

TOWN OF WEBSTER
RULES AND REGULATIONS
BOARD OF HEALTH

REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION
OF MARIJUANA BUSINESSES
AND
THE SALE OF MARIJUANA

A. Statement of Purpose and Authority:

On November 6, 2012, Massachusetts voters approved the legal use of medical Marijuana, allowing patients meeting certain conditions to obtain Marijuana produced and distributed by new state-regulated centers.

On November 8, 2016, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of Marijuana for adult use, not medically prescribed, through Chapter 334 of the Acts of 2016, an Act for The Regulation and Taxation of Marijuana.

On July 28, 2017, Governor Baker signed the General Court's revised law on the subject, "An Act to Ensure Safe Access to Marijuana" adopted as Chapter 55 of the Acts of 2017 (the "Act") codified in Massachusetts General Law as Chapter 94G.

Massachusetts, acting through the Department of Public Health ("DPH"), amended regulatory framework for the regulation of the use of medical Marijuana through 105 CMR 725.000 *et seq.* on December 1, 2017 (the "DPH Regulations").

Massachusetts, acting through the Cannabis Control Commission (the "CCC"), implemented regulatory framework for the regulation of the adult use of Marijuana Establishments through 935 CMR 500.000 *et seq.* on March 23, 2018 (the "CCC Regulations").

The prevention of the illegal sale and use of Marijuana, particularly involving youth is a public health priority.

The state regulation, 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements.

Local oversight and inspection of Marijuana Businesses is within the legal authority of local boards of health to protect public health, safety and welfare.

The Massachusetts Supreme Judicial Court has held that ". . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means."¹

¹ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

In furtherance of its mission to protect, promote, and preserve the health and well-being of all Webster residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §31, the Board of Health of Webster enacts a Regulation to Ensure the Sanitary and Safe Operation of Marijuana Businesses and the Sale of Marijuana in the Town of Webster as follows.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 105 CMR 725.000, 935 CRM 500.000 and in General Law, Chapters 94G-94I.

In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of Individuals under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Board of Health.

Board of Health: Town of Webster Board of Health and its designated Board of Health agents.

Board of Health Agent: The Director of Public Health, appointed Board of Health Agents and any town employee designated by the Board of Health, which may include Board of Health staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent: An Individual who has been designated by the owner or operator of any Marijuana Business to be the manager or otherwise in charge of said business.

Edible Marijuana Products: A Marijuana Product that is to be consumed by humans by eating or drinking.

Individual: A single person, as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association.

Marijuana: All parts of any plant of the genus cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws. "Marijuana" shall not include 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; hemp; or the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Accessories: Equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing,

compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing cannabis or Marijuana into the human body.

Marijuana Business: A Marijuana Establishment and/or a Medical Marijuana Treatment Center.

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, licensed by the Cannabis Control Commission pursuant to 935 CMR 500.000, except a Medical Marijuana Treatment Center.

Marijuana-infused Product (MIP): A product infused with marijuana that is intended for use or consumption including, but not limited to, edible products, ointments, aerosols, oils, and tinctures. MIPs are the equivalent of marijuana products under 935 CMR 500.000.

Medical Marijuana Treatment Center: An entity registered under 105 CMR 725.100, to be known as a registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs (Marijuana Infused Products), tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of medical Marijuana.

Marijuana Operating Permit: a permit issued by the Board of Health to operate a Marijuana Business in the Town of Webster.

Marijuana Products: Products that have been manufactured and contain Marijuana or an extract from 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.

Operating Permit Holder: Any Person engaged in the cultivation, sale, distribution or delivery of Marijuana who applies for and receives an Operating Permit, or any Person who is required to apply for an Operating Permit pursuant to these regulations, or his or her business agent.

Minimum Legal Sales Age: The age an Individual must be before that Individual can be sold a Marijuana Product in the Town of Webster.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an Individual who produces rolled Marijuana Products solely for the Individual's own personal consumption or use) that can make rolled Marijuana Products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Person: Any Individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or Individual in charge of any establishment, business, cultivation property or retail store.

Self-Service Displays: Any display from which customers may select Marijuana or a Marijuana Product without assistance from a Marijuana Business.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes Marijuana Products.

C. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No Person shall sell Marijuana or Marijuana Products, or permit Marijuana or Marijuana Products to be sold to an Individual under the minimum legal sales age unless a qualifying patient; or give Marijuana or Marijuana Products, or permit Marijuana or Marijuana Products to be given to an Individual under the minimum legal sales age unless a qualifying patient. The minimum legal sales age for adult- use Marijuana, not medically prescribed, in Webster is 21.

2. Each Person selling or distributing Marijuana or Marijuana Products for adult use, not medically prescribed, shall verify the age of the Individual by means of a valid government-issued photographic identification containing the bearer's date of birth that the Individual is 21 years of age or older.

3. All retail sales of Marijuana or Marijuana Products for adult use, not medically prescribed, shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of adult-use Marijuana Products is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein. Medical Marijuana delivery shall be in accordance with state law and governing regulations.

D. Marijuana Operating Permit:

1. No Person shall sell, cultivate, deliver or otherwise commercially distribute Marijuana or Marijuana Products within the Webster without first obtaining a Marijuana Operating Permit issued annually by the Board of Health.

a. All applicants shall certify that they are in compliance with all local and state laws, regulations, bylaws and be prepared to show proof if requested.

2. Only owners of Marijuana Businesses with a permanent, non-mobile locations in Webster are eligible to apply for a Marijuana Operating Permit at the specified location in the Webster except:

a. A Marijuana delivery-only Establishment, if authorized and licensed under state regulation, shall not be required to have a permanent, non-mobile location, but shall have an in-state permanent business office address and contact information available. Upon request, the Marijuana Establishment must share information about the current location and destination of its employees with the Board of Health, said information to remain confidential.

b. A Marijuana delivery-only Business, if authorized and licensed as a Medical Marijuana Treatment Center, shall be required to strictly comply with all state laws and regulations.

3. No Person shall gift Marijuana or Marijuana Products to a consumer contingent upon the sale of any other product.
4. No Person shall accept or redeem, offer to accept or redeem, or cause or hire any Individual to accept or redeem or offer to accept or redeem any coupon that provides any Marijuana or Marijuana Products without charge. Free samples are prohibited.
5. As part of the Marijuana Operating Permit application process, the applicant will be provided with these regulations and the Regulation of Marijuana Businesses to Prevent Nuisance. Each applicant is required to sign a statement declaring that the applicant has read said regulations and that the applicant is responsible for instructing all employees who will be responsible for Marijuana sales regarding state and local laws regarding the sale of Marijuana and these regulations.
6. Each applicant who sells, cultivates, delivers or otherwise distributes Marijuana is required to provide proof of a current license issued by the CCC or the Massachusetts DPH before a Marijuana Operating Permit can be issued.
7. A separate Marijuana Operating Permit, displayed conspicuously, is required for each Marijuana Business. The fee for which shall be determined by the Board of Health annually.
8. A Marijuana Operating Permit is non-transferable. A new owner of a Marijuana Business must apply for a new permit.
9. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unannounced, periodic inspection of the Marijuana Business to ensure compliance with this regulation.
10. A Marijuana Operating Permit will not be renewed if the Operating Permit Holder has failed to pay all fines issued and the time to appeal the fines has expired and/or the Operating Permit Holder has not satisfied any outstanding permit suspensions.
11. A Marijuana Operating Permit may be subject to non-renewal if the Marijuana Business has sold Marijuana or Marijuana Products to an Individual under the minimum legal sales age two times within the previous permit year and the time to appeal has expired. The Operating Permit Holder may request a hearing pursuant to this regulation prior to non-renewal.
12. Permissible Entrance.
 - (a) No Individual under the minimum legal sales age shall be permitted to enter a Marijuana Establishment with a Marijuana Operating Permit.
 - (b) No Individuals under the minimum legal sales age, except those Individuals in possession of a registration card demonstrating that the Individual is a registered qualifying patient with the Medical Use of Marijuana Program or a personal caregiver, shall be permitted to enter a Medical Marijuana Treatment Center.

(c) If the Marijuana Business is a Marijuana Establishment co-located with a Medical Marijuana Treatment Center, then the following shall apply:

i. If the Individual is between 18 and 21 years of age, (s)he shall not be admitted unless (s)he produces an active patient registration card issued by the DPH or the CCC.

ii. If the Individual is younger than 18 years old, (s)he shall not be admitted without an active patient registration card and a personal caregiver with an active patient registration card.

iii. In addition to the patient registration card, registered qualifying patients 18 years of age and older and personal caregivers must also produce proof of identification.

13. A Marijuana Retailer shall sell primarily Marijuana, Marijuana Products and Marijuana Accessories. The sale of other products must be merely incidental. A Marijuana Retailer is prohibited from applying for or otherwise holding tobacco sales permit. A Marijuana Retailer is also prohibited from holding a liquor license or selling or distributing any alcoholic beverage in any form.

14. If required, a Hazardous Waste permit is to be filed with the Board of Health annually.

15. If required, a waste-water permit and reports are to be filed with Charles River Pollution Control.

16. All Marijuana Operating Permits expire annually on December 31.

E. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:

The manufacture of all edible Marijuana Products and food products containing Marijuana shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. Marijuana Businesses and Business Agents shall comply with 105 CMR 590.000, "Minimum Sanitation Standards for Food Establishments" relative to edible Marijuana Products.

F. Incorporation of 935 CMR 500.00 and 105 CMR 725.000:

Marijuana Businesses and Business Agents shall comply with 935 CMR 500.000 and 105 CMR 725.000.

G. Out-of-Package Sales:

The sale or distribution of edible Marijuana Products in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any edible Marijuana Product for retail sale.

H. Self-Service Displays:

All self-service displays of Marijuana or Marijuana Products are prohibited.

I. Vending Machines:

All vending machines containing Marijuana or Marijuana Products are prohibited.

J. Marijuana Accessories:

Marijuana Accessories, as defined herein, shall only be sold in Marijuana Businesses and Adult-Only Retail Tobacco Stores.

K. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of Marijuana and Marijuana Products shall be conducted in compliance with all laws, bylaws, regulations or policies applicable to similar activities. This shall include, but not be limited to compliance with food service permit requirements, secondhand smoke regulations, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.

2. In no instance shall a Marijuana Operating Permit be issued to any Marijuana Business which fails to comply with the Town of Webster Zoning Bylaw.

3. The cultivation, processing, manufacturing, delivery, sale and use of Marijuana and Marijuana Products shall not exempt any Person or entity from complying with all state and local laws, bylaws, regulations and policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.

4. A Marijuana Business shall submit a security plan for review to the Webster Police Department detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises; the Police Department shall notify the Board of Health if the security plan is sufficient.

6. The Board of Health may require the distribution of additional educational materials in Marijuana Businesses.

L. Enforcement and Penalties:

1. Authority to inspect Marijuana Businesses for compliance and to enforce this regulation shall be held by the Board of Health, its designees and the Webster Police Department.

2. Any Person may register a complaint under this regulation to initiate an investigation and enforcement with the Board of Health and its designees. Unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.

3. If permissible by local bylaws, any fines or fees collected under this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to the regulation of the operation of Marijuana Businesses and the sale and use of Marijuana.

4. It shall be the responsibility of the Marijuana Operation Permit Holder and/or business agent to ensure compliance with all applicable sections of this regulation. Any Marijuana Business found to be in violation of the provisions of these regulations may receive a written warning citation, a fine, a Marijuana Operation Permit suspension, a Marijuana Operation Permit revocation.

5. Any Operating Permit Holder or any Person or entity charged with violation of any provision of this regulation shall receive a notice of violation from the Board of Health or its designated agent. Unless waived by the Operating Permit Holder, the Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/or issue a permit revocation order.

6. Prior to issuing any suspension or revocation, the Board of Health shall provide notice of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than 7 days after the date of said notice. The Operating Permit Holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Board of Health may suspend or revoke the Marijuana Operating Permit if the Board of Health finds that a violation of this regulation occurred.

7. Whoever violates any provisions of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws Chapter 40, Section 21D.

8. Each day or portion thereof any violation exists shall be deemed to be a separate offense.

M. Variances:

1. A variance from this regulation may be requested in writing to the Board of Health. A variance may be granted by the Board of Health after a hearing at which time the applicant establishes the following:

- (a) Strict enforcement of this regulation would do manifest injustice; and
- (b) The granting of a variance shall not in any way impair the public health and safety or the environment.

2. The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

N. Severability:

If any provision of this regulation is declared invalid or unenforceable, the provisions shall not be affected thereby but shall continue in full force and effect.

O. Effective Date: _____

This regulation shall take effect immediately upon passage by the Board of Health.

Way Talley

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