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April 18, 2017 (via e-mail)

Dear Smithfield Town Council Members:

**Re: Proposed Zoning Ordinance Amendment Governing Medical Marijuana**

On behalf of the ACLU of Rhode Island, I am writing in response to the proposed zoning ordinance which is the subject of a public hearing at your Council meeting tonight, designed to significantly restrict the use of medical marijuana in the Town. For the reasons expressed below, we urge that the ordinance be rejected. I apologize for the late nature of this written testimony, but we were only just made aware today of tonight's public hearing, and I am unable to attend.

The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act establishes detailed standards and requirements for the use and cultivation of medical marijuana. This proposed ordinance, we submit, severely interferes with, and undermines, critical aspects of that law, and is in direct conflict with it. It could significantly hamper the ability of patients and caregivers to grow and access medication that is critical to their well-being. We recognize the tragedy that has likely led to this proposal, but if all it does is encourage the growing of medical marijuana in violation of the ordinance or lead to a successful legal challenge to the ordinance's validity under state law, little will have been accomplished.

Among other dubious aspects of the ordinance, this proposal would generally restrict any growing of medical marijuana in the Town except by a medical marijuana patient. §4.4.L(D). It would bar caregivers from growing medical marijuana for patients, and would also completely prohibit residential co-ops and non-residential co-ops. §4.4.L(E-F). It would limit patients to growing two plants, §4.4.L(D)(5) and require that they be grown in their own residence and nowhere else. §4.4.L(D)(1). It would further require a variety of permits, approvals and documentation in order for the patient to grow. §4.4.L(D)(3-4). All these limitations go far beyond the criteria contained in the Medical Marijuana Act and clearly violate both the spirit and letter of the law.

Regarding the limitation on caregivers, the crucial importance of these individuals to the medical marijuana program cannot be overstated. They truly are a lifeline for some patients who are too ill to try to grow their own marijuana or who cannot afford to purchase marijuana from a compassion center. Growing medical marijuana can also be extremely expensive and requires an expertise that many patients simply do not have. It is therefore not a surprise that many rely on a caregiver to grow their marijuana for them. Yet this proposal would essentially eliminate caregivers from the program if they live in Smithfield. We do not believe the Town has the right or the authority to make use of its zoning powers to completely undermine an integral component of the state's medical marijuana program.

In addition, the Medical Marijuana Act further explicitly provides for the cooperative cultivation of marijuana in both residential and non-residential locations, and contains standards for such cultivation. R.I.G.L. § 21-28.6-14. For similar reasons to those expressed above for caregivers, we do not believe the Town has the power to use a zoning ordinance to render the “co-op” provisions of the law meaningless.

As is the case with some patients’ need for caregivers, there are many legitimate reasons the state ensured that cardholders could also cooperatively cultivate medical marijuana. Because of the costs and the proficiency that can be needed to successfully grow marijuana, cooperative cultivation can be an extremely important way for patients and caregivers to actualize their ability to make use of the Act. Many people simply cannot cultivate marijuana on their own.

Further, the ability to grow medical marijuana, individually or cooperatively, in both residential and non-residential settings is a necessary option. Some cardholders wishing to grow in a co-op or in a non-residential setting may have no choice but to do so. For example, their landlord may prohibit growing medical marijuana in their apartment or home, or the patient may determine it is not safe or feasible to grow there. In many instances, as noted above, patients may need assistance in growing the marijuana, and cultivation in a location other than their residences may be the most feasible – indeed, the only – approach.

The bureaucratic hurdles imposed by this ordinance are incredible, particularly with growing limited to patients’ residences. Among the many other obstacles, the patient must apply for a zoning certificate and fire department approval, obtain certified building plans, and grow only in a room in their residence that has two exits. Although the ordinance claims that all permits and applications will be confidential, it is difficult to imagine how, in practice, such confidentiality would be assured. Finally, the two plant limit is in direct conflict with the state law’s provisions governing the amount of marijuana that patients, caregivers and others may have.

Because these proposed zoning restrictions are in conflict with the state’s Medical Marijuana Act and have the potential to cause much harm to patients in Smithfield while doing little to protect the Town, we urge the Town Council to reject this proposal.

Thank you in advance for considering our views.

Sincerely,

Steven Brown  
Executive Director

cc: Dennis Finlay, Town Manager  
Carol Aquilante, Town Clerk  
Edmund Alves, Jr., Town Solicitor