



Mayor Joshua Garcia

Office of Planning & Economic Development

City of Holyoke

Aaron Vega, Director

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Holyoke City Council

City of Holyoke

Holyoke, MA 01040

Holyoke City Clerk's
Holyoke, MA

President McGee,

Please accept this communication from the Office of Planning & Economic Development in regard to approved City Council Special Permits for marijuana companies. Please note, we are simply alerting you to a potential concern and are here to work with you and council however you decide to proceed.

As you know, when a Special Permit is granted by the City Council under Appendix A, Zoning Ordinance, Section 7.10 Marijuana Facilities, the applicant has two years to act upon the use granted in the permit. If after two years, substantial progress on the construction or use granted is not made, the permit expires. Please refer to Section 9.3.4 of the Zoning Ordinance for exact language (*see below). If the permit is exercised, and a marijuana facility successfully opens for business, they can lawfully operate, or if they wish, they can sell their business and the special permit would remain with the parcel.

To date there are technically four expired Special Permits issued by the City Council that have not been acted upon, four Permits that are past their two-year expiration date but have some construction work in progress, and seven permits that will expire in 2023 (see list below).

For the applicant, there may be some confusion as to this permit expiration as it is not referenced in the final drafted Notices of Decision (NOD) granted by the City Council. We believe that adding the Ordinance directly into the Decision will alert the applicant of this condition and will memorialize it for them as well as the City Council. The Planning Board uses the following language in their Notices of Decisions (NOD's), cover sheet:

"In accordance with the Holyoke Zoning Ordinance Section 9.3.4, said approval shall expire in 2 years if a substantial use or construction thereof has not sooner commenced except for good cause. In cases of good cause, an extension may be requested from the Planning Board prior to the expiration of said approval."

The two year expiration for Special Permits is in line with State law with one caveat, that the three years noted in **MGL Chapter 40A, Sec 9/11** (**see below) was never adopted by the City Council, so our permits are still at the two year mark. The Law Department has confirmed that the Zoning was never amended by the City Council when given the opportunity by the State to adopt a three-year expiration period. To adopt it now would require a text zone change following the standard zone change process (**see below).

Within the Planning Board Special Permits, applicants that get close to their two year expiration are invited to amend their Special Permit for an extension of time to complete the project and comply with their approved Notice of Decision, prior to the two year expiration.

This process is done through another public hearing which will generate a new Special Permit Notice of Decision. This amendment or extension could also be permitted by the City Council as the special permit granting authority in this case of special permits granted under Section 7.10 of the Zoning Ordinance.

The Office of Planning & Economic Development will work with any process that the City Council finds acceptable to address this issue, but again, we offer no suggestion as to how you wish to proceed. We are simply providing this information to you as we continue to refine our internal processes and update our master marijuana list.

Respectfully Submitted,



Aaron M. Vega

Director of Planning and Economic Development

*For reference Ordinance and MGL regarding Special Permits are included on the next pages.

Relevant Ordinances and MGL regarding Special Permits

***Zoning Ordinance**

Section 9.3.4 Lapse.

Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk.

****MGL Chapter 40A, Sec 9**

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

****MGL Chapter 40A, Sec 11 NOD**

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

...

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

*******The second amendment, **Section 30 of Chapter 219 of the Acts of 2016**, amends General Laws c.40A, §9, by extending the time within which a special permit may lapse from two years to three years: Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than three years, which shall not include such time required to pursue or await the determination of an appeal referred to in

section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause. (emphasis added). This provision of §9 requires a municipality to provide a lapse provision in its zoning by-law or ordinance for special permits. While the amendment extends from two to three years the time which a zoning by-law or ordinance may allow prior to a special permit lapsing, the statute does not require that a city or town extend the time limit for lapse of special permits to three years, it merely permits a municipality to do so. Accordingly, you may wish to propose an amendment to your zoning ordinance or by-law to extend the lapse provision to up to three years, although the statute does not require that a change be made.

Expired/Expiring Special Permits

No Known Work:

1. High End Management Co LLC – 110 Winter St
 - a. HCA Date: 11/5/2018
 - b. Special Permit Date: 9/3/2019 (expired 9/3/2021)
2. Four Trees – 1 Cabot St
 - a. HCA Date: 8/19/2019
 - b. Special Permit Date: 1/21/2020 (expired 1/21/2022)
3. Exotica Farms – 5 Appleton St
 - a. HCA Date: 6/11/2020
 - b. Special Permit Date: 9/15/2020 (expired 9/15/2022)
4. Victoria Frost – 679 Main St
 - a. HCA Date: 11/5/2020
 - b. Special Permit Date: 8/4/2020 (expired 8/4/2022)

Known Work:

1. Solurge – 650 Beaulieu St
 - a. HCA Date: 5/2/2018
 - b. Special Permit Date: 12/18/2018
2. 4Bros – 630 Beaulieu St
 - a. HCA Date: 5/9/2018
 - b. Special Permit Date: 8/7/2018
3. Buudda Brothers- 604-606 Main St

- a. HCA date: 8/19/2019
 - b. Special Permit Date: 9/15/2020
4. Leaf Lux- 40 Lyman St
- a. HCA Date: 7/29/2020
 - b. Special Permit Date: 12/1/2020

Expiring in 2023:

- 1. EMB Natural Ventures-140 Middle Water St (expires 4/20/2023)
- 2. North Country Productions-12 Crescent St (expires 5/18/2023)
- 3. Green Valley Analytics-306 Race St (expires 6/1/2023)
- 4. MassCannabis Coop-11 Jackson St (expires 6/15/2023)
- 5. Green Highland LLC-26 Hadley Mills Rd (expires 6/15/2023)
- 6. Pleasantrees-111 Mosher St (expires 8/3/2023)
- 7. First City Provisions- 89 South St (expires 10/5/2023)