

TO: Council President and City Councillors
FROM: Councillor Jennie L. Donahue
DATE: March 7, 2023
SUBJECT: Retail Sale of Marijuana

The intent of this letter is to initiate a conversation around my intentions to propose amendments to the City's code of ordinances to permit retail sales of marijuana in portions of the downtown. The **attached draft amendments** to the general ordinance and the zoning ordinance are intended to be a starting point for discussion of this proposal.

I am proposing (1) to delete the current provision in the general ordinances that prohibits non-medical retail marijuana sales, and (2) to amend the zoning ordinance to allow retail marijuana sales in the portions of the B-2 and B-3 zoning districts lying east of Titcomb Street, as shown on the **attached map**. This would limit such sales to the downtown core, the Tannery Marketplace, and the Pond Street plaza. Excluding the areas west of Titcomb Street would prevent establishment of retail shops adjacent to the YWCA and along the Route 1 corridor.

In addition, I am proposing that retail establishments not be allowed within 200 feet of an entrance to a K-12 school. This would mean that such establishments would not be allowed on Washington Street, or on Green Street between the Immaculate Conception School and the Masonic Hall.

A key benefit to the City of allowing retail marijuana sales is the potential increase in local revenues. Communities are allowed to impose a local tax of 3 percent on retail transactions of marijuana products. I have been contacting our neighboring communities to learn about their experiences with respect to the revenues and expenses generated by their retail marijuana establishments and will provide my findings when we have a Planning and Development Committee meeting or hearing on this proposal.

My draft proposal also requires that the first retail store permitted in the City, and any other store permitted within the next two years, be a "social equity" or "economic empowerment" business certified by the State. This would give the City an additional one percent of total sales revenues from those businesses.

The current prohibition on retail marijuana sales in the City was enacted by the Council in December 2019 following the results of a non-binding referendum. As stated in the **attached email** from KP Law, amending the City's ordinances to allow retail sales of marijuana does not require another referendum vote, because "regulation consistent with the statutory limitations found in G.L. c. 94G, sec. 3" is "less restrictive" than the existing prohibition on retail sales.

I request that this communication be sent to the Planning and Development Committee in order to provide opportunities for discussion on my intended proposal.

Attachments:

- Draft amendments
- Map showing areas
- KP Law opinion

KP Law Opinion Regarding Ballot Requirement for Allowing Retail Marijuana Establishments

From: Mark R. Reich <MReich@k-plaw.com>
Sent: Wednesday, January 18, 2023 6:45 PM
To: Sean Reardon <SReardon@CityofNewburyport.com>
Cc: Nicole J. Costanzo <NCostanzo@k-plaw.com>; Jonathan D. Eichman <JEichman@k-plaw.com>
Subject: RE: Cannabis Retail Zoning

Mayor –

Please be aware that prohibition of retail marijuana establishments or limitation marijuana retailers to fewer than 20 per cent of the number of package store licenses issued by the City would require passage of a ballot question by the voters pursuant to the provisions of G.L. c. 94G, sec. 3(a)(2). The City currently has an ordinance prohibiting retail marijuana retail uses in the City. Clarification will be necessary as to whether this prohibitory ordinance was supported by a ballot question approved by the voters, as this would be necessary pursuant to G.L. c. 94G, sec. 3(a)(2).

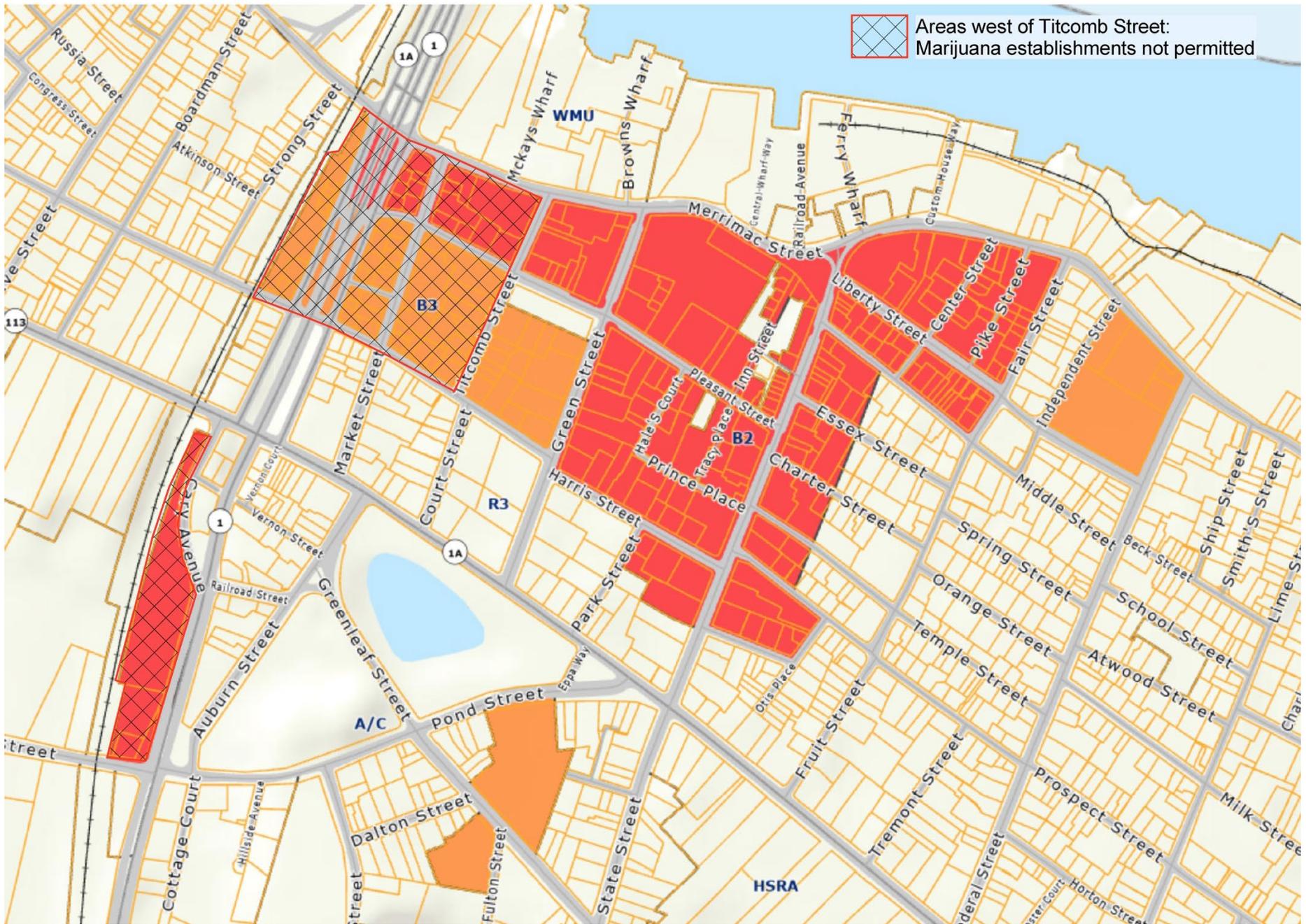
In our opinion, a new ballot question would not be required to allow for retail marijuana uses within the City. A less restrictive action, including regulation consistent with the statutory limitations found in G.L. c. 94G, sec. 3, would be permissible even if a prior ballot question prohibiting a particular type of establishment has passed.

Please contact me if you would like to discuss this matter further.

Thank you.

Mark

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A GENERAL ORDINANCE AMENDMENT TO REMOVE THE PROHIBITION ON RETAIL SALES OF MARIJUANA

Be it ordained by the City Council of the City of Newburyport as follows:

Amend the Code of Ordinances Chapter 9 Article X (Prohibition of Non-Medical Marijuana Retailers) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

~~ARTICLE X. PROHIBITION OF NON-MEDICAL MARIJUANA RETAILERS~~

~~Sec. 9-241. In general.~~

~~Consistent with M.G.L.A. c. 94G, § 3(a)(2), "Marijuana Retailers," as defined in M.G.L.A. c. 94G, § 1, shall be prohibited within the City of Newburyport. This prohibition shall not apply to the sale, distribution manufacture or cultivation of marijuana for medical purposes.~~

Councillor Jennie L. Donahue

A ZONING ORDINANCE AMENDMENT TO ALLOW RETAIL SALES OF MARIJUANA

Be it ordained by the City Council of the City of Newburyport as follows:

Amend Section V-D (Table of Use Regulations) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

8. MARIJUANA-RELATED USES

USE	NUM		B-1 ±	B-2	B-3	I-1	I-1B	
Marijuana establishment (with retail sales) <u>Marijuana retailer</u>	801		SP^(h) <u>NP</u>	NP <u>P *</u>	NP <u>P *</u>	NP	NP	
Marijuana establishment (without retail sales)	802		NP	NP	NP	SP ^(h)	SP ^(h)	
Medical Marijuana treatment center or registered marijuana dispensary (with retail sales)	803		SP^(h) <u>NP</u>	NP <u>P *</u>	NP <u>P *</u>	NP	NP	

~~*Use 801 is limited to the marijuana retailer subtype. For further limitations see section XXXI.~~

*Uses 801 and 803 are not permitted in the B-2 and B-3 districts west of Titcomb Street.

Amend Section V-I (Prohibition of non-medical marijuana retailers) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

~~V-I Prohibition of non-medical marijuana retailers.~~

~~Consistent with M.G.L.A. c. 94G, § 3(a)(2), "Marijuana Retailers," as defined in M.G.L.A. c. 94G, § 1, shall be prohibited within the City of Newburyport. This prohibition shall not apply to the sale, distribution, manufacture or cultivation of marijuana for medical purposes.~~

V-I – Initial limitation on marijuana retailers

The permit granted for the first marijuana retailer in the City, and any additional permit granted within two (2) years after said first permit is granted, shall be limited to a business that is certified by the Commonwealth’s Cannabis Control Commission (CCC) as a Social Equity Program Applicant or Economic Empowerment Applicant.

Amend Section VII-B (Parking requirements) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

8. MARIJUANA-RELATED USES

<u>USE</u>	<u>NUM</u>	<u>PARKING REQUIREMENT</u>
<u>Marijuana retailer</u>	<u>801</u>	<u>3 per 1,000 square feet of gross floor area (GFA)</u>
<u>Marijuana establishment without retail sales</u>	<u>802</u>	<u>See Section XXXI-E</u>
<u>Medical Marijuana treatment center or registered marijuana dispensary (with retail sales)</u>	<u>803</u>	<u>See Section XXXI-E</u>

Amend Section XXXI-B (Definitions) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

Marijuana establishment means a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, medical marijuana treatment center (MMTC), independent testing laboratory, marijuana research facility, marijuana transporter, marijuana retailer or any other type of licensed marijuana-related establishments, as set forth in M.G.L.A. c. 94G, § 1 and regulations promulgated thereunder, ~~but not including so-called marijuana retailers.~~

Amend Section XXXI-C (Special permit required) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

XXXI-C - Special permit required for certain marijuana establishments.

Pursuant to M.G.L.A. c. 40A, as well as under the home-rule powers of the city pursuant to Sections 1 and 6 of Article II of the Articles of Amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article LXXXIX of said Articles of Amendment, and in order to mitigate potential secondary adverse impacts, a special permit is required for a marijuana establishment within the City of Newburyport where so specified in Section V-D, Table of Use Regulations.

Amend Section XXXI-D (License requirements and conditions of use) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

4. No marijuana establishment, with the exception of properly licensed medical marijuana treatment centers (MMTCs) and marijuana retailers, shall be permitted to conduct in-person retail sales to consumers on premises.

Amend Section XXXI-F (Required buffer zones and restrictions on use) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

2. Protected uses. ~~Neither use number 802 (marijuana establishments without retail sales) nor use number 803 (medical marijuana treatment centers or registered marijuana dispensaries) shall be located or permitted within five hundred (500) feet of any public entrance to the following uses, regardless of whether such use is enclosed within a structure or building, except that in the Business district (B-1) centered around the intersection of State Street and Route 1 (Route 1 Traffic Circle), said minimum distance shall be two hundred fifty (250) feet~~
 - ~~a. A pre-existing public or private school providing education in kindergarten or any of grades one (1) through twelve (12);~~
 - ~~b. A pre-existing nursery school or daycare facility;~~
 - ~~c. A pre-existing public library;~~
 - ~~d. A pre-existing public park or playground;~~
 - ~~e. A pre-existing municipal youth or recreation center;~~
 - ~~f. A pre-existing public swimming pool; or~~
 - ~~g. Any similar pre-existing facility in which children commonly congregate in an organized, ongoing, formal basis.~~

No marijuana establishment shall be located or permitted within five hundred (500) feet of any School Entrance as defined in 935 CMR 500, except that in the downtown business district (B-2) and the neighborhood business district (B-3) said minimum distance shall be two hundred (200) feet.

Amend Section XXXI-G (Permitting procedure and criteria for approval) as follows, with deletions ~~double-stricken and italicized~~, and additions double-underlined and italicized:

XXXI-G ~~Permitting~~ Special permit procedure and criteria for approval.

The provisions of sections XXXI-G and XXXI-H shall apply to marijuana establishments for which a special permit is required by section V-D, Table of Use Regulations.

Permit granting authority. The planning board shall act as the designated special permit granting authority (SPGA) in administering this section.

Special permit required. Marijuana establishments may be permitted only pursuant to a special permit hereunder where so specified in Section V-D, Table of Use Regulations. The planning board shall review and may deny, approve, or approve with conditions all applications hereunder in accordance with the procedures listed in section X-H8. The SPGA shall approve an establishment if the SPGA determines that the proposed use meets all the requirements of this section and, in addition, the special permit criteria of section X-H7.

Councillor Jennie L. Donahue