

Tammy Hodgman

From: Barry A. Tibbets
Sent: Wednesday, October 6, 2021 4:03 PM
To: Tammy Hodgman
Subject: FW: Clear legal issue with transferring ownership in medical marijuana caregiver businesses - opportunity to amend Windham ordinances

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From: "Malina E. Dumas" <MDumas@dwmlaw.com>
Date: September 10, 2021 at 9:45:27 AM EDT
Subject: Clear legal issue with transferring ownership in medical marijuana caregiver businesses - opportunity to amend Windham ordinances

Good morning Councilor Kalogerakis,

I hope you are doing well. I am writing to revisit an issue with Windham's marijuana licensing ordinance, which the Town Council amended earlier this year to allow for transfers of ownership in marijuana businesses that hold local licenses. The issue with this was that state law actually prohibits a subset of these businesses (specifically caregiver entities, including those operating medical marijuana caregiver retail stores in town) from selling equity in their companies. I am hoping that now the time is ripe to amend Windham's ordinances to authorize registered dispensary retail stores and allow the existing stores to transition to this new model. Dispensary registrations are now available, and the state confirmed in writing that registered caregivers are not authorized to sell equity in the entities through which they run their operations.

Authorizing Registered Dispensaries Will Allow Caregiver Retail Stores to Transition to a New Model and Lawfully Raise Capital

Back in February, I provided public comment about restrictions on transfers of ownership in caregiver entities under state law and issues raised by the ordinance amendment. I requested that the Council consider amending the licensing and land use ordinances further to allow the existing caregiver retail stores to transition to registered dispensary retail stores, which would address these issues. I wanted to circle back on this now that new registered dispensary applications are available and the Office of Marijuana Policy's leadership (as well as the Attorney General's office) confirmed that under state law, caregivers are prohibited from transferring equity ownership in their caregiver businesses. My hope is that the Town Council will work toward amending the ordinances as soon as possible so that the medical marijuana stores in town have the opportunity to apply for dispensary registrations and subsequently raise capital from investors in a manner that fully complies with existing state law.

During the last meeting I attended on this topic, the Council decided to wait and see what might happen with the new medical marijuana program rule before revisiting this. At that time, it was not evident when dispensary applications would even be available. As you may know, the rulemaking ended up being significantly delayed and final rules will likely not be adopted until 2022. However, the release of dispensary registration applications did not depend on the adoption of the final rule, because the cap on dispensary registrations was automatically repealed by statute in January 2021. OMP released the new application materials last month, so now it is possible for caregivers across the state to transition their operations.

In order for a caregiver to transition to a registered dispensary, however, their business must first obtain local authorization for this change. In order to sign off on a local authorization form, the municipality must have language in its ordinance(s) authorizing the operation of dispensaries. Accordingly, I am asking the Windham Town Council to amend the marijuana licensing ordinance and land use ordinance to allow registered dispensaries, for the sole purpose of allowing the existing licensed caregiver retail stores to convert to a retail store operated by a registered dispensary. This will allow the existing stores to lawfully raise capital through sales of equity in their businesses.

Written Correspondence from the Office of Marijuana Policy Confirming State's Position on Compliant Corporate Structures for Caregiver Businesses

I am attaching to this e-mail a message from the Office of Marijuana Policy's Policy Director Gabi Pierce, with Director Erik Gundersen and Deputy Director of Operations Vern Malloch copied, confirming that it is the position of OMP and the Office of the Attorney General that "**caregiver business entities must be structured in such a way that the natural person who is a caregiver retains sole equity ownership and sole control of the business entity.**" In other words, in order to comply with the existing Medical Use of Marijuana Statute, a registered caregiver entity must be wholly owned by the registered caregiver, and it is a violation of state law to transfer equity ownership in this entity to any other individual (i.e. investors).

It is clear from the attached correspondence that the position of OMP's leadership and the Maine Attorney General does not hinge on further rulemaking; this is how the state interprets the law as it currently stands.

I know that the Windham Town Council understood the issues facing marijuana businesses that have limited access to banking and traditional loans, and you all voted to amend Windham's marijuana licensing ordinance to allow for transfers of ownership accordingly as a way of raising capital through the sale of equity.

It should be of concern to the town, however, that signing off on such transfers for caregiver businesses (such as the licensed caregiver retail stores in town) precipitates a clear violation of state law.

Limited Opt-In For Retail Sales Component – Dispensary Cultivation/Manufacturing Can Still Be Prohibited

Importantly, Windham can make this change to its ordinances without allowing the other aspects of registered dispensary operations (i.e. larger scale cultivation and manufacturing of medical marijuana). I know there was a concern raised in the winter about the other state-authorized activities of dispensaries beyond retail sales. It is simple to break down the definition of "registered dispensary" in the ordinance amendment to only allow for the retail sales component of a dispensary operation, and other municipalities have done this. Registered dispensaries may cultivate, manufacture, and sell medical marijuana under state law but only to the extent the municipality authorizes them to do so. Unlike with caregiver entities, registered dispensaries must obtain local authorization before they can

even apply for their state license. What we are proposing is simply allowing the existing caregiver retail stores to transition to registered dispensary retail stores, keeping the land use exactly the same but providing more flexibility in how they structure their operations in order to ensure continued compliance with state law.

Thank you in advance for your time and taking this all into consideration. I am happy to answer any questions you might have. Best,

Malina

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Inclusion is a professional and personal value of mine. One way I practice gender inclusion is to share my gender pronouns. Mine are she/her.

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