

REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF MARIJUANA ESTABLISHMENTS AND THE SALE OF ADULT-USE MARIJUANA AND CANNABIDIOL

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation and 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 prevention of the illegal sale and use of marijuana, particularly involving youth, is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, Chapter 55 of the Acts of 2017 specifically allows municipalities to “adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments” specifically related to “the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories” provided that such restrictions “are not unreasonably impracticable and are not in conflict” with the state statute or regulations regulating marijuana sales.

Whereas, local oversight and inspection of marijuana establishments, including marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas G.L. c. 128, §§116 – 123 permits the growing of hemp for commercial purposes and designates the Massachusetts Department of Agricultural Resources (MDAR) as the regulatory authority;

Whereas MDAR requires that until the agency enacts regulations, hemp products grown and processed in Massachusetts must obtain a license issued by MDAR unless otherwise authorized by federal law, and these products must be tested by an approved Massachusetts independent laboratory or a Federally approved laboratory to determine that the THC and pesticide levels are within the standards set by MDAR;

Whereas, 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

Therefore, in furtherance of its mission to protect, promote and preserve the health and well-being of all Harvard’s residents and pursuant to the authority granted to it pursuant to G. L. c. 111, §31, the Harvard Board of Health enacts a Regulation to Ensure the Sanitary and Safe

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

Operation of Adult-Use Marijuana Establishments and the sale of Adult-Use Marijuana and Cannabidiol.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and G.L. c. 94G, §1 and G.L. c 128, §116. In addition, for the purposes of this regulation, the following words shall have the following meanings:

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 persons under the minimum legal sales age is prohibited at all times, unless accompanied by their parent or guardian, and which maintains a valid permit for the retail sale of tobacco products as required by the Harvard Board of Health.

Board of Health: The Town of Harvard Board of Health as elected/appointed by the Select-Board and its designated agent(s).

Board of Health Agent: The Director of Public Health 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 officers.

Business Agent: An individual who has been designated by the owner or operator of any adult-use marijuana establishment to be the manager or otherwise in charge of said establishment.

Cannabidiol (CBD): One of hundreds of cannabinoids in cannabis plants. CBD is non-intoxicating.

Colocated Marijuana Operations (CMO): An entity operating under both an RMD registration pursuant to 935 CMR 501.000: *Medical Use of Marijuana*, and under at least one Marijuana Establishment license pursuant to 935 CMR 500.000: *Adult Use of Marijuana*, on the same premise. Co-located marijuana operations pertain to cultivation, product manufacturing, and retail, but not any other adult-use license.

Edible Hemp/CBD products: A hemp or CBD product that is to be consumed by humans by eating or drinking.

Edible Marijuana Products: A marijuana product that is to be consumed by humans by eating or drinking and is sold or made by a facility licensed as a Marijuana Establishment under 935 CMR 500.000 and or 935 CMR 501.000.

Hemp: The plant of the genus *cannabis* and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration that does not exceed 0.3 per cent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus *cannabis* regardless of moisture content, or any product labelled as "Hemp" with the exception of products labelled "hulled hemp seeds", "hemp seed protein" and "hemp seed oil".

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; 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 section 1 of chapter 94G 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 adult-use 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 ingesting, inhaling or otherwise introducing adult-use marijuana into the human body.

Marijuana Establishment: Any type of marijuana-related business licensed by the Cannabis Control Commission (CCC) pursuant to 935 CMR 500.050, 935 CMR 501.000, and 935 CMR 502.000 including a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent testing laboratory, marijuana retailer, delivery-only marijuana retailer, marijuana social consumption establishment, marijuana research facility, marijuana transporter, marijuana micro-business, registered marijuana dispensaries (RMD) and a colocated marijuana operations (CMOs).

Marijuana Establishment Operating Permit: A permit issued by the Board of Health, renewed annually for a fee set by the Board of Health, that permits a Marijuana Establishment to operate within the town of Harvard. A separate Marijuana Establishment Operating Permit is required for each establishment.

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.

Marijuana Infused Product (MIP): This is a product intended to be consumed or applied topically, that contains marijuana, its oils, or derivatives, as an added ingredient.

Operating Permit Holder: Any person engaged in the cultivation, sale, distribution or transportation of marijuana who has received an operating permit.

Minimum Legal Sales Age: The minimum age an individual must be before that individual can be sold a marijuana product in the Town of Harvard.

Person: 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): An entity formerly and validly registered under 105 CMR 725.000: *Implementation of and Act for the Humanitarian Medical Use of Marijuana* or currently and validly registered under 935 CMR 501.100, that acquired, 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.

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

THC: Abbreviation for tetrahydrocannabinol.

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

C. 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 or marijuana products as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in the town of Harvard is 21.
2. Each person selling or distributing marijuana or marijuana products as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth and showing that the purchaser is 21 years of age or older.
3. All retail sales of marijuana or marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of marijuana 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.
4. No person shall sell marijuana accessories or permit marijuana accessories as herein defined 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 the town of Harvard is 21.

D. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana or marijuana products, as defined herein, within the town of Harvard without first obtaining a Marijuana Operating Permit issued annually by the Board of Health. Only owners of establishments with a permanent, non-mobile location in Harvard are eligible to apply for an operating permit at the Town Hall and must meet the following application requirements:
 - a. All applicants shall certify that they have obtained and are following: all local and state laws, regulations, bylaws, including proof of a current license with the CNB and present this proof as requested.
 - b. 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 establishment must share information about the current location and destination of its employees with the Harvard Board of Health.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other products.

3. No person shall 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 marijuana or a marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read and understands this regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales about federal, state and local laws regarding the sale of marijuana, including this regulation.
5. A separate Marijuana Operating Permit, displayed conspicuously, is required for each Marijuana Establishment, the fee for which shall be determined by the Board of Health.
6. A Marijuana Operating Permit is non-transferable. Each new owner of a Marijuana Establishment must apply for a new permit.
7. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to periodic inspections of the Marijuana Establishment, including any off-site location where business is conducted relating to the manufacture or sale of marijuana at the Marijuana Establishment.
8. A Marijuana Operating Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired without an appeal having been filed and/or the permit holder has not satisfied any outstanding permit suspensions. If a violation was enforced by non-criminal dispositions, any appeal shall be taken pursuant to G.L. c. 40, §21D.
9. A Marijuana Operating Permit shall be subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age two times within the previous permit year and either the time to appeal has expired without an appeal having been filed or the appeals were unsuccessful. The permit holder may request a hearing pursuant to this regulation prior to non-renewal. Hearing will be held pursuant to Section L of this regulation.
10. No person under the minimum legal sales age shall be permitted to enter an establishment with a Marijuana Operating Permit except if the establishment is a registered marijuana dispensary or is co-located with a registered marijuana dispensary as defined in 935 CMR 501.000, those individuals in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program, and is in compliance with 935 CMR 501.000.
11. A retail marijuana establishment shall sell primarily marijuana, edible marijuana products and marijuana accessories as defined herein. The sale of other products must be merely incidental. A retail marijuana establishment is prohibited from holding a tobacco sales permit, retail or wholesale food permit or a license that permits the sale or distribution of any alcoholic beverage in any form.
12. In no instance shall a Marijuana Operating Permit be issued to any establishment within five hundred (500) feet of a public or private school where children attend classes in preschool programs, kindergarten programs or grades one (1) to twelve (12) inclusive, or licensed after-school care programs and daycare programs, or community sanctioned venues for athletic

events. The 500-foot distance shall be measured in a straight line from the nearest point of the facility or venue in question to the nearest point of the proposed marijuana establishment.

13. All Marijuana Operating Permits expire annually.

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

The manufacture of all edible marijuana products shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. All Marijuana Establishments, including those that develop or process edible marijuana products, shall comply with the sanitary requirements in 105 CMR 500.000: Good Manufacturing Practices for Food. All edible products shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments.

F. 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 and sale of an edible marijuana product for retail sale.

G. Self-Service Displays:

All self-service displays of marijuana products are prohibited.

H. Vending Machines:

All vending machines containing marijuana products are prohibited.

I. Marijuana Accessories:

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores.

J. CBD/Hemp Products and Sales:

1. No person shall sell CBD or Hemp products without demonstrating the following:

a. The products come from an approved source licensed either by MDAR or equivalent.

b. The products have been tested by a Massachusetts approved independent laboratory or a Federally approved independent laboratory and confirm that the products do not contain more than 0.3 per cent of THC and are pesticide free.

c. "Hulled hemp seeds", "hemp seed protein" and "hemp seed oil" are exempt.

d. Any medication approved by the federal Food and Drug Administration, including Epidiolex is exempt from this regulation.

2. No person shall sell CBD or Hemp infused food products unless approved by the Harvard Board of Health. Approval requires the following:

a. MDAR license or equivalent.

b. Independent laboratory testing that confirms that the CBD or hemp contains less than 0.3 per cent THC and is pesticide free.

c. Written plan for policies and procedures for adding product to food.

d. Posting on menu or menu board disclosing that CBD or hemp has been added to the food product.

3. No person shall sell Hemp/CBD products to a person under the minimum legal sales age of 21.

4. All Self Service Displays of Edible Hemp/CBD products are prohibited.

5. All Vending Machine sales of Edible Hemp/CBD products are prohibited.

K. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all state and local laws, ordinances, regulations or policies. These shall include, where applicable but not limited to, compliance with Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 935 CMR 500.000, secondhand smoke laws and regulations, electronic cigarette laws and regulations, nuisance laws and regulations and all requirements associated with zoning and other local permitting. Violation of any such law, not including federal laws relating to marijuana, shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation provides or is intended to provide any immunity under federal law or poses an obstacle to federal enforcement of federal law.

2. A marijuana establishment shall submit a security plan for review to the Board of Health detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises.

3. The Board of Health, in consultation with the local Police Department, other town departments and officials, may establish limitations on the hours of operation of any marijuana establishment.

4. The Board of Health may require the distribution of additional educational materials in marijuana establishments.

L. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Board of Health and its designees, including the local Police Department.

2. Any person may register a complaint pursuant to this regulation to initiate an investigation and enforcement with the Board of Health and its designees. Compliance inspections shall be conducted at a minimum of three (3) times annually, at the discretion of the Board of Health and its designees.

3. If permissible by local regulations, any fines or fees collected pursuant to this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to this regulation related to the operation of marijuana establishments or the sale and use of marijuana.

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

5. Any 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 an appeal of such violation notice is waived by the permit holder or any person or entity charged, 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 to the permit holder 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 seven (7) days after the date of said notice. The 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 permit if the Board of Health finds that a violation of this regulation occurred.

7. Alternatively, violations of this regulation may be enforced by the non-criminal method of disposition as provided in G.L. c. 40, § 21D and as enabled pursuant to the town's regulations.

8. Each day a violation exists shall be deemed to be a separate offense.

M. Variances:

1. A variance from this regulation may be requested in writing of 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.

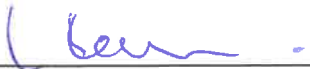
N. Severability:

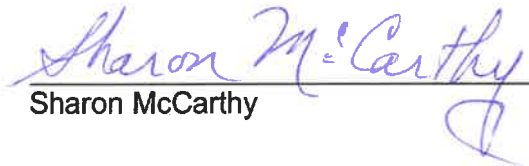
If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

O. Effective Date:

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


Thomas Philippou, Chair


Libby Levison


Sharon McCarthy

[Approved: November 19, 2019]

