

# PIONEER VALLEY PLANNING COMMISSION

## MODEL ADULT USE MARIJUANA ESTABLISHMENTS BYLAW/ORDINANCE (June 2018)



Timothy W. Brennan, Executive Director

### INTRODUCTION

The Pioneer Valley Planning Commission, in response to numerous requests from its member communities and working through a District Local Technical Assistance (DLTA) request for technical assistance submitted by the City of Springfield, Town of Belchertown and Town of Cummington, developed the attached Model Adult Use Marijuana Ordinance/Bylaw.

This proposed model bylaw/ordinance is designed to work in consort with Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws and 935 CMR 500.000 developed by the state's Cannabis Control Commission, by addressing local land use issues relative to the siting of such facilities in their community.

This Bylaw is offered as a model which should be tailored to meet the unique needs of each individual community and the structure of their Zoning Bylaw/Ordinance. We strongly advise that you should also consult:

- the Cannabis Control Commission's regulations contained in 935 CMR 500.000: ADULT USE OF MARIJUANA as well as their other Municipal Guidance documents
- the guides prepared by KP Law
- your municipal legal counsel.

PVPC would like to thank the members of this working group and acknowledge their significant contribution towards this effort:

- Jeffrey Bagg, Easthampton City Planner
- Phil Dromey, Springfield Deputy Director of Planning
- Douglas Albertson, Belchertown Town Planner
- Kalyan Uprichard, Cummington Planning Board
- Ron Barron, Associate Planner, CMRPC
- Larry Smith, PVPC Principal Land Use Planner
- Susan Westa, PVPC Senior Planner (please contact if you have any questions, require additional information or need assistance)

**GENERAL COMMENTS** - In the development of this Model Bylaw/Ordinance a number of issues were taken into consideration, which each municipality should consider in developing exactly what bylaw/ordinance meets their community's needs:

- For clarification, the terms "Recreational", "Retail", among others, have been used to identify the use of non-Medical Marijuana. Because those terms don't appear anywhere in either the original ballot question, the legislation or the developed regulations, for consistency we will be using the term "Adult Use of Marijuana" as it appears in state legislation as well as the Cannabis Control Commission's regulations (935 CMR 500.000: ADULT USE OF MARIJUANA)
- These recommendations relate to the regulating of Adult Use Marijuana establishments and assumes that your community has already adopted zoning regulating Medical Marijuana facilities. If your community has not already adopted zoning regulating Medical Marijuana facilities, please review PVPC's **MODEL MEDICAL MARIJUANA BYLAW/ORDINANCE**.

## MARIJUANA CULTIVATION

- It should be noted that MGL chapter 40A, Section 3 was modified to specifically exclude the cultivation of marijuana from the provisions of that section.

PVPC's Model Medical Marijuana Bylaw had included the provision that "*The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.*" We recommend that the cultivation of Adult Use Marijuana be treated in the same manner. There were a number of reasons for this:

- the commercial cultivation and processing of marijuana is really an industrialized process that typically takes place in highly secured, climate controlled structures 24 hours/day, 7 days/week, 52 weeks/year so production facilities should be directed to areas where you have large (perhaps already vacant) buildings, likely an Industrial or Heavy Business Zone.
- because such facilities were enclosed in structures they would not necessarily be dependent on or even utilize the vast acreages of fertile open agricultural lands contained in our communities and thus didn't need to be located on agricultural lands.
- most communities don't have an exclusive "Agricultural" zone but rather a "Rural Residential" district which is a mix of farms inter-mixed with low density residential housing
- questions have been raised as to whether existing greenhouses can meet the regulation's security requirements.
- unlike most agricultural products, marijuana is still a federally regulated Schedule 1 narcotic.

- While we are not encouraging or advocating for the outdoor cultivation of marijuana, if a community chooses to permit it then we recommend that outdoor cultivation be considered only after careful consideration of factors such as security, visual buffers, associated activities and accessory buildings, and size and clearing considerations.

## CRAFT CULTIVATORS

- At the earlier CCC “Listening Sessions” a number of area farmers provided testimony that felt that they had been excluded from participating in the cultivation of medical marijuana by the corporate nature of the medical marijuana industry. They wanted the CCC to make sure that they would have the ability to cultivate adult use marijuana on their farms. In trying to address that concern the CCC created a special category of marijuana cultivator as a “*Craft Marijuana Cooperative*” defined as:

*... comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.*

Essentially this allows farmers to form a cooperative to cultivate marijuana and wholesale it to retailers.

It appears that many communities have not accommodated these craft cultivators in their adult use marijuana bylaws as they primarily only allow cultivation in buildings and in industrial districts. There are a number of reasons for this:

1. Some town's may not be aware of the craft cultivator provision and are inadvertently zoning it out of their town not realizing it's need for agricultural lands
2. Some town's have concerns over the nature of craft cultivators and whether they can adequately provide the required security for their sites. This can be especially true for many of the region's small towns who rely on a part-time police force
3. Some towns prefer the out-of-site/out-of-mind nature of marijuana production by restricting cultivation to within buildings.

We have some concerns relative to the operation of craft cultivators. While we certainly recognize the desire of local farmers to be able to participate in the cultivation of a more lucrative crop then they traditionally have, towns and cities should carefully consider a range

of issues if considering allowing cultivation in residential and rural zoned areas, including but not limited to:

1. The unknown variations in the size, nature, and extent of cultivation operations. The regulations allow a cooperative to involve one farm property owner and the ability to lease to outside cultivators.

Size limits on cultivation buildings should be considered. For example, under the regulations cultivation facilities are based on a tier system from 5,000 square feet of flowering canopy up to 100,000 square feet of flowering canopy. This does directly equate to building sizes, which would be larger to house other aspects of the operation. We recommend communities consider Tier 5 as a modest operation consisting of 40,000 square feet of flowering canopy.

2. Questions about security measures to prevent thefts; the ability of local law enforcement to respond to such crimes; and, agricultural land looking more like the perimeter of a maximum security prison.
3. The soil characteristics of the agricultural land relative to marijuana's "sponge" like properties relative to contaminants.

#### FURTHER EXPLANATION OF SPECIFIC SECTIONS OF THE MODEL BYLAW/ORDINANCE

- Table of Uses/Permitted Zoning Districts - We are recommending that adult use marijuana establishments be permitted in specific commercial/industrial zoning districts in your zoning Bylaw. We understand that there are many smaller communities that have small or no Commercial or Industrial Zoning Districts within which to locate such facilities, and we suggest that they might want to consider establishing one or increasing the size of them.

The other alternative would be to adopt an "overlay district" identifying a particular limited area over an existing District(s) where such uses would only be permitted.

- Section 3.a.v. - The CCC regulations require that, for those communities that voted Yes on the original ballot question, if they restrict the number of Adult Use Marijuana Retail Establishments to "*less than 20% of the number of licenses issued within the town/city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws.*", then you will have to also conduct another town-wide ballot vote on your proposed Zoning Bylaw/Ordinance in addition to your Town Meeting/City Council vote.

We are recommending that town's adopt a limit of 20% (for the purposes of determining this number we are recommending that any fraction be rounded up to the next highest whole

number just to make things easy). This would avoid having to do another town-wide ballot vote on the Bylaw, and would avoid a proliferation of such retail facilities until you get a feel for how they work out. You can always go back and amend the Bylaw to increase the percentage if you feel the need for more. You won't be able to go back and reduce the number of permitted establishments if you find you've got too many. Of course, if communities want permit a greater number of Marijuana Retail Establishments they can adopt a percentage greater than 20%.

Also, we recommend that you adopt a percentage (i.e. 20%) rather than a hard number (i.e. 7 establishments) as, if for some reason your community increases the number of premises licensed for the retail sales of alcohol (i.e. package stores) your number of permitted marijuana establishments may fall below that 20% threshold and you would now be out of compliance with the CCC's regulations

- Section 3.b.iii. - In PVPC's Model Medical Marijuana Bylaw "*Off-Site Medical Marijuana Dispensaries*" were limited to a gross floor area of 2,500 square feet or less. For Adult Use Marijuana Retailers we are recommending that the gross floor area "*open to the public*" be limited to 2,500 square feet or less (that would be a 50' x 50' area). We are recommending limiting the size of retailers to control their massing and the number of patrons that can be accommodated in an attempt to mitigate impacts on abutting businesses and land uses. Anecdotal evidence of medical marijuana dispensaries have generated large numbers of customers and associated parking demand/overflow. While we recognize that a contributing factor to this is the limited number of such dispensaries actually in operation servicing a large number of card carrying patients, we should not underestimate the level of interest of patrons frequenting adult use retail facilities.
- Section 3.c.ii. - The CCCF regulations allow town's to require a buffer area of up to 500 feet for any marijuana establishment. We are suggesting a 300' buffer as that is consistent with what is recommended in the PVPC Model Medical Marijuana Bylaw. In determining an appropriate buffer area communities should carefully consider this measurement as it relates to the characteristics of the town or city, and whether you can actually locate a facility in the area in which you are permitting them.

However, there is a significant difference between the buffer zones for Medical Marijuana Facilities and those for Adult Use Marijuana Establishments. While the Medical Marijuana buffer allowed you to include a much larger number of potential youth oriented land uses (daycare, schools, playgrounds, churches, etc.) the CCC's Adult Use Marijuana Establishment regulations only require a buffer from:

*"a parcel occupied by a pre-existing public or private school (existing at the time the applicant's license application was received by the Cannabis Control Commission) providing education in kindergarten or any of grades 1-12."*

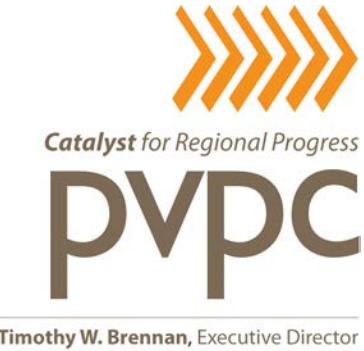
Some towns have considered the CCC's stipulation is only a "minimum" listing of concerned uses, and have expanded the list of uses. We are waiting to see if anyone actually adopts something more stringent and see if the AGO approves it.

- Section 3.c.iv.&v. – These sections prohibit the location of a marijuana establishment proximate to properties and buildings containing residential uses. We recognize that in heavily urbanized areas with mixed use buildings/neighborhoods this may not be feasible but the intent is to try limit and mitigate the exposure of the underage population to these types of facilities.
- Section 3.e.iv.1. – This section requires that operators provide a "decommissioning" bond to the town in the event that the marijuana establishment ceases to operate and the town has to remove all materials, plants, equipment and other paraphernalia if the applicant fails to do so.

The CCC, in the issuing of its license, also requires such a bond "*to ensure payment of the cost incurred for the destruction of cannabis goods necessitated by a violation of St. 2016, c. 334, as amended by St. 2017, c. 55 or 935 CMR 500.000 or the cessation of operation of the Marijuana Establishment.*" Some may find that the additional requirement of a local bond is redundant and an unfair and unnecessary cost burden on the marijuana establishment. Some however may feel that the CCC's interests may not necessarily be exactly the same as those of the municipality and they may want funding to ensure decommissioning of the site above and beyond what the CCC requires.

- Section 4.c. – The provision requiring an applicant to submit a Provisional License from the state provides a Planning Board with as much information as possible to consider in the context of the Special Permit application. There may be significant issues relating to security, waste removal, nuisance to neighbors, and coordination with City officials that will all need to be addressed by the Planning Board. The role of the Planning Board is made easier and the public is better protected when more reliable and finalized information is provided to the Planning Board. This provision also requires that an applicant demonstrate a serious commitment to their proposal before coming to the Planning Board. This not only encourages the applicant to seriously consider the details of their proposal before they get to the Planning Board, but it also ensures that serious, viable applicants are not prevented from obtaining a Special Permit due to quicker filings by less-serious applicants.

Eliminating this requirement may limit the information available to the Planning Board or result in a decision based on speculative information that may or may not be reviewed or approved by the state Cannabis Control Commission.



## MODEL ADULT USE MARIJUANA BYLAW/ORDINANCE

(June 2018)

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These recommendations relate to the regulating of Adult Use Marijuana establishments and assumes that your community has already adopted zoning regulating Medical Marijuana facilities. If your community has not already adopted zoning regulating Medical Marijuana facilities, please review PVPC’s **MODEL MEDICAL MARIJUANA BYLAW/ORDINANCE**.

### Moratoriums

If your town/city has adopted a moratorium on Adult Use/Recreational/Retail Marijuana Establishments, it needs to be repealed at the time your new regulations are adopted.

*The following should be adopted as General Bylaws/Ordinances:*

### Local Option Adult Use Marijuana Excise Tax

The Town/City accepts M.G.L. c. 64N Section 3, and in accordance with such imposes a local sales tax upon the sale of adult use marijuana originating within the Town/City by a vendor at a rate of 3% of the gross receipts of the vendor from the sale of adult use marijuana, marijuana products, and marijuana edibles. Such excise shall take effect on the first day of the calendar quarter commencing at least thirty days after such vote of Town Meeting/City Council.

### **Limitation on the Number of Adult Use Retail Establishments**

The number of adult use marijuana retail establishments permitted to be located within the Town/City of \_\_\_\_\_ shall not exceed 20% of the number of licenses issued within the town/city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws. For the purposes of determining this number, any fraction shall be rounded up to the next highest whole number.

### **Prohibition on Public Consumption of Marijuana or Tetrahydrocannabinol**

No person shall inhale, ingest, or otherwise use or consume marijuana or THC (as defined in G.L. c. 94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public. Whoever is found in violation of this bylaw/ordinance shall, when requested by an official authorized to enforce this bylaw, state their true name and address to such official.

This Bylaw/Ordinance may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L. c.40, § 21, or by noncriminal disposition pursuant to G.L. c. 40, § 21D, or any police officer. The fine for violation of this Bylaw/Ordinance shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this Bylaw/Ordinance shall be in addition to any civil penalty imposed under G.L. c. 94C, § 32L.

This Bylaw/Ordinance shall not alter or affect the jurisdiction of the Board of Health under the provisions of G.L c.111, §31 or any other applicable law, including but not limited to the regulation of combustion and inhalation of tobacco and non-tobacco products in workplaces and public spaces in the Town.

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### **Changes To Zoning Bylaws/Ordinances**

*The following should be added to the DEFINITIONS section of your Zoning Bylaw/Ordinance:*

Cannabis Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and promoting the growth of cannabis by a cannabis cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for cannabis cultivation. Such use is not agriculturally exempt from zoning. The cultivation and processing of medical marijuana in accordance with these regulations is

considered to be a manufacturing use and is not agriculturally exempt from zoning. Note this term is not defined in 935 CMR 500.

Cannabis or Marijuana or Marihuana: All parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana(a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L. c. 94G, § 1; provided that cannabis shall not include:

- (a) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;
- (b) hemp; or
- (c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

Cannabis or Marijuana Products: Cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Ceases to Operate: Marijuana Establishment closes and does not transact business for a period greater than 60 days with no substantial action taken to reopen. The Commission may determine that an establishment has ceased to operate based on its actual or apparent termination of operations.

Commission: The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, § 76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St. 2016, c. 334 as amended by St. 2017, c. 55, M.G.L. c. 94G, and 935 CMR 500.000.

Community Host Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Cannabis Establishment and a municipality setting forth additional conditions for the operation of a Cannabis Establishment, including stipulations of responsibility between the parties and a up to 3% host agreement revenue sharing. Note this term is not defined in 935 CMR 500.

Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

**Hemp:** The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

**Host Community:** A municipality in which a Marijuana Establishment is located or in which an applicant has proposed locating an establishment.

**Marijuana Independent Testing Laboratory:** A laboratory that is licensed by the Commission and is:

- (a) accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission;
- (b) independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- (c) qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

**Licensee:** A person or entity licensed by the Commission to operate a Marijuana Establishment under 935 CMR 500.000.

**Manufacture:** To compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.

**Marijuana Cultivator:** An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

**Marijuana Establishment:** A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center. Marijuana establishments permitted in accordance with these regulations are considered to be a commercial and/or manufacturing use and are not considered being subject to any agricultural exemptions under zoning.

**Marijuana Microbusiness:** A colocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

**Marijuana Process or Processing:** To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

**Marijuana Product Manufacturer:** An entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

**Marijuana Research Facility:** An entity licensed to engage in research projects by the Commission.

**Marijuana Retailer:** An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

**Marijuana Transporter:** An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

**Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary (RMD):** A not-for-profit entity registered under 105 CMR 725.100: Registration of Registered Marijuana Dispensaries, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

**Propagation:** The reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.

**Provisional Marijuana Establishment License:** A certificate issued by the Commission confirming that a Marijuana Establishment has completed the application process.

**RMD Applicant:** A previously Registered Marijuana Dispensary with a final or provisional certificate of registration in good standing with the DPH.

## **Permitted Districts**

The following should be added as principal uses to your TABLE OF USE REGULATIONS and then specify which Zoning Districts they are permitted in:

	Rural	Residential	Commercial**	Industrial**
Craft Marijuana Cooperative	N*	N	N	SP/SPA
Marijuana Cultivator	N	N	N	SP/SPA
Marijuana Product Manufacturer	N	N	N	SP/SPA
Marijuana Retailer	N	N	SP/SPA	SP/SPA
Marijuana Independent Testing Laboratory	N	N	SP/SPA	SP/SPA
Marijuana Microbusiness	N*	N	N	SP/SPA
Marijuana Research Facility	N	N	N	SP/SPA
Marijuana Transporter	N	N	SP/SPA	SP/SPA
any other type of licensed marijuana-related business, except a medical marijuana treatment center	N	N	N	SP/SPA
SP – Special Permit				
SPA – Site Plan Approval				

[NOTES:

- \*Craft Cooperative (See Introduction Narrative) - It is recommended that towns and cities fully understand the nature and extent of these opportunities and consider an initial size threshold, such as a Tier 5 operation with 40,000 square feet of flowering canopy and perhaps restricting outside cultivation and permitting in greenhouses.
- \*Microbusiness – This is a small growing operation of up to 5,000 square feet of flowering canopy. If towns and cities wish to allow these in rural or residential areas a range of factors should be carefully consider, including but not limited to whether these will be indoor or outdoor operations and incorporate other associated activities.
- \*\*Communities that have small or no Commercial or Industrial Zoning Districts within which to locate such facilities should consider establishing one or increasing the size of them. An alternative would be to adopt an “overlay district” identifying a particular limited area within an existing District(s) where such uses would only be permitted.]

***The following should be added to the chapter of your Bylaws/Ordinance that contains the additional requirements for your By-Right, Special Permit and/or Site Plan Approval uses.***

## **Section \_\_\_\_\_ ADULT USE MARIJUANA ESTABLISHMENTS**

### **1. Purposes.**

It is recognized that the nature of the substance cultivated, processed, and/or sold by marijuana establishments may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as legally authorized adult customers seeking to legally purchase marijuana for their own use. The specific and separate regulation of Marijuana Establishments (hereafter also referred to as an ME) is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town/City of \_\_\_\_\_.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws and 105 CMR 725.000, Marijuana Establishments will be permitted to provide the opportunity for the legal cultivation, product manufacturing and retail sale of marijuana for non-medical adult marijuana use in a manner that complies with state regulations.

### **2. Applicability**

Nothing in this section shall be construed to supersede federal and state laws governing the sale and distribution of marijuana. This section shall not be construed to prevent the conversion of a medical marijuana treatment center licensed or registered no later than July 1, 2017 engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a Marijuana Establishment, provided, however, any such medical marijuana treatment center obtains a special permit pursuant to this Section for any such conversion to an adult use Marijuana Establishment.

This bylaw does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

### **3. Additional Requirements/Conditions**

In addition to the standard requirements for uses permitted By-right or requiring a Special Permit or Site Plan Approval, the following shall also apply to all Marijuana Establishments:

- a. Use:
  - i. Any type of Marijuana Establishment may only be involved in the uses permitted by its definition and may not include other businesses or services.
  - ii. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.

- iii. The hours of operation shall be set by the Special Permit Granting Authority, but in no event shall an RMD or OMMD facility be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
  - iv. No marijuana establishment may commence operation or apply for a building permit prior to its receipt of all required permits and approvals including, but not limited, to its Final License from the Cannabis Control Commission.
  - v. The number of adult use marijuana retail establishments permitted to be located within the Town/City of \_\_\_\_\_ shall not exceed 20% of the number of licenses issued within the town/city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws. For the purposes of determining this number, any fraction shall be rounded up to the next highest whole number.
- b. Physical Requirements:
- i. All aspects of the any marijuana establishment, except for the transportation of product or materials, relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building (including greenhouses) and shall not be visible from the exterior of the business. They may not be permitted to be located in a trailer, storage freight container, motor vehicle or other similar type potentially movable enclosure.
  - ii. No outside storage is permitted.
  - iii. No Marijuana Retailer shall have a gross floor area open to the public in excess of 2,500 square feet.
  - iv. Ventilation – all marijuana establishments shall be ventilated in such a manner that no:
    1. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
    2. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.
  - v. Signage shall be displayed on the exterior of the marijuana establishment's entrance in plain sight of the public stating that "Access to this facility is limited to individuals 21 years or older." in text two inches in height.

All other signage must comply with all other applicable signage regulations in the Zoning Bylaw/Ordinance and 935 CMR 500

- vi. Cannabis plants, products, and paraphernalia shall not be visible from outside the building in which the cannabis establishment is located and shall comply with the requirements of 935 CMR 500. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen

and the Board shall consider the surrounding landscape and viewshed to determine if an artificial screen would be out of character with the neighborhood.

c. Location:

- i. Marijuana establishments are encouraged to utilize existing vacant buildings where possible
- ii. No marijuana establishment shall be located on a parcel which is within three hundred (300) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located) of a parcel occupied by a pre-existing public or private school (existing at the time the applicant's license application was received by the Cannabis Control Commission) providing education in kindergarten or any of grades 1-12.
- iii. No marijuana retailer shall be located on a parcel which is within three hundred (300) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the marijuana retailer is or will be located) of a parcel occupied by another marijuana retail facility.
- iv. No marijuana establishment shall be located on a parcel which abuts a residential use (including commercial residential uses such as hotels, motels, lodging houses, etc.) or residential zoning district.
- v. No marijuana establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
- vi. No marijuana establishment is permitted to utilize or provide a drive-through service.

d. Reporting Requirements.

- i. Prior to the commencement of the operation or services provided by a marijuana establishment, it shall provide the Police Department, Fire Department, Building Commissioner/Inspector and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.
- ii. The local Building Commissioner/Inspector, Board of Health, Police Department, Fire Department and Special Permit Granting Authority shall be notified in writing by the marijuana establishment facility owner/operator/ manager:
  1. A minimum of 30 days prior to any change in ownership or management of that establishment.
  2. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.
- iii. Permitted marijuana establishments shall file an annual written report to, and appear before, the Special Permit Granting Authority no later than January 31<sup>st</sup> of

- each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit.
- iv. The owner or manager of a marijuana establishment is required to respond by phone or email within twenty-four hours of contact by a town/city official concerning their marijuana establishment at the phone number or email address provided to the City as the contact for the business.
  - e. Issuance/Transfer/Discontinuance of Use
    - i. Special Permits/Site Plan Approvals shall be issued to the marijuana establishment owner.
    - ii. Special Permits/Site Plan Approvals shall be issued for a specific type of marijuana establishment on a specific site/parcel.
    - iii. Special Permits/Site Plan Approvals shall be non-transferable to either another marijuana establishment owner or another site/parcel.
    - iv. Special Permits/Site Plan Approvals shall have a term limited to the duration of the applicant's ownership/control of the premises as a marijuana establishment, and shall lapse/expire if:
      - 1. the marijuana establishment ceases operation (not providing the operation or services for which it is permitted) for 365 days, and/or
      - 2. the marijuana establishment's registration/license by the Cannabis Control Commission expires or is terminated.
    - v. The marijuana establishment shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.
    - vi. A marijuana cultivation or product manufacturing establishment shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.
      - 1. Prior to the issuance of a Building Permit for a marijuana establishment the applicant is required to post with the Town Treasurer a bond or other form of financial security acceptable to said Treasurer in an amount set by the Planning Board. The amount shall be sufficient to cover the costs of the town removing all materials, plants, equipment and other paraphernalia if the applicant fails to do so. The Building Inspector shall give the applicant 45 days' written notice in advance of taking such action. Should the applicant remove all materials, plants, equipment and other paraphernalia to the satisfaction of the Building Inspector prior to the expiration of the 45 days written notice, said bond shall be returned to the applicant.

#### **4. Application Requirements**

Applications for Special Permits and Site Plan Approvals for marijuana establishments will be processed in the order that they are filed with the town/city. The approval of a Special Permit for any marijuana establishment is up to the discretion of the Planning Board who will be making its determination based on selecting the marijuana

establishments that it *Finds* are in the best interests of the town/city and best comply with the standards and intent of this Bylaw/Ordinance. While the Planning Board is authorized to approve Special Permits for marijuana establishments in an amount up to, but not exceeding, 20% of the number of licenses issued within the town/city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under chapter 138 of the General Laws, the Planning Board is not obligated to approve an application for a marijuana establishment that it doesn't *Find* is in the best interests of the town/city and complies with the standards and intent of this Bylaw/Ordinance just because the maximum number of allowed Special Permits for a marijuana establishment haven't been approved.

In addition to the standard application requirements for Special Permits and Site Plan Approvals, such applications for a marijuana establishment shall include the following:

- a. The name and address of each owner and operator of the marijuana establishment facility/operation.
- b. A copy of an approved Host Agreement.
- c. A copy of its Provisional License from the Cannabis Control Commission pursuant to 935 CMR 500.
- d. If it's in conjunction with an approved RMD, a copy of its registration as an RMD from the Massachusetts Department of Public Health in accordance with 105 CMR 725.000 or from the Cannabis Control Commission in accordance with 935 CMR 500.
- e. Proof of Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500.
- f. Evidence that the Applicant has site control and right to use the site for a marijuana establishment facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement.
- g. A notarized statement signed by the marijuana establishment organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons.
- h. In addition to what is normally required in a Site Plan, details showing all exterior proposed security measures for the marijuana establishment including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity.
- i. A detailed floor plan identifying the areas available and functional uses (including square footage).
- j. All signage being proposed for the facility.
- k. A pedestrian/vehicular traffic impact study to establish the marijuana establishment's impacts at peak demand times, including a line queue plan to ensure that the

- movement of pedestrian and/or vehicular traffic, including but not limited to, along the public right of ways will not be unreasonably obstructed.
1. An odor control plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative of odor control including maintenance of such controls.
  - m. A Management Plan including a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to marijuana establishment or off-site direct delivery.
  - n. Individual written plans which, at a minimum comply with the requirements of 935 CMR 500, relative to the marijuana establishment's:
    - i. Operating procedures
    - ii. Marketing and advertising
    - iii. Waste disposal
    - iv. Transportation and delivery of marijuana or marijuana products
    - v. Energy efficiency and conservation
    - vi. Security and Alarms
  - vii. Decommissioning of the marijuana establishment including a cost estimate taking into consideration the community's cost to undertake the decommissioning of the site.

## 5. Findings

In addition to the standard Findings for a Special Permit or Site Plan Approval the Special Permit Granting Authority must also find all the following:

- a. The Marijuana Establishment is consistent with and does not derogate from the purposes and intent of this Section and the Zoning Ordinance/Bylaw.
- b. That the marijuana establishment facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- c. That the marijuana establishment facility demonstrates that it meets or exceeds all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations;
- d. That the applicant has satisfied all of the conditions and requirements of this Section and other applicable Sections of this Bylaw/Ordinance;
- e. That the marijuana establishment facility provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured on-site or via delivery.
- f. That the marijuana establishment facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.