

**Proposed Conditions for a Registered Marijuana Dispensary License for
New England Treatment Access, Inc.**

*Public Hearing, December 8, 2015, approximately 7:30 p.m., Board of
Selectmen, Selectmen's Hearing Room, 333 Washington Street, 6th Floor*

The Board of Selectmen will hold a public hearing on the application of New England Treatment Access, Inc. ("NETA") for a license to operate a Registered Marijuana Dispensary ("RMD") at 160 Washington Street, Brookline, and on draft license conditions proposed by the Town's Licensing Review Committee ("LRC"). The public hearing will take place on Tuesday December 8, 2015 at approximately 7:30 p.m. in the Selectmen's Hearing Room, 6th Floor, Town Hall.

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. A licensee 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 has given that person the opportunity to review it prior to executing the Form.

4. The licensee acknowledges that the conditions herein pertain to its sales of medical marijuana and related products as may be permitted under existing state law, and that in adopting these conditions the Town assumes operations by the licensee that comply with existing state law. The Town reserves the right to modify these conditions as may be permitted by law in the event that changes in state law could authorize changes in the products sold by the licensee or in the nature of the licensee's business.¹

Operational Requirements

5. The hours of operation shall not exceed the hours of 10 a.m. to 7 p.m. Monday through Saturday, and 12 noon to 5 p.m. on Sunday.²
6. 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.
7. 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.
8. 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.
9. 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 the 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.³
10. The licensee shall see customers on an appointment-only basis, with no more than

¹ This condition is proposed by Board of Selectmen Chair Neil Wishinsky.

² This sentence is proposed by Selectman Nancy Daly.

³ Selectman Nancy Daly proposes including condition no. 10 and deleting what the LRC had proposed as the final sentence of this condition no. 9: "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".

[number to be determined] appointments scheduled for a single hour. One additional emergency appointment may be included if necessary per hour.⁴

11. The licensee shall offer home delivery to all customers. All customers may receive the maximum amount allowed under state law and their individual prescription by home delivery.⁵
12. The licensee shall limit on-site transactions to 2 ounces of medical marijuana, or its equivalent in whatever form the medical marijuana is dispensed, per customer per site visit, with the balance of the order delivered to customers' homes. The licensee may provide an exception to this 2-ounce limitation where home delivery poses a hardship to the patient.⁶
13. The licensee shall implement and comply with such Transportation Demand Management Plan as has been approved in its final form by the Director of Transportation and Engineering and the Assistant Director for Regulatory Planning, which may include,⁷ as they 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, and performance monitoring and submission of records of any required remedial actions, with traffic studies to be conducted approximately 3 months and 15 months after opening for business.
 - (d) a provision stating that 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.
14. The licensee shall equip the Town RMD and otherwise conduct its operations in such a manner that (a) no 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.
15. Home deliveries shall not originate from the Town RMD.

⁴ This condition is proposed by Selectman Nancy Daly.

⁵ This condition is proposed by Selectman Nancy Daly.

⁶ This condition is proposed by Selectman Nancy Daly.

⁷ Approval by the Assistant Director for Regulatory Planning is added for consistency with the ZBA's special permit conditions.

16. The licensee shall notify the Board and the Town's Health Director in writing of any newly-offered medical marijuana-infused products that the licensee had not previously disclosed to the Board in its original RMD license application or in any subsequent written disclosure to the Board.
17. The licensee shall have a police officer on-site to direct traffic in and out of the site subject to ongoing review during the first 15 months of operation as provided for in the Transportation Demand Management Plan.⁸

Security-Specific Requirements

18. 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.
19. The licensee shall immediately notify the Town's Police Department of any known or suspected violation 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.
20. 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").
21. 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).
22. 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

23. Packaging and Labeling of Marijuana (Excluding MIPs). The licensee shall package marijuana in plain, opaque, tamper-proof, and child-proof containers without

⁸ This reflects NETA's agreement as stated to the Planning Board and ZBA in the Fall of 2015 in connection with its special permit application.

depictions of the product, cartoons, or images other than the RMD's logo. The licensee shall consider reverse marketing techniques in devising the presentation of the packaging (including the color of the packaging and its lettering). The licensee shall place a legible, firmly affixed label on which the wording is no less than 1/16 inch in size on each package of marijuana that it prepares for dispensing, containing at a minimum the following information:

- (a) The registered qualifying patient's name;
- (b) The name and registration number of the RMD that produced the marijuana, together with the RMD's telephone number and mailing address, and website information;
- (c) The name of the strain contained within the package;
- (d) The quantity of usable marijuana in ounces contained within the package. A conversion table to allow the rapid conversion from ounces to grams shall be included in the Patient Handbook referenced in condition no. 26 below;
- (e) The date that the RMD packaged the contents;
- (f) A batch number, sequential serial number, and bar code when used, to identify the batch associated with manufacturing and processing;
- (g) The cannabinoid profile of the marijuana contained within the package, including THC level;
- (h) A statement that the product has been tested for contaminants, that there were no adverse findings, and the date of testing in accordance with 105 CMR 725.105(C)(2);
- (i) This statement, including capitalization: "This product has not been analyzed, studied⁹ or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN"; and
- (j) A warning that driving while impaired may result in a traffic stop and that the driver could be subject to criminal prosecution for driving under the influence of marijuana.¹⁰

All labeling and packaging must receive prior approval of the Town's Health Director.¹¹

24. Labeling of Marijuana-Infused Products (MIPs, including capsules and pills¹²). The licensee shall package marijuana in plain, opaque, tamper-proof, and child-proof containers without depictions of the product, cartoons, or images other than the RMD's logo. Edible MIPs shall not bear a reasonable resemblance to any product available for consumption as a commercially available candy. The licensee shall consider reverse marketing techniques in devising the presentation of the packaging (including the color of the packaging and its lettering). The licensee shall place a

⁹ Selectman Bernard Greene suggests inserting "studied."

¹⁰ This condition is proposed by Selectman Nancy Daly.

¹¹ This sentence is proposed by Selectman Nancy Heller.

¹² Selectman Bernard Greene suggests inserting "including capsules and pills."

legible, firmly affixed label on which the wording is no less than 1/16 inch in size on each MIP that it prepares for dispensing, containing at a minimum the following information:

- (a) The registered qualifying patient's name;
- (b) The name and registration number of the RMD that produced the MIP, together with the RMD's telephone number and mailing address, and website information;
- (c) The name of the product;
- (d) The quantity of usable marijuana contained within the product as measured in ounces;
- (e) The size of the dose of active cannabinoids as measured in milligrams;
- (f) A list of ingredients, including the cannabinoid profile of the marijuana contained within the product, including the THC level;
- (g) The date of product creation and the recommended "use by" or expiration date;
- (h) A batch number, sequential serial number, and bar code when used, to identify the batch associated with manufacturing and processing;
- (i) Directions for use of the product if relevant;
- (j) A statement that the product has been tested for contaminants, that there were no adverse findings, and the date of testing in accordance with 105 CMR 725.105(C)(2);
- (k) A warning if nuts or other known allergens are contained in the product;
- (l) With regard to edible MIPs,¹³ the following statement, including capitalization and bold: **"The effects of this product may be delayed for two or more hours. This product has not been analyzed, studied¹⁴ or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN;"** and
- (j) A warning that driving while impaired may result in a traffic stop and that the driver could be subject to criminal prosecution for driving under the influence of marijuana.¹⁵

All labeling and packaging must receive prior approval of the Town's Health Director.¹⁶

25. Dosage and MIP Safety. To ensure proper MIP dosage and patient safety, the licensee, at a minimum, will:

- (a) Products: Offer low dosage MIPs (10 mg) for new or low-tolerance patients.
- (b) Provide patients a MIPs dosage and safety guide that has been reviewed and approved by the Town's Health Director that includes instruction, information, and warnings about the following:

¹³ Health Director Alan Balsam suggests limiting this warning to edibles, as it is edibles that pose the concern regarding the two-hour delay in effects.

¹⁴ Selectman Bernard Greene suggests inserting "studied."

¹⁵ This condition is proposed by Selectman Nancy Daly.

¹⁶ This sentence is proposed by Selectman Nancy Heller.

- (i) Dosage safety: Urging consumption on a “start low and go slow” basis; including information about variability among different patients’ tolerance to products and person-to-person variation in the effects;
- (ii) Guidance for first-time or low-tolerance patients;
- (iii) Information in the nature of a product label guide that explains dosage and ingredients;
- (iv) Duration: Information about both the time interval until the product effects are felt and the length of product effects;
- (v) Responsible storage: Direction to keep products away from children and not to store them next to any other food items;
- (vi) Other warnings to patients:
 - a. Driving and machinery: Not to operate a vehicle or machinery under the influence;
 - b. Pregnancy: That there may be additional health risks associated with consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.
 - c. With regard to edible MIPs:¹⁷
 - (i) Alcohol: Not to mix MIPs with alcohol;
 - (ii) Eating first: To eat a full meal before consuming MIPs as doing so helps in lowering the intensity of the effects;

26. Patient Education. The RMD must distribute a Patient Handbook, which shall be reviewed and approved by the Town’s Director of Health, to all new patients upon intake. The receiving patient shall acknowledge receipt of the Patient Handbook in writing, and the acknowledgement shall be kept on file with the RMD.

27. 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.

28. 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.

29. Any edible for sale is subject to random testing to check for contaminants and/or proof that testing has occurred.

30. 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.

¹⁷ Health Director Alan Balsam suggests limiting these warnings to edibles.

31. The licensee shall maintain a Town Health Department-approved annual evaluation plan for measuring efficacy (outcome measures).
32. The licensee shall conduct a patient satisfaction survey every 6 months.
33. The licensee shall have at least one staff member trained in CPR/AED on-site at the Town RMD during all hours of operation, and there must be one working AED on site at all times.

Facility-Specific Requirements

34. The licensee shall maintain a designated patient/handicap drop off space/zone within its parking lot.
35. The licensee shall conspicuously post signage at any entrance actively used by the public 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

36. 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 date of the meeting.
 - (b) The licensee shall promptly notify the Town Administrator of community meetings and supply a copy of the Brookline TAB advertisement.
 - (c) The licensee shall notify all Town Meeting members of community meetings two (2) to three (3) weeks in advance of the meeting.
 - (d) As part of the Town's annual 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

37. 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.

38. The licensee shall cooperate and comply with requests for information made by the Board and its agents.
39. 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) An independent financial audit of the licensee prepared by a licensed CPA for the preceding fiscal year;
 - (iii) The percent of the Town's RMD's customers who qualify for and receive a subsidy from the licensee;
 - (iv) 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;
 - (v) A current list of products sold at the licensee's Town premises and of the prices of these products.
 - (vi) In connection with the Transportation Demand Management Plan, performance monitoring records, reports and records of any required remedial actions, and any other records as may permit the Selectmen to review the effectiveness of the TDMP and that may evidence the licensee's continued implementation of and compliance with the TDMP's performance goals;¹⁸
 - (vii) The number and percentage of on-site employees using the licensee's public transportation subsidy for employees, and the number and percentage of on-site employees who generally commute to the Town RMD using a means other than a vehicle parked in Town;¹⁹
 - (viii) Total number of employees whose duties entail working at the Town RMD on a part- or full-time basis;
 - (ix) Certification that all employees who drive to the Town RMD site are parking in an off-site private parking facility;

¹⁸ The last phrase (beginning "and any other records") has been added to the LRC's proposed language, as the ZBA's special permit states that "[t]he effectiveness of the TDM plan will be reviewed during the annual RMD licensing process by the Board of Selectmen."

¹⁹ The LRC discussed and agreed on this proposal but it was inadvertently omitted from the draft it voted.

- (x) 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.
- (xi) 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.
- (xii) In connection with community meetings held during the preceding license period, a report outlining the number of attendees, a summary of comments received, and proposed responses and plans to address comments.
- (xiii) Number and circumstances, without confidential patient data, of emergency appointments given out during the reporting period in excess of the limitation on the number of appointments per hour, and of hardship patients who received an exemption to the condition prohibiting on-site transactions in excess of 2 ounces.²⁰

40. Within twenty-four (24) hours of receipt of 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 of 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 for a state dispensary agent registration is denied, or if the Dispensary Agent is subject to any pending administrative process or legal action.

41. licensee shall provide thirty (30) days prior notice to the Town Administrator of its intent to cease accepting payment by credit card.²¹

42. 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.

²⁰ This condition is proposed by Selectman Nancy Daly.

²¹ This condition has been proposed by Board of Selectmen Chair Neil Wishinsky.

43. Executive Management Team Members, Managers and Alternate Managers shall respond within twenty-four (24) hours of contact by a Town staff member.²²
44. 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.

²² Selectman Bernard Greene suggests substituting "Town staff member" for "Town official" in this condition.