "Registered Marijuana Dispensary (RMD)") establishing certain siting and other requirements, including that an RMD receive a special permit to operate from the Town's Zoning Board of Appeals ("ZBA"). **Second**, it amended Article 8.30 of the Town's By-Laws (entitled "Fingerprint-Based Criminal Record Background Checks") to permit the Town to conduct national criminal record background checks of RMDs and their Executives, Directors and Managers through the FBI's database. **Third**, and most germane to the draft Conditions currently being discussed, it approved a new Article 8.32 requiring RMDs operating in the Town to be licensed by the Board of Selectmen and authorizing the Board of Selectmen to issue implementing regulations to govern RMDs.

On April 24, 2014, after vetting them through the Town's Licensing Review Committee ("LRC"),<sup>1</sup> the Board of Selectmen adopted the Town's Registered Marijuana Dispensary (RMD) Regulations ("Regulations").<sup>2</sup> They were modeled after the Town's liquor regulations and apply to any RMD that locates in Town. They include provisions on a number of matters that include the application process, the appointment of and changes in senior personnel such as managers, Town inspections, RMD maintenance of records, and sanctions in the event the RMD violates the DPH regulations, the Town regulations, the conditions on a Town RMD license, or any other

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<sup>1</sup> The LRC is an advisory body to the Board of Selectmen with respect to Town licenses under the Selectmen's authority.

<sup>2</sup> The Regulations may be viewed on the Selectmen's page of the Town's website under "Licensing" at: <http://www.brooklinema.gov/DocumentCenter/Home/View/5819>.

State or local legal requirement. The Sanctions section of the Regulations (Section 15) specifically states that sanctions for a violation could include the imposition of new conditions (in addition to more severe sanctions such as license suspension or revocation).

In May 2014, DPH granted a provisional license to New England Treatment Access, Inc. (“NETA”) to operate an RMD in Town. Thereafter, NETA submitted an application for a special permit to the Town’s Planning Department to operate an RMD at 160 Washington St., the former Brookline Bank building.<sup>3</sup> It is anticipated that NETA will submit its application for a Town RMD license in the coming weeks.

On December 11, 2014, January 29, 2015, and February 12, 2015, members of the LRC and numerous staff from various departments (Planning, Building, Health, Police, Fire, Legal) met to discuss license conditions proposed by the various departments.<sup>4</sup> The license conditions will function much like the Regulations, except that while the Regulations are of general applicability to any RMD, the conditions will be specific to NETA’s operations at 160 Washington St. (but could serve as a model for a different Town RMD in the future).

The current draft license conditions that are the subject of the March 25, 2015 LRC public hearing explicitly condition the Town’s license on the RMD’s compliance with the DPH regulations, the Town regulations and the conditions on the license. They contain a number of performance standards in the “General Operational Requirements” section (*e.g.*, that the RMD’s operations will not create a nuisance, that its operations will not result in illegal distribution of marijuana under State and local law,<sup>5</sup> etc.), in addition to specific operational requirements that are categorized as “Security-Specific”, “Public Health-Specific”, “Facility Specific”, “Community Relations-Specific”, or that preserve and maintain the Town’s authority to access and inspect the RMD’s premises and relevant documents, request and receive reports and other information, and otherwise monitor the RMD’s operations for compliance with the license conditions and with State and local law. General performance standards will provide the RMD with flexibility to adjust its operations to address the Town’s over-riding concerns, while at the same time providing the Town with a basis to adjust the license conditions if the RMD’s failure to meet them seems attributable to its manner of operations. The specific operational requirements were proposed by the various departments to ensure smooth operations at the proposed site that do not adversely affect the surrounding area and that otherwise address the

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<sup>3</sup> On March 26, 2015, the Planning Board will consider NETA’s special permit application, including draft special permit conditions that the Planning Department will propose. On April 23, 2015, the ZBA will take up the matter. The Planning Department has attended the LRC’s three (3) meetings and its proposed special permit conditions will be informed by the anticipated licensing process and draft license conditions.

<sup>4</sup> Minutes from these meetings are posted on the LRC’s Town website. *See* <http://brooklinema.gov/451/Licensing-Review-Committee>. Town Counsel’s Office created a google site to make publicly available materials related to the LRC’s RMD-related work. The google site is linked from the LRC’s Town page and can be accessed at <https://sites.google.com/site/brooklinelrcdispensaryregu/>. The efforts by the Town’s Economic Development Advisory Committee to bring to the LRC’s attention the ordinance of Sebastopol, California, which served as a model for some of the draft conditions, is gratefully acknowledged.

<sup>5</sup> Distribution of marijuana remains illegal under federal law. The United States Department of Justice issued a memorandum on August 29, 2013, stating its current position on State initiatives to legalize medical marijuana, namely, that it will continue to monitor the operations of the dispensaries for an adverse impact on federal priorities (*e.g.*, preventing illegal distribution to children) and will consider State and local regulatory efforts to foster responsible operations. This memorandum is posted on the google site under “Federal Materials.”

departments' potential concerns. The draft requires compliance with a Transportation Demand Management Plan devised by the Transportation Division. The draft also includes language specifically reserving the Selectmen's right to require patient service on an appointment-only basis in the event that the RMD's operations create nuisance conditions notwithstanding the inclusion of other carefully-crafted conditions intended to prevent this.

Following the March 25, 2015 public hearing, the LRC will make a recommendation to the Board of Selectmen on proposed license conditions. The Board of Selectmen will vote on a final draft of the license conditions as part of its consideration of NETA's RMD license application.