

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

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Memo

To: City Council
William Bridgeo, City Manager
Micheal Duguay, Director of Development Services

From: Matt Nazar, Deputy Director of Development Services

Date: May 3, 2010

Re: Medical Marijuana and Methadone Clinics

The Governor signed a law in early April that approved eight medical marijuana facilities in the state with one in each DHHS region. Augusta's region includes all of Kennebec and Somerset counties. So there will be one medical marijuana dispensary for the Kennebec and Somerset County area. The application process for dispensaries is currently open at the state. It is reasonable to assume that Augusta would be an attractive location for a business to want to locate - the greatest population densities are in this part of the region, the regional hospital and cancer center will be in the city, and all roads really do lead to Augusta. Each facility in the state will be licensed and regulated by the state.

While discussing the issue of Medical Marijuana, the Planning Board discovered that methadone clinics are currently allowed in a number of zoning districts where Board members felt they would create conflicts with adjacent uses. The Board proposed to address this issue through the same amendment process. The two issues are not directly related to each other. No one has proposed that the two uses would occur together. The Planning Board simply took this opportunity to address two health care uses at the same time.

The Planning Board held two public hearings on the topic of medical marijuana dispensaries and methadone clinics. The Board heard from two local health care professionals that spoke neither in favor nor against the zoning amendment, but expressed interest in the proper regulation of the medical marijuana as a health care service and support for the location of a dispensary in the city's medical district. Two other individuals

also spoke and expressed interest in having the marijuana dispensary locate in the medical district as well. One individual is a property owner adjacent to the medical district and the other is a potential operator of such a facility.

The Planning Board recommendation is to create two new uses in the ordinance. Specialized Medical Clinic is a use that is proposed to be allowed in the Medical district and can be a methadone clinic, a medical marijuana dispensary where marijuana is grown and dispensed, or a marijuana dispensary only without any growing occurring on site. The second definition is for a Medical Marijuana Grow-only Facility, which is a facility where plants could be grown and processed, but no dispensary could exist. Growing facilities are anticipated to be warehouse space with processing facilities on site for dispensing to patients at another site. The expectation is that about 15,000 to 20,000 square feet of warehouse space would be necessary to serve the patient population of Kennebec and Somerset Counties, although a larger facility might be necessary if the patient population is larger than anticipated.

It is apparent that "grow facilities" and "dispensaries" may or may not be located in separate places. Grow operations can occur in nearly any warehouse style setting. The plants are grown under lights with automatic irrigation. A warehouse facility would only need security and proper ventilation in order to serve the needs of the industry. The reality of the facility is that an individual passing by would be unlikely to know what was occurring inside. Dispensaries are expected to be structures that enable registered users to enter and purchase products ranging from various paraphernalia for delivering the drug to various forms of the drug including smokables, edibles, tinctures, oils, and topicals.

The Board recommendations are attached.

New Definitions

Specialized Medical Clinic. A facility that dispenses methadone or medical marijuana to patients. A medical marijuana dispensary may also grow and process the product at the same facility. Typical accessory uses for a medical marijuana dispensary or grow facility may include, but are not limited to, counseling services associated with the medical conditions being treated with medical marijuana, processing and cooking facilities for preparing the marijuana, other treatments for the medical condition being treated with marijuana. In all cases, accessory uses must remain secondary, individually and in aggregate, to the primary use.

Medical Marijuana Grow-only Facility. A facility that engages only in the growing and processing of medical marijuana in accordance with state law, but does not dispense marijuana. Processing of medical marijuana may include, but are not limited to, the preparation of tinctures, ointments, and food products containing medical marijuana.

District Changes:

Allow both of these uses in the Medical District as permitted uses.

Allow the Medical Marijuana Grow-only Facility in the Medical and IA districts as a permitted use.

Augusta Housing Authority (33 Union Street)

An increase of \$ 990.00 annually over the next 5 years to bring the cost of the lease space closer to the actual operating cost for the City. (Information based on calculations of FY 09/10)

Present leased square footage = 3950 sq ft

Present cost per sq ft = \$3.02/sq ft X 3950 = \$11,942.00 annually

Annual increase payment of \$ 990.00

FY10/11 \$11,942.00 + \$ 990.00 = \$12,932.00

FY11/12 \$12,932.00 + \$ 990.00 = \$13,922.00

FY12/13 \$13,922.00 + \$ 990.00 = \$14,912.00

FY13/14 \$14,912.00 + \$ 990.00 = \$15,902.00

FY14/15 \$15,902.00 + \$ 990.00 = \$16,892.00

City's present cost per square foot \$ 3.69

\$3.69 X 3,950 sq ft = \$ 14, 575.50

City's estimated cost per square foot in 5 years \$ 4.28

\$ 4.28 X 3,950 sq ft = \$ 16,906.00

THIS LEASE made this _____ day of May, 2010, by and between the City of Augusta, Maine (“Landlord”), and Augusta Housing Authority (AHA) (“Tenant”)

WITNESSETH:

WHEREAS, Tenant desires to obtain a location for office space for the provision of providing services related to housing programs, and

WHEREAS, Landlord desires to provide such a location at a facility it owns at 33 Union Street, Augusta, Maine.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

SECTION 1. GRANTING OF LEASEHOLD

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, approximately 3,950 square feet of space contained in certain real property located at 33 Union Street, Augusta, Maine (the “Premises:”). The Tenant intends to utilize the Leased space for approximately 5 days per week for the duration of the Lease agreement.

It is understood by both the Tenant and the Landlord that the Landlord is to deliver Tenant the Premises in the existing condition.

SECTION 2. TERM

This Lease shall be a continuation of the existing lease and shall continue on the date as hereafter defined and shall terminate June 30, 2015 thereafter, unless sooner terminated as provided hereinafter. The continuation date shall be July 01, 2010.

SECTION 3. TENANT’S LEASEHOLD IMPROVEMENTS AT RISK

The Tenant hereby understands and acknowledges that any and all leasehold improvements made to the Premises referenced herein will be fully at risk to the Tenant. As such, Landlord has no obligation whatsoever, implied or explicit, to compensate Tenant for improvements that may be considered as appurtenances or fixtures.

SECTION 4. USE OF THE PREMISES

The Tenant shall use and occupy the designated Premises throughout the term hereof solely for the purpose of providing services related to housing programs.

All activities will be conducted in accordance with any applicable municipal land use restrictions, building codes and other ordinances that may govern such operations.

SECTION 5. PARKING LOT AND RESERVATION OF SPACES

It is understood that the Tenant will have unrestricted use of the parking lot, except the spaces designated as "police business only", for its employees, agents and invitees and will share such facilities with other building tenants. The Tenant must ensure that it will discourage employees, agents and invitees from overnight parking on the Premises.

SECTION 6. IMPROVEMENTS

Tenant has inspected and accepts the condition of the Premises. At the expiration of the term of this Lease or any renewal period, Tenant shall have the right to remove the Improvements, provided that Tenant shall repair any damage to the Premises caused by such removal to a condition roughly equal to that upon commencement of the Lease. Improvements shall be defined as follows: lighting, carpeting, wall hangings, paintings, removable furniture, and any other item that is determined to be personal property of the Tenant. Improvements that are determined as fixtures or appurtenances will be at risk to the Tenant as set forth in Section 3 of this Lease.

SECTION 7. RENT

The rent shall be payable on a quarterly basis and be due on the first day of the first month of each quarter. Payment of the rent shall commence on July 1, 2010. The Tenants rent is based on the total of approximately 3,950 square feet that has been designated as Tenant space.

The rent payments shall be as follows:

FY2010/2011 shall be \$ 12,932.00 with quarterly payments of \$ 3,233.00
FY2011/2012 shall be \$ 13,922.00 with quarterly payments of \$ 3,480.50
FY2012/2013 shall be \$ 14,912.00 with quarterly payments of \$ 3,728.00
FY2013/2014 shall be \$ 15,902.00 with quarterly payments of \$ 3,975.50
FY2014/2015 shall be \$ 16,892.00 with quarterly payments of \$ 4,223.00
All quarterly payments shall be due in July, October, January, and April.

Rent includes the following; the physical space indicated within this Lease for the Tenant, heat, sewer, water, electricity, trash removal and snow removal.

The rent does not include telephone, internet services or custodial services of the Tenant's designated space.

SECTION 8. REPAIRS AND MAINTENANCE

Tenant shall, during the term, at its sole expense, keep the Premises in as good order and repair as on the day the facility was received for occupancy, reasonable wear and tear excepted. Landlord will be responsible for repairs and maintenance of the heating system, electrical system, alarm system, and plumbing system, and all other repairs to the buildings, which are not necessitated by the actions of the Tenant, its employees, agents or invitees.

SECTION 9. RENTING AND ASSIGNMENT

The Tenant may not assign or sublet its interest in this Lease to any other party.

SECTION 10. QUIET ENJOYMENT

Landlord covenants and warrants that Landlord is seized in fee simple title to the Premises, with good and marketable title. Landlord covenants that Tenant shall at all times during the term of this Lease and any extensions thereof have peaceful and quiet possession of the Premises. Landlord further covenants and warrants that it has good right, full power and lawful authority to make this Lease for the full term and any extensions thereof.

Tenant agrees to not allow loitering on the Premises and agrees to secure the Facility at all time in a manner that reduces any noise emanating from the Premises.

SECTION 11. DEFAULT

In the event that the Tenant shall fail to pay the rent when due or shall fail to perform any of its other obligations under this lease or shall be dissolved or declared insolvent or bankrupt, the Landlord shall have all the rights and remedies granted by, Maine law. In the event that the Landlord shall fail to perform any of its obligations under this lease or shall be dissolved or declared insolvent or bankrupt, the Tenant shall have all the rights and remedies granted by, Maine law.

SECTION 12. INDEMNITY

Each party will indemnify the other and save it harmless from and against any and all claims, actions, damages, liability and expenses in connection with the loss of life, personal injury and/or damage to property of others arising under this Lease, but Tenant

shall do so only to the extent of Tenant's liability and insurance therefore under the Maine Tort Claims Act. **In any matter arising under or relating to this Lease, each party shall be responsible for its own legal fees.** Nothing in this section, nor in any other section contained in this Lease, shall expand upon the scope or limits of liability set forth by the Legislature under the Maine Tort Claims Act, 14M.R.S.A. sec. 1801, et seq., or immunities or limitations of any state or federal law.

SECTION 13. INSURANCE

A. At all times during the term of this Lease or any renewal term, the Tenant will purchase and keep in full force and effect, at its own expense, the following: Comprehensive general liability insurance in the amount of not less than the Maine Tort limits; and all risk casualty insurance, written at a replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the premises, including, without limitation, its inventory, trade fixtures, floor coverings, furniture, and any other personal property removable by the Tenant under the provisions of this Lease.

B. Landlord shall provide during the term of this Lease and any other renewal term thereof, public liability insurance and building hazard insurance. Landlord will also maintain adequate fire insurance coverage for the Leased Premises.

SECTION 14. EXPIRATION OF TERM

Tenant has the option to renew this Lease for one additional (5) year term. Such an extension shall conform to all aspects of the Lease.

Tenant will provide notice to Landlord, in writing, of Tenant's intention to renew the Lease in accordance with the terms of this section within ninety (90) days prior to the termination date of this lease or any renewal thereof. The cost associated with the lease extension shall be negotiated at the time of the request to renew the lease.

This lease is made subject to available budgetary allocations and shall not create any obligation on behalf of the Landlord or Tenant in excess of such allocations. In the event that the amount of funds appropriated is such that either Landlord or Tenant must restrict or terminate its administrative program, this lease shall be terminated sixty (60) days after written notification.

SECTION 15. LANDLORD'S RIGHT OF ENTRY

Following the execution of the Lease, non-emergency entry of the premises by Landlord shall be conducted in a manner designed to not unreasonably interfere with any continuing or permitted use of the Premises by Tenant and done so by providing Tenant with 24 hour notice.

SECTION 16. MISCELLANEOUS

- (a) Landlord acknowledges that notwithstanding any contrary provision herein Landlord shall pay and be responsible for all utility expense and maintenance costs of the Premises prior to the commencement of the Lease term.
- (b) Tenant will place, or cause to be placed, trash to be removed from its designated space. Trash will not be allowed to be stored.
- (c) Tenant will make every attempt feasible, without disrupting its operations, to be energy conscious by turning off the lights and taking necessary steps to reduce energy consumption.
- (d) Smoking, on the grounds, shall conform to all applicable State laws.
- (e) Landlord warrants that the Leased Premises comply with all state and federal disability accessibility law requirements.

SECTION 17. DISPUTES

This lease and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maine. If a dispute arises, the parties agree to mediate. If litigation is brought, it must be filed in Kennebec County Superior Court.

SECTION 18. ENTIRE LEASE

This Lease may be modified only by a written amendment duly authorized and signed by the Landlord and the Tenant.

SECTION 19. WAIVERS

Failure of the Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver or a breach of any other provision of this Lease or a consent to any subsequent breach or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

CITY OF AUGUSTA
Landlord

By _____

Name:

Its _____

Tenant

By _____

Name:

Its _____

State of Maine
Kennebec, ss

PERSONALLY APPEARED the above-named _____
of the City of Augusta, Maine as aforesaid, and acknowledged the foregoing instrument
to be his free act and deed in his capacity and the free act and deed of said City of
Augusta, Maine.

Before me,

Name

State of Maine
Kennebec, ss

PERSONALLY APPEARED the above-named _____
of the _____ as aforesaid, and acknowledge the foregoing
instrument to be their free act and deed in their said capacity and the free act and deed of
said Corporation.

Before me,

Name