

**From:** [Stephen Anderson](#)  
**To:** [Roland Bartl](#); [Kristen Domurad-Guichard](#)  
**Cc:** [Steve Ledoux](#); [Nina Pickering Cook](#); [Scott Mutch](#)  
**Subject:** RE: Acton/Gen PB - APA Zoning Practice - Medical Marijuana  
**Date:** Thursday, November 08, 2012 7:08:07 PM  
**Attachments:** [Beek v City of Wyoming.doc.doc](#)

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Kristen:

Here is a link to the Secretary of State's website on:

- Question 3 Summaries: [http://www.sec.state.ma.us/ele/ele12/ballot\\_questions\\_12/quest\\_3.htm](http://www.sec.state.ma.us/ele/ele12/ballot_questions_12/quest_3.htm).
- The full text of Question 3:  
[http://www.sec.state.ma.us/ele/ele12/ballot\\_questions\\_12/full\\_text.htm#three](http://www.sec.state.ma.us/ele/ele12/ballot_questions_12/full_text.htm#three).

Attached is a 2012 case from the Michigan Court of Appeals concluding that the City's zoning ordinance directly conflicted with the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq., by prohibiting conduct permitted by the MMMA. The court therefore concluded that the ordinance was void and unenforceable to the extent that it purported to sanction the medical use of marijuana.

The City also argued that the MMMA is preempted by the federal Controlled Substances Act (CSA), 21 USC 801 et seq., so the MMMA should not stand as an obstacle to the enforcement of the City's zoning ordinance. The court also concluded that the federal CSA does not preempt the MMMA's the limited grant of immunity from a "penalty in any manner" because that section pertains only to state action and does not purport to interfere with federal enforcement of the CSA. The court noted, "Our conclusion is consistent with the conclusions reached by the California and Oregon courts, both of which addressed whether their state medical marijuana laws were preempted by the CSA on grounds of impossibility preemption. Both state courts concluded that their state laws were not preempted by federal law on the basis of impossibility preemption. See *Emerald Steel Fabricators v Bureau of Labor & Indus*, 348 Or 159, 176; 230 P3d 518 (2010); *San Diego County v San Diego NORML*, 165 Cal App 4th 798, 821; 81 Cal Rptr 3d 461 (2008); *Qualified Patients Ass'n v Anaheim*, 187 Cal App 4th 734, 758-759; 115 Cal Rptr 3d 89 (2010)."

Steve

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**From:** Roland Bartl [mailto:[rbartl@acton-ma.gov](mailto:rbartl@acton-ma.gov)]  
**Sent:** Thursday, November 08, 2012 3:43 PM  
**To:** Kristen Domurad-Guichard  
**Cc:** Stephen D. Anderson; Steve Ledoux; Nina Pickering Cook; Scott Mutch  
**Subject:** RE: APA Zoning Practice - Medical Marijuana

An important piece of information here seems to be what the "community standards" are with respect to medical marijuana cultivation, processing, and dispensaries. While the ballot voting results for Acton are one indicator, it seems that a conversation with the Planning Board may be an appropriate first step. Could you, please, pull together for an agenda item:

1. The language of the ballot amendment, together with the official pro and con arguments that the Secretary of State usually issues before the ballot vote.
2. The APA Zoning Practice article & any other relevant literature (but not an overwhelming amount); may Steve A. has come across something that he finds particularly informative, but brief.
3. Zoning bylaw examples, especially interesting if from Massachusetts, or model bylaws, if

they exist.

4. The Acton voting results on the ballot question (on your desk)
5. Town Counsel correspondence that we had since the ballot measure passed.
6. And, to keep the discussion focused, develop a set of pertinent questions for the Planning Board to consider, like
  - a. Do you think the Town should regulate the growing of Marijuana? If so how.
  - b. Should the Town regulate the processing of marijuana?
  - c. Should the town establish a special use definition for dispensaries and regulate them different from say, retail, or service, or pub, or whatever, in terms of what zoning districts they should be allowed or not allowed?
  - d. Is there a desire in Acton to establish separation requirements for dispensaries to schools, for instance, and between dispensaries?
  - e. Is there a need to make them single use establishments, or can they be combined with other uses?
  - f. Is there a perception among Board members that Acton would want unique, parking, setback, signage or other standards for dispensaries?
  - g. Any other question that comes to your mind after you read the materials.

Thanks -

Roland Bartl, AICP  
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**From:** Kristen Domurad-Guichard  
**Sent:** Thursday, November 08, 2012 9:59 AM  
**To:** Roland Bartl  
**Subject:** APA Zoning Practice - Medical Marijuana

See attached Zoning Practice "Medical Marijuana"

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