

**TOWN OF MASHPEE
BOARD OF HEALTH**

REGULATIONS RESTRICTING THE SALE OF MARIJUANA

A. Statement Of Purpose

Whereas, the citizens of Massachusetts voted in November of 2012 to approve the legal cultivation, processing, distribution, sale, and use of marijuana through Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana; and the regulation of the use and distribution of marijuana not medically prescribed on November 8, 2016, pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and

Whereas, the Acts and state regulations at 105 CMR 725.600 and 935 CMR 500.000 allow for lawful local oversight and regulation, including local inspection and fee requirements; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth, is a public health priority and within the legal authority of boards of health to protect public health, safety, and welfare; and

Whereas, the Massachusetts Supreme Judicial Court had 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

Whereas, the Town of Mashpee aims to abide by the purpose of this law and ensure that Registered Marijuana Dispensaries and Marijuana Establishments abide by further regulations to ensure the public health and public safety of our Town.

Now therefore, it is the intention of the Town of Mashpee Board of Health to regulate the sale of marijuana.

B. Authority

This Regulation is promulgated pursuant to the authority granted to the Mashpee Board of Health by M.G.L. c. 111, §31, that "Boards of Health may make reasonable health regulations".

C. Definitions

Unless otherwise indicated, terms used throughout this Regulation shall be defined as they are in 935 CMR 500.000, 105 CMR 725.000, and in General Law, Chapter 94, §1.

Adult-Only Retail Tobacco Store shall mean 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

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

paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons 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 the issued by the Mashpee Board of Health.

Board of Health shall mean the Mashpee Board of Health and its designated Agents.

Board of Health Agent shall mean the Director of Public Health and any Town employee designated by the Board of Health, which may include Mashpee Board of Health staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent shall mean an individual who has been designated by the owner or operator of any Marijuana Establishment to be the manager or otherwise in charge of said establishment.

Certificate of Registration shall mean the certificate issued by the Department that confirms that a Registered Marijuana Dispensary (RMD), caregiving institution, or independent testing laboratory has met all applicable requirements pursuant to St. 2012, c. 369 and 105 CMR 725.000 and is registered by the Department. An RMD may be eligible for a provisional or final certificate of registration. This may also include a Permit which is the certificate issued by the Commission that confirms that a Marijuana Establishment has met all applicable requirements pursuant to St. 2012, c. 334, as amended by St. 2017, c.55 and 935 CMR 500.000. A Marijuana Establishment may be eligible for a provisional or final Permit.

Department shall mean the Department of Public Health.

Dispensary Agent shall mean a board member, director, employee, executive, manager, or volunteer of an RMD, who is 21 years of age or older. Employee includes a consultant or contractor who provides on-site services to an RMD related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

Edible Marijuana Products or Edible Marijuana-Infused Products shall mean a Marijuana-Infused Product (MIP) that is to be consumed by humans by eating or drinking.

Fee shall mean the Permit cost established by the Mashpee Board of Health's Fee Schedule, which has been assessed in order to support execution of the responsibilities set forth in this Regulation.

Operating Permit shall mean the annual certificate(s) issued to any marijuana-related business by the Mashpee Board of Health including, but not limited to, Marijuana Establishments which sell, cultivate, deliver, or otherwise commercially distribute marijuana or marijuana products within the Town of Mashpee according to Section E of these regulations. There are two classifications of Operating Permit – those for adult-use Marijuana Establishments and those for Medical Use Treatment Centers.

Laboratory Agent shall mean an individual who has been designated by the owner or operator of a Marijuana Establishment, other than an RMD or retail facility, to be the manager or otherwise in charge of said establishment.

Limited Access Area shall mean a building, room, or other indoor or outdoor area on the registered premises of an RMD or Marijuana Establishment where marijuana, MIPs, or marijuana by-products are cultivated, stored, weighed, packaged, processed or disposed, under the control of an RMD or Marijuana Establishment, with access limited to only those designated RMD or Marijuana Establishment Agents.

Local Permitting Authority, as referenced in this Regulation, shall mean the Mashpee Board of Health.

Marijuana or Marihuana shall mean 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; provided that “Marijuana” shall not include: 1) 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; 2) hemp; or 3) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products; or 4) marijuana rendered unusable in accordance with 725.105(J)(3)(c). Marijuana also includes marijuana products except where the context clearly indicates otherwise.

Marijuana Accessories shall mean equipment, products, devices, or materials of any kind that are intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana Establishment shall mean a marijuana cultivator, independent testing laboratory, research facility, marijuana product manufacturer, marijuana retailer, or any other type of marijuana-related business permitted by the Cannabis Control Commission pursuant to 935 CMR 500.050 as a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent marijuana testing laboratory, storefront marijuana retailer, delivery-only marijuana retailer, marijuana primary social consumption establishment, marijuana mixed-use social consumption establishment, marijuana research facility, marijuana transporter and marijuana micro-business.

Marijuana Establishment Agent shall mean a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant or contractor who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.

Marijuana Products shall mean 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.

Medical Marijuana Treatment Center shall mean an entity registered under 105 CMR 725.100 to be known as an RMD, that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, 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 marijuana.

Operating Permit Holder shall mean a person engaged in the operation of a Marijuana Establishments, as defined in this regulation, who applies for and receives an Operating Permit pursuant to this regulation, or his/her Business Agent.)

Minimum Legal Sales Age shall mean the age an individual must be before that individual can be sold a marijuana product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine shall mean 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 shall mean any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor, or person in charge of any establishment, business, cultivation property or retail store.

Registered Marijuana Dispensary (RMD) see Medical Marijuana Treatment Center.

Registered Qualifying Patient shall mean a qualifying patient who has applied for and received a registration card from the Department.

Registration Card means a Medical Use of Marijuana Program identification card issued by the Department to a registered qualifying patient, personal caregiver, institutional caregiver, Dispensary Agent or Laboratory Agent. The registration card facilitates verification of an individual registrant's status. The registration card allows access into appropriate elements of a Department-supported, interoperable database in which detailed information regarding certifications and possession criteria are stored. The registration card facilitates identification for the Department and law enforcement authorities of those individuals who are exempt from Massachusetts criminal and civil penalties for the medical use of marijuana in compliance with 105 CMR 725.000 and St. 2012, c. 369.

Self-Service Display shall mean any display from which customers may select marijuana or a marijuana-infused product without assistance from an establishment.

Vending Machine shall mean any automated or mechanical self-service device which, upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

D. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited

1. No person shall sell marijuana or permit marijuana, as defined herein, to be sold to a person under the minimum legal sales age; or give marijuana products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in **Mashpee** is 21 years of age.
2. Each person selling or distributing marijuana products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification card, containing the bearer's date of birth verifying that the purchaser is 21 years of age or older.

All retail sales of marijuana products shall be face-to-face between the seller and the buyer and shall occur at the permitted location, unless and until delivery of adult-use marijuana products is authorized and permitted under state regulation, and then only in strict compliance with all applicable rules and regulations, as well as the age limitation set forth herein.

E. Permit to Operate a Marijuana Establishment

1. No person shall operate a marijuana-related business or sell, cultivate, deliver, or otherwise commercially distribute marijuana or marijuana products within the Town of Mashpee without first obtaining a Permit to Operate Marijuana Establishment (hereinafter referred to as "Operating Permit" or "Permit") issued annually by the Board of Health. Only Marijuana Establishments with a permanent, non-mobile location in Mashpee, meeting zoning restrictions, are eligible to apply for an Operating Permit to maintain a supply of marijuana or marijuana products at the specified location in Mashpee, except that transportation and delivery of marijuana shall occur between Marijuana Establishments only. Permits for delivery to locations other than a Marijuana Establishment shall be issued after further guidance from the Cannabis Control Commission. Upon request, the chain-of-custody and GPS tracking shall be provided to the Board of Health.
2. As part of the Permit application or renewal process, the applicant will be provided with this Regulation. Each applicant is required to sign a statement declaring that the applicant has read said Regulation and shall certify that they are in compliance with all local and state laws, regulations, bylaws or ordinances, and be prepared to show proof if requested. That applicant shall be responsible for instructing any and all Marijuana Establishment Agents who will be responsible for sales, as to ensure full compliance. A copy of this Regulation must be retained on site at the permitted facility.
3. All Marijuana Establishments must have and follow a set of detailed operating procedures which are submitted to the Board of Health prior to issuance of a new Permit. For annual renewals thereafter, it is the responsibility of the owner/ operator to provide to the Town any changes to the business or written operating procedures, inclusive of 105 CMR 725.105 and/or 935 CMR 500.105.
4. All applicants for Operating Permits must acknowledge that the sale of all other products by a marijuana-related business must be merely incidental. Therefore, it is specifically prohibited for a Marijuana Establishment to:
 - a. Be in possession of a Liquor License and/ or Common Victualler License, or otherwise sell or serve alcohol at the Permitted dispensary or establishment; and
 - b. Prepare, sell, vend, or provide foods to the public, for on-premises consumption, which are not considered MIPs; and (which includes MIPs)
 - c. Sell tobacco products and/or Nicotine Delivery Products or be in possession of a Tobacco Sales Permit; and
 - d. No Marijuana Establishment is permitted to be a Massachusetts lottery dealer.
5. Permits will be classified as adult-use or medical-use and tailored to include the specific types of business conducted (cultivator, retail, manufacturer, testing laboratory, other). A separate Permit, conspicuously displayed, is required for each classification and location of a Marijuana Establishment and/or medical marijuana treatment center where the owner is approved by the state to cultivate, dispense, or prepare marijuana or MIPs. An Operating Permit Holder may

possess two Permits for the same address if they participate in both adult-use and the medical marijuana program.

6. Each applicant for a local Permit to sell, cultivate, prepare, deliver or otherwise distribute marijuana or MIPs in the Town of Mashpee is required to provide proof of a valid Permit issued by the Cannabis Control Commission before any Operating Permit(s) can be issued.
7. Applicants agree to comply with the Security Requirements for Marijuana Establishments (935 CMR 500.110) and/or Security Requirements for RMDs (105 CMR 725.110) and to promptly provide information or video recordings to any law enforcement official or Board of Health Agent who requests such recording.
8. All Permit Holders must utilize digital ID scanners to check identification.
9. A Permit is non-transferable. The Board of Health must be notified of any changes, in accordance with 935 CMR 500.104 and/or 105 CMR 725.100. Any such change or conversion shall not be permitted until approved in writing by the Board of Health or their authorized Agent, and the appropriate fees paid. No new Permit(s) will be issued unless and until all outstanding violations or penalties incurred by the previous Permit Holder are satisfied in full.
10. Issuance and maintaining a Permit shall be conditioned on the Permit Holder's:
 - a. Consent to unannounced, periodic inspections of the establishment by the Board of Health or their authorized Agent, including business conducted off site; and
 - b. Ongoing compliance with current local and state laws, rules, regulations, and policies regarding marijuana sales; and
 - c. Agreement that any Marijuana Establishment may be subject to business hours as determined by the Board of Health.
11. No Permit shall be issued, renewed, converted, or modified until it is voted on and approved by the Mashpee Board of Health. Permits shall not be granted if the facility has unresolved compliance issues, unpaid fines, unpaid taxes, and/or has not satisfied any outstanding Permit suspensions.
12. The number of marijuana retail establishments shall be determined per the Mashpee By-Law. After receiving a completed application for a Permit, including the required fee and any requests for relief, the Board of Health shall act on said application.
13. The application fee for a Permit is nonrefundable. This fee may not be prorated and is subject to change annually.

Adult Use Marijuana Retailer	\$300.00
Adult Use Marijuana Retailer of edible MIPs	(+\$100.00 per retail food fee)
Medical Marijuana Treatment Center/ Registered Marijuana Dispensary engaging in Retail Sale	\$300.00
Marijuana Cultivator including Craft Marijuana Cooperatives	Tier 1 \$300.00 (includes Microbusiness) Tier 2 \$400.00 (5,001-10,000 SF) Tier 3-11 \$600.00 (>10,000 SF)
Marijuana Product Manufacturer	\$300.00
Research Facility	\$300.00
Testing Laboratories	\$300.00

14. All Permits, unless otherwise established by the Board of Health, expire annually on December 31st.

F. Marijuana Sales by Marijuana Establishments

1. No person shall sell marijuana from any location in the Town of Mashpee other than from a Marijuana Establishment that possesses a valid Operating Permit issued by the Board of Health for that type of business.
2. Limited Access Areas shall be restricted to specifically authorized personnel, and meet the requirements found at 105 CMR 725.110(C) and/or 935 CMR 500.110(D). Records on persons who access these areas must be maintained and provided to any law enforcement official or Board of Health Agent upon request.
3. Excluding transactions at RMDs, which are in accordance with the provisions of 105 CMR 725.100(A)(6), relative to patients with documented, verified financial hardship, no person shall:
 - a. Distribute, or cause to be distributed, any free samples of marijuana or marijuana products;
 - b. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem, or offer to accept or redeem, any coupon that provides any marijuana product without charge;
 - c. Gift marijuana or marijuana products to a consumer contingent upon the sale of any other product or item; and
 - d. Allow any retail sales to take place other than face-to-face with the Marijuana Establishment Agent present.
4. No person under the minimum sales age of 21 shall be permitted to enter an establishment with an Operating Permit 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 if the establishment is co-located with a medical marijuana treatment center.

G. Marijuana Establishment Operating Requirements

A list of the current Marijuana Establishment Agents, management, and employees shall be provided at the time of renewal to the Board of Health.

1. A copy of the Cannabis Control Commission inspections shall be provided to a Board of Health Agent, upon request.
2. A Permit will not be renewed if the Permit Holder has failed to pay all fines issued, and the time period to appeal the fines has expired, and/or the Permit Holder has not satisfied any outstanding Permit suspensions or violations.
3. Dispensary Agents and Marijuana Establishment Agents must present their state Registration Card to any law enforcement official or Board of Health Agent who questions the Dispensary or Establishment Agent concerning their marijuana-related activities.

H. Incorporation of 105 CMR 500.000 and 105 CMR 590.000

1. The manufacture of all edible marijuana products and food products containing marijuana for adult use shall be conducted in a state-Permitted marijuana manufacturing facility and in accordance with all applicable state regulations.
2. Marijuana Establishments and Agents within the Town of Mashpee shall comply with 105 CMR 500.000, "Good Manufacturing Practices for Food", 105 CMR 590.000, "Minimum Sanitation Standards for Food Establishments", and any other local food service permit requirement which may be applicable to edible marijuana products.
3. 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 or MIP for retail sale.
4. Marijuana-Infused Products which are products infused with marijuana that are intended for use or consumption including, but not limited to, edible products, ointments, aerosols, oils and tinctures, when created or sold by an RMD, shall not be considered a food or a drug as defined in M.G.L. c. 94, §1 and are therefore exempt from §J (1-3) of this Regulation.

I. Compliance with Local and State Laws

1. All cultivation, processing, manufacturing, delivery, sale, and use of marijuana shall be conducted in compliance with all local and state laws, ordinances, regulation or policies applicable to similar activities.
2. The smoking of any marijuana is prohibited in locations governed by the Massachusetts Smoke-Free Workplace Law (M.G.L. c. 270 §22) and by any local laws or regulations that further ban smoking and electronic cigarette use.

3. In no instance shall an Operating Permit be issued to any establishment within five hundred (500) feet of the grounds of or within a public or private school where children attend classes in preschool programs, on school grounds, kindergarten programs, or grades one (1) through twelve (12), inclusive, on a school bus, or in any youth center, on playgrounds and at public and semi-public bathing beaches. The 500-foot distance shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment.
4. Marijuana Establishments shall be located in commercial or industrial-zoned properties where the potential for exposure to residential properties shall be minimized through conditions set forth by the Board of Health.
5. The Board of Health may require mitigation plans for reducing odor and ensuring compliance with nuisance laws for certain types of marijuana-related businesses. For example, odors from cultivation and manufacture of MIPs using solvents, and noise from chillers, shall be evaluated and required to provide a mitigation/control plan with conditions at the discretion of the Board.
6. Research, testing, including laboratory, and manufacturing facilities of Recreational Marijuana shall comply with the following:
 - a. No recreational marijuana business may use metals, butane, propane, or other solvent or flammable product, or produce flammable vapors, to process or test marijuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist; and
 - b. The Board of Health shall require the business to obtain verification from a qualified industrial hygienist that the manner in which the business producing or testing marijuana complies with all applicable laws, and does not produce noxious or dangerous gases or odors, or otherwise create a danger to any person or entity in or near the business.
7. Infusing or otherwise adding cannabinoid extract in alcoholic beverages is considered adulteration of alcohol under M.G.L. c. 270, §1, and it is prohibited to manufacture and/or sell alcoholic beverages containing any cannabinoid extracts, including tetrahydrocannabinol ("THC") and cannabidiol ("CBD"), regardless of whether it is derived from the cannabis plant or industrial hemp.
8. Open air cultivation for commercial or industrial purposes shall be located to provide a 1000 foot buffer of undeveloped land from the growing area.

J. Variances

1. A variance from this Regulation may be requested in writing to the Board of Health, and may be granted by the Board 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/or other limitations on a Permit or variance when it deems it appropriate to protect the public health and safety or the environment.
3. The Board of Health shall have 60 days to act on written requests for relief from this Regulation.

K. Enforcement and Penalties

1. Authority to inspect Marijuana Establishments for compliance and to enforce this Regulation shall be held by the Board of Health, its designees, and the Mashpee Police Department.
2. Any person may register a complaint under this Regulation to initiate an investigation and enforcement with the Board of Health and/or its designees. The receipt of five (5) confirmed complaints from different facilities, within a 30-day period, for a single odor source shall require the Board to issue an order to mitigate the odor source.
3. Unscheduled compliance inspections shall be conducted at a minimum of two (2) inspections annually.
4. It shall be the responsibility of the Permit Holder, his or her Business Agent or Permit Holder to ensure compliance with all sections of this Regulation pertaining to his or her distribution of marijuana and/or marijuana products. The violator shall receive:
 - a. In the case of a first violation, a fine of three hundred dollars (\$300.00).
 - b. In the case of a second violation within 18 months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Permit may be suspended for fourteen (14) consecutive business days.
 - c. In the case of three (3) or more violations within an 18 month period, a fine of three hundred dollars (\$300.00) and the Permit may be suspended for up to thirty (30) consecutive business days.
 - d. In the case of four (4) violations, or repeated, egregious violations, the Board of Health may hold a hearing to permanently revoke the Permit.
5. Refusal to cooperate with inspections pursuant to this Regulation shall result in the suspension of the Permit for thirty (30) consecutive business days.
6. In addition to the monetary fines set above, any Permit Holder who engages in the sale or distribution of marijuana or marijuana products while his/her Permit is suspended shall be subject to the suspension of all town-issued permits and Permits for thirty (30) consecutive business days.
7. The Board of Health shall provide notice of the intent to suspend 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 seven (7) days after the date of said notice. The Permit Holder or its Business Agent shall have an opportunity to be heard at such hearing, and shall be notified of the Board's decision and the reasons therefore in writing. After a hearing, the Board shall suspend the Permit if it finds that a violation of this Regulation occurred. For purposes of such suspensions, the Board shall make the determination, notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All marijuana and marijuana products shall be removed from the retail establishment upon suspension of the Permit. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this Regulation.

8. Whoever violates any provision of this Regulation may be penalized by the non-criminal method of disposition as provided in M.G.L., c. 40, §21D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

L. Severability

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

M. Effective Date

This Regulation was originally adopted on April 4, 2019 (not published) and amended on May 16, 2019, and shall take effect upon publication in a newspaper of local circulation.

Per Order Of:

Mashpee Board of Health

Brian Baumgaertel, Chair

Laurel Almquist, Co-Chair

Mallory Langler, Clerk

Adopted: April 4, 2019

Revised: May 16, 2019