

From: Americans for Safe Access

To: Joint Committee on Municipalities and Regional Government

Date: May 15, 2013

Re: S.950 An Act relative to the zoning of marijuana treatment centers

The act to grant municipalities the right to issue special permits to prospective medical marijuana treatment centers (now referred to as “Registered Marijuana Dispensaries” or “RMDs”, per 105 CMR 725.004) appears to have a laudable intent; however, it is unnecessary, and is written in such a way that de facto bans could come into effect, thereby presenting a conflict with the March 13, 2013 decision from Attorney General Martha Coakley's Office, which held that localities may not impose bans on such facilities. Given AG Coakley's ruling, a zoning ordinance or by-law that could result in a ban would mean that the ordinance or by-law would be effectively void. Notwithstanding the conflict with AG Coakley's ruling, the bill is unnecessary because localities already have the affirmed right to implement their own regulations. Because the bill is both unnecessary and creates a potential conflict, it should not be approved by the committee.

S.950 would allow localities to establish special permit-granting authorities, which would have the power to grant permits to RMDs to operate in their jurisdictional base. Localities may use factors such as distances from an applicant's RMD location relative to things such as parks, schools, and residential areas.

However, AG Coakley's decision already affirms that localities presently possess the right to issue their own regulations on where and how RMDs may conduct business, “so long as such zoning by-laws do not conflict with” Question 3, which was approved by 63% of Massachusetts voters in 2012.¹ The decision goes on to say that municipalities have the authority to regulate dispensaries as long as such local regulations are not “clearly arbitrary and *unreasonable, having no substantial relation to the public health, safety, morals or general welfare.*”² It is clear that municipal governments will be able to draft regulations that pertain to the areas called for under S.950 without an unnecessary layer of bureaucracy.

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1 . Letter from Attorney General Martha Coakley, “RE: Wakefield Fall Annual Town Meeting of November 15, 2012 - Case # 6601 Warrant Article # 11 (Zoning),” March 13, 2013, page 1, see <http://www.mass.gov/ago/docs/municipal/wakefield-6601.pdf> (last accessed May 13, 2013).

2 . Id.

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such as parks, schools, and residential areas. Although the bill requires a public comment period and contains a clause that would automatically grant the special permit if they local authority fails to act in a timely manner, an authority could vote repeatedly to disapprove any and all applicants, thereby creating a de facto ban that frustrates the intent of Question 3.

The reason for unintended possibility is two-fold. First, the bill fails to require that localities issue their regulatory criteria in advance of an applicant applying for a special permit, and second, because there is no requirement for the special permit authority to grant permits to RMDs that adhere to locally created regulatory requirements. Such ambiguity would enable the voting body to reject every applicant that sought a permit.

A better solution is simply for localities to issue their own local regulations (with a public comment period) relating to where RMDs may operate within the community. If a local regulation pertaining to how close a RMD may operate from a school is reasonable, it will be upheld and a RMD would not be allowed to open up at that location. Throwing in the special permit process simply adds an unnecessary extra layer of bureaucracy that could lead to decisions not bound to be consistent with local regulations that have been created in advance with unambiguous approval standards. This could lead to a situation where counties fail to meet their requirement of at least one RMD per county, which is balanced by a ceiling of no more than 5 RMDs per county. Because the special permit granting authority would be unnecessary and potentially harmful to patients by failing to establish safe and legal venues for them to be able to purchase medical marijuana, the committee should reject the proposed bill.

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