

## MEMORANDUM

**DATE:** March 23, 2018

**TO:** Mayor and Council

**THRU:** Mark Schwieterman, City Manager

**FROM:** Steve Bergstresser, Assistant City Manager / City Engineer  
Ted Hamer, Law Director  
Tom Robillard, Planning & Development Director

**SUBJECT:** **Medical Marijuana Update and Recommendation**

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Mayor and Council,

In Ordinance No. 4291-17, adopted April 11, 2017, City Council directed City Staff to “to continue their review of House Bill 523, Ohio Revised Code Chapter 3796, and any related issues regarding the presence of medical marijuana cultivation, processing, or retail operations within the City. City staff shall then make recommendations regarding any potential changes to the City’s Codified Ordinances related to these activities for City Council’s consideration.” This memorandum serves as City Staff’s follow-up and recommendation.

The City of Kettering’s current medical marijuana moratorium will expire on May 31, 2018. Therefore in the coming months, Council will need to take legislative action on the issue of medical marijuana, if there is the desire to establish Kettering-specific regulations for any or all of the functional areas of the State’s medical marijuana program. Through this memo, we will present a summary of the State’s rules; a review of the Federal government’s position regarding medical marijuana; a summary of surrounding communities’ medical marijuana regulations; and several regulatory options for Kettering. We have also included a staff recommendation regarding Kettering’s regulation of medical marijuana.

### **State of Ohio Regulations**

After the adoption of Kettering Ordinance No. 4291-17, the agencies in charge of Ohio’s Medical Marijuana Control Program (Ohio Department of Commerce, Ohio Board of Pharmacy, and State of Ohio Medical Board) finalized the initial rules for cultivating, processing, dispensing, testing, and use of marijuana for medical purposes. Only the rules concerning operations of cultivators, processors, and dispensaries will be addressed in this memo. Per state law, municipalities cannot adopt ordinances to limit research and testing related to marijuana when conducted at a state university, academic medical center, or private research & development organization,

therefore Kettering's ability to regulate medical marijuana testing is very limited. The full set of rules is available for review at <https://www.medicalmarijuana.ohio.gov/rules>.

### **State Land Use Restrictions**

Ohio Revised Code Section 3796.30(A) prohibits cultivators, processors, and retail dispensaries from being located within 500 feet of a school, church, public library, public playground, or public park. However, there is nothing in the state law to prohibit concentrations of those entities, particularly retail dispensaries.

### **Cultivator Rules Synopsis**

The rules require cultivators to have in place operations plans for the production, storage, inventory, and transportation of medical marijuana. (See OAC 3796:2-2-01(A).) Cultivators are required to:

- Designate areas in the facility that are compartmentalized based on function and restrict access between the different areas;
- Develop a quality control plan;
- Implement security procedures;
- Document the chain for all medical marijuana in the inventory tracking system;
- Establish sanitation standards and prevent infestations of pests;
- Test a random sample from every batch of medical marijuana;
- Dispose of medical marijuana waste in the prescribed manner;
- Keep certain books and records.

### **Processor Rules Synopsis**

The rules require processors to have in place operations plans for the production, storage, inventory, and transportation of plant material, medical marijuana extract, and medical marijuana products. (See OAC 3796:3-2-01(A).) Processors are required to:

- Designate areas in the facility that are compartmentalized based on function and restrict access between the different areas;
- Establish training and safety policies for employees, including safe handling of chemicals and equipment used in processing;
- Document the chain for all medical marijuana in the inventory tracking system;
- Establish sanitation standards and prevent infestations of pests;
- Maintain facility with adequate lighting, ventilation, temperature, sanitation, equipment, and security for the processing of medical marijuana;
- Comply with packaging and labeling requirements;
- Dispose of medical marijuana waste in the prescribed manner;
- Keep certain books and records;
- Implement security procedures.

### **Dispensary Rules Synopsis**

The rules require dispensaries to have in place an operations and management practices plan for the handling, security, inventory, and distribution of medical marijuana. (See OAC 3796:6-3-01(L)). Dispensaries are required to:

- Appoint a designated representative;
- Not be located within 500 feet of a community addiction services provider;
- Be open a minimum of thirty-five hours a week, unless otherwise authorized;
- Only dispense medical marijuana between the hours of 7:00 AM EST and 9:00 PM EST;
- Follow certain security practices;
- Follow specified dispensing protocols;
- Provide certain reports to the State;
- Meet minimum employee training requirements;

- Comply with packaging and labeling requirements;
- Dispose of medical marijuana waste in the prescribed manner;
- Keep certain books and records;
- Not make medical marijuana or medical marijuana products attractive to children and follow other advertising and marketing regulations.

### **Status of State Approval of Cultivators, Processors, Testing Laboratories, and Dispensaries**

Currently the State is in the first round of permit approvals for the medical marijuana program. To date, 376 dispensary applications have been filed with the State's Medical Marijuana Control Program. State law provides for up to 60 total dispensary locations to be permitted in a distributed fashion across Ohio based on considerations such as potential patient populations, surrounding states' regulations, population distribution, and access to major roadways. Dispensary license approvals are anticipated in the coming months. Cultivation licenses have been granted for a dozen locations around Ohio, with the closest locations to Kettering in Yellow Springs, Springfield, Dayton, and Huber Heights. Applications for processing locations are currently under review by the State. The State has received 104 processing applications and is authorized to approve up to 40 licenses. The State has also received nine testing lab applications and is in the process of review.

Currently there are pending applications with the State for several dispensary locations surrounding Kettering. In Montgomery County, a total of three dispensaries are being permitted by the State during the first phase of approvals. To date, 18 applications have been submitted for dispensaries in Montgomery County, with 13 locations in the City of Dayton, two in Riverside, two in Clayton, and one in Union. The two closest locations to Kettering within Montgomery County are in Dayton, near Smithville Road and Watervliet Avenue.

Three applications are pending for dispensaries within the City of Beavercreek, the closest to Kettering located at 4370 Tonawanda Trail across from The Greene. The State of Ohio is only permitting one dispensary to be located in the entire geographic area covering Greene County, Fayette County, and Madison County during this first phase of approvals. To date, three applications in Greene County, three in Madison County, and none in Fayette County have been submitted to the State. Below is a map that the Dayton Daily News prepared on February 2, 2018 that shows the locations of potential dispensaries throughout the Dayton region.



Dayton Daily News map of potential medical marijuana dispensaries in the Dayton-Springfield region.  
Prepared February 2, 2018.

## Federal Government's Position on Medical Marijuana

On January 4, 2018, the United States Attorney General issued a "Memorandum For All United States Attorneys" regarding Marijuana Enforcement (copy attached). That memo stated in pertinent part:

[i]n the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 *et seq.* It has established significant penalties for these crimes. 21 U.S.C. § 841 *et seq.* These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

The memo concluded by rescinding five previously issued memoranda on the same subject that had indicated a more permissive enforcement of federal laws related to marijuana would be used in states that had legalized its possession and had strong control measures in place. The January 4, 2018 memo has been largely viewed as setting the stage for the Federal Government to resume stricter enforcement of federal laws concerning marijuana.

## Update on Other Communities' Regulations

Over the past year, most communities within the Dayton region have taken action to either enact or extend moratoriums, or to completely ban all functional areas of the medical marijuana program (cultivation, processing, testing, & dispensing). Below is a chart showing the status of selected communities with regard to their level of regulation:

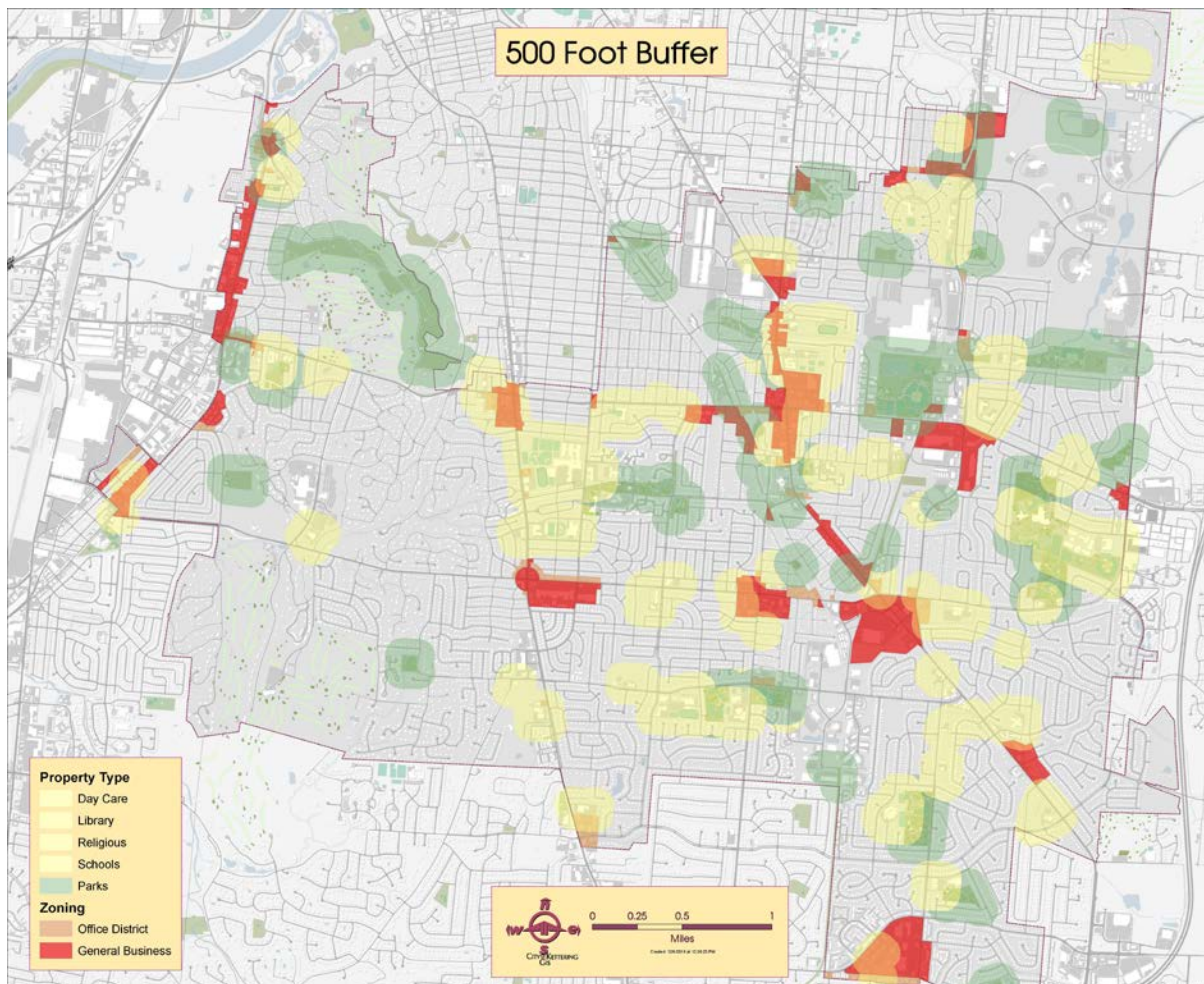
<b>Medical Marijuana Regulations, as of 3/23/18</b>	
<b>Jurisdiction</b>	<b>Status</b>
<b>Dayton</b>	Permitted
<b>Clayton</b>	Permitted
<b>Riverside</b>	Permitted
<b>Beavercreek</b>	Permitted
<b>Springfield</b>	Permitted
<b>Yellow Springs</b>	Permitted
<b>Kettering</b>	Moratorium (expires May 31, 2018)
<b>Centerville</b>	Moratorium
<b>West Carrollton</b>	Moratorium
<b>Moraine</b>	Moratorium
<b>Oakwood</b>	Prohibited
<b>Springboro</b>	Prohibited
<b>Miamisburg</b>	Prohibited
<b>Vandalia</b>	Prohibited
<b>Huber Heights</b>	Prohibited
<b>Middletown</b>	Prohibited

## Options for Regulating Medical Marijuana in Kettering

With regard to the potential regulation of medical marijuana in the City of Kettering, City Council has several options to consider. Under the State's medical marijuana law, municipalities can fully ban or enact stricter regulations for medical marijuana cultivators, processors, and/or dispensaries. Below is a brief summary of these options, ranging from least restrictive to most restrictive:

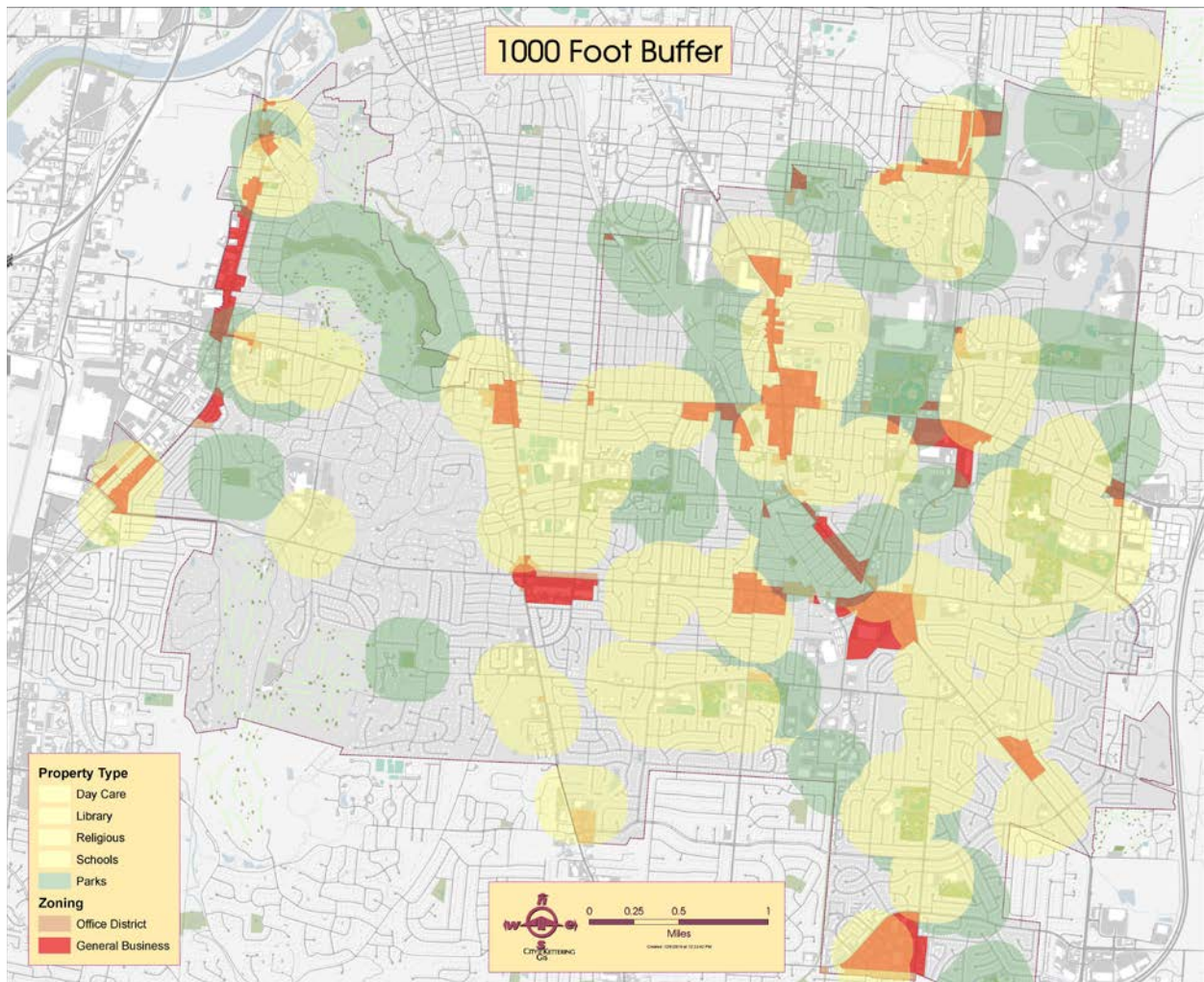
**Least Restrictive Option: No Kettering-specific regulations; allow medical marijuana in Kettering according to state law.** Under this option, the City's current moratorium would be allowed to expire at the end of May 2018. After that time, any entity wishing to establish cultivation, processing, and/or dispensary locations in Kettering would be permitted to do so under the regulations established in the State law, unless local regulations are enacted by City Council. The basic restriction on locations for any of these three functions is that they may not be located within 500 feet of any school, church, public library, public playground, or public park. All of the other previously described State rules would also apply. This option would require no further legislative action by City Council.

Under this option, medical marijuana cultivation, processing, and/or dispensary operations would be permitted in Office and General Business zoning districts that are outside of the 500 foot radius restrictions. Examples of commercial areas in Kettering that are located outside of the 500 foot restrictions include the area surrounding Town & Country, portions of the Wilmington Pike corridor, Oak Creek Plaza, portions of the South Dixie corridor north of Dorothy, the area surrounding the Woodman & Dorothy intersection, and the Wilmington Heights Shopping Center at Wilmington & Swigert. A map depicting 500 foot buffers overlaid on Office and General Business zoning districts is shown below.



**More Restrictive Option: Enact Kettering-specific regulations via the Zoning Code or a medical marijuana-specific Business Regulation.**

Under this option, Council could allow medical marijuana cultivation, processing and/or retail dispensary locations in Kettering, but establish more restrictive conditions than those established in state law. A more restrictive condition could include wider buffers (larger than 500 feet) from schools, churches, public libraries, public playgrounds, or public parks. A wider buffer would further limit the commercial areas where medical marijuana operations could locate. For example, a 1,000 foot buffer would limit medical marijuana operations to the area surrounding Town & Country, portions of the South Dixie corridor north of Dorothy, a small portion of the Wilmington Pike corridor between Marshall & Stroop, and a smaller area near the Woodman & Dorothy intersection. A map depicting 1,000 foot buffers overlaid on Office and General Business zoning districts is shown below.



Other potential restrictions that Council could enact include: restrictions on site locations based on the current Zoning Code; hours of operation; maximum number and concentration of locations; additional security requirements; and local business licenses. This list of regulations is not all encompassing, and if Council elects to move forward with this option, Staff would begin writing specific regulations for future consideration in the coming months, to potentially be enacted around the time the current moratorium is set to expire. The current moratorium would need to be extended to allow for full consideration and approval of potential regulations.

A change to the Zoning Code would necessitate taking the medical marijuana issue through the Planning Commission process, while enacting a new Business Regulation could be accomplished through Council's standard Ordinance process, with or without public hearings on the matter. Council could choose to

allow all functions of the medical marijuana program in Kettering, or only some of them (e.g. prohibit retail dispensaries but allow cultivation and processing, or any combination of the three).

**Most Restrictive Option: Fully prohibit all functions of medical marijuana within Kettering.**

Council has the ability under state law to fully prohibit the cultivation, processing, and/or retail dispensing of medical marijuana in Kettering. The prohibition could either be enacted via the Zoning Code or a medical marijuana-specific Business Regulation. A change to the Zoning Code would necessitate taking the medical marijuana issue through the Planning Commission process with multiple public hearings, while enacting a new Business Regulation could be accomplished through Council's standard Ordinance process, with or without public hearings on the matter.

**Staff Recommendation**

Ohio Revised Code Chapter 3796, which permits cultivating, processing, dispensing, testing, and use of marijuana for medical purposes, is in conflict with federal law. From a legal perspective, until this conflict is resolved (e.g. marijuana being removed from the Federal Schedule I drug list), staff is recommending that City Council fully prohibit cultivation, processing, and dispensing of medical marijuana in Kettering. Possession and use of medical marijuana in compliance with state law would be allowed, and those individuals who desire to possess and use medical marijuana would be able acquire it from nearby dispensaries in neighboring jurisdictions (e.g. Beavercreek and Dayton).

**Negative Secondary Effects**

Much like sexually oriented businesses, medical marijuana businesses could bring with them negative secondary effects. A prohibition on the cultivation, processing, and dispensing of medical marijuana in Kettering will help prevent potential negative secondary effects that could be caused by these operations. These negative effects are documented in state and city published reports from California, Washington State, and Colorado, where medical marijuana is currently grown, processed, and sold. Washington State's 2016 Marijuana Impact Report explains that the emergence of both the medical marijuana retail market and later, the recreational use market, has caused "major shifts affecting law enforcement, public health institutions, and cultural perceptions." The following is a condensed list of some of the secondary effects documented in these reports:

Increases in Crime:

- An increase in crime associated with medical marijuana dispensaries and cultivation sites. Dispensaries have been targets for burglaries, violent armed robberies, assaults, and even murder.
- Medical marijuana establishments often operate all cash businesses because many banks still adhere to the federal prohibition on the drug. This means patrons of medical marijuana dispensaries are known to carry cash. Police in these states have reported an increase in robberies of patrons as they enter or exit the dispensaries.
- Operators of medical marijuana dispensaries have been linked with various criminal activities including: money laundering, drug trafficking, illegal weapons possession and sales, illegal drug transactions, organized crime and gang activities.

Illegal Diversion:

- Police departments reported illegal re-sale of medical marijuana to juveniles, and the sale of medical marijuana to juveniles using a third party's medical marijuana ID card.
- Police departments report confiscations of fake medical marijuana ID cards, the purchase of medical marijuana from dispensary security guards, and the re-selling of medical marijuana in dispensary parking lots.

Negative Impacts on Neighboring Land Uses:

- Various neighborhoods and retail areas that include medical marijuana dispensaries have reported an increase in noise, traffic, double parking, complaints of blocked driveways, loitering, panhandling, and public marijuana smoking.

- A rise in “street dealing” of marijuana near dispensaries has substantially increased. “Street dealing” near dispensaries means drug dealers attempt to intercept dispensary patrons prior to entering the business with the promise of a cheaper or better product.
- A rise in the rate of electrical fires and chemical explosions has been reported in locations where medical marijuana is cultivated and processed.
- These states reported pollution from pesticides and negative environmental impacts from other chemicals used to grow and process medical marijuana.
- Businesses located in the same vicinity as medical marijuana operations have reported a loss of customers due to increased crime in the area, negative public perception of the area, and a smell that emanated from the dispensaries themselves.
- Cities, as a whole, have reported reduction in visitors as a result of safety issues and negative perception.

Full versions of the state and city reports cited are available at:

- <http://www.rmhidta.org/html/FINAL%202017%20Legalization%20of%20Marijuana%20in%20Colorado%20The%20Impact.pdf>
- <http://www.riag.ri.gov/documents/NWHIDTAMarijuanaImpactReportVolume1.pdf>
- [http://saratoga.granicus.com/MetaViewer.php?view\\_id=8&clip\\_id=689&meta\\_id=26722](http://saratoga.granicus.com/MetaViewer.php?view_id=8&clip_id=689&meta_id=26722)

We will plan to discuss the City’s options for medical marijuana during the March 27, 2018 Workshop. If you have any questions prior to the Workshop, please feel free to contact the City Manager’s Office.