



Conor Baldwin
Chief Financial Officer

MEMORANDUM

TO: Eileen Donoghue, City Manager *EMD*

FROM: Conor Baldwin, Chief Financial Officer/ Acting Treasurer/ Collector *[Signature]*

DATE: January 17, 2019

SUBJECT: MOTION RESPONSE: C. Nuon – 1/8/2019 - Req. City Mgr. Explore Possibility Of Using Revenues From Recreational Marijuana Sales To Repair Municipal Buildings.

In response to the motion made by Councilor Nuon, the finance team has researched the relevant guidance documentation issued by the Department of Revenue (“DOR”) on the treatment and use of revenue generated by municipalities from the sale of recreational marijuana. These types of revenue at the local level fall into two distinct categories: (1) so-called “impact fees” or other payments under a community host or other agreement with a marijuana establishment or medical marijuana treatment center in connection with its siting and operation in the municipality; and (2) tax revenue generated due to the imposition of a local excise on the retail sales of marijuana for adult use. On May 15, 2018, the Lowell City Council accepted G.L. c. 64N § 3, the local excise option on recreational marijuana. The two categories of revenue are accounted for differently under the rules established by the DOR.

As a general rule in Massachusetts municipal finance, all money received or collected must be credited to the general fund and can only be spent after appropriation unless a general or special law provides for an exception and different treatment (i.e. a general or special law expressly reserves the revenue stream for expenditure for a particular purpose or allows expenditure by a municipal or district department or officer without appropriation - G.L. c. 44 § 53). It is important to note that, unlike the host agreement “impact fees”—which carry restrictions on the use for certain public safety and public health expenses—there is currently no general law that establishes a different accounting treatment for tax revenue from the local option. Therefore, the money belongs to the general fund and can only be spent by appropriation.

Because the receipts associated with marijuana establishments are a new revenue source for the city, however, there is a method, prescribed under state law, that Lowell could dedicate payments made by a marijuana establishment or medical marijuana treatment center for later appropriation for particular purposes. The City Council could accomplish this by using a local acceptance option to dedicate all, or a portion of **at least 25%**, of the collections of the excise on retail sales of marijuana or payments from a community host and other agreement payments to a general or special purpose stabilization fund established under G.L. c. 40 § 5B. Under this option, these collections and payments may be dedicated to stabilization funds because they are not earmarked for a particular purpose under current state law. In addition, the excise on marijuana retail sales is not a locally assessed tax or excise specifically excluded from dedication. Changes made by the



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Municipal Modernization Act to the stabilization fund legislation under G.L. c. 40, § 5B, eliminated caps on stabilization fund balances and the amount of annual appropriations into stabilization funds, changed the quantum of vote for appropriations into stabilization funds, and allowed the dedication of certain revenue streams into stabilization funds and expanded the depositories and investment options for stabilization fund reserves.

Lowell would be a trailblazer in utilizing these specific receipts in this manner, so the finance team has reviewed the proposal closely with our representative at the DOR and received confirmation that this innovative solution is consistent with their guidance. The City Council could therefore establish—by a two-thirds vote—a new, special purpose stabilization fund for the repair and maintenance of municipal facilities or, more specifically, school buildings. Two votes would be required to do so; the first to establish the fund pursuant to Chapter 40 § 5B and the second, to set the funding source from marijuana revenue. The City Council could dedicate any percentage between twenty five percent (25%) and one hundred percent to be automatically dedicated to the stabilization fund. The fund would carry over from one fiscal year to another and any interest earned on the principal balance would remain with the special fund. The monies on deposit in the stabilization fund could only be spent for the specific purpose set forth in the stabilization vote by a two-thirds appropriation vote and the fund must remain in existence for at least three years after adoption. However, the City Council could re-purpose the funds for any other legal expenditure upon another two-thirds vote. The recommendation from the finance department would be to start by dedicating twenty-five percent (25%) of the marijuana revenue into the stabilization fund.

Alternatively, if a special fund is not created, the receipts would remain with the general fund and at the close of the fiscal year; any excess receipts would be certified as free cash by the DOR. At such time that the full number of recreational marijuana establishments are open for business in Lowell and the finance department has time to analyze several years' worth of actual receipts, the city can estimate those receipts as part of the annual budget process as general revenue. The finance team, as it does with all other existing sources of revenue, could craft the financing plan for the lands and buildings division of DPW such that the excise tax receipts become a component of any increased expenditures on maintaining school buildings. The potential drawback of this method is that in the future, competing priorities in the budget may pull funding from investment in the municipal facilities.

If it is the will of the Council to move forward with the option to create a special purpose stabilization fund, I will work with the Law Department to prepare the necessary votes.

Please let me know if there are any questions.