



The Commonwealth of Massachusetts
Town of Dudley
BOARD OF HEALTH

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

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation of the use and distribution of adult-use 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 restriction “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 is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas, local oversight and inspection of adult-use marijuana establishments is within the legal authority of local 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.”ⁱ

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

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CRM 500.000 and in General Law, Chapter 94, §1. In addition, for the purposes of this regulation, the following words shall have the following meanings:

Board of Health: Town Of Dudley, Board of Health and its designated board of health agents.

Board of Health Agent: The Public Health Agent and any town employee designated by the board of health, which may include employees of Dudley Board of Health, Dudley Police Department, Dudley Fire Department, and Dudley Building Department.

Business Agent: 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.

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.

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 ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana Establishment: A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, registered marijuana dispensary or any other type of marijuana-related business licensed by the Cannabis Control Commission (CNB) 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 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 operation permit, or any person who is required to apply for an operation 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 municipality.

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 person in charge of any establishment, business, cultivation property or retail store.

Registered Marijuana Dispensary (RMD): A not-for-profit entity as defined in Chapter 369 of the Acts of 2012 with a registration in good standing that submitted an application for a registration to operate a medical marijuana treatment center to the Department of Public Health before July 28, 2017.

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

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 permit marijuana, as defined therein, 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 Dudley is twenty-one (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 means of identification containing the bearer's date of birth that the purchaser is twenty-one (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 or 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.

4. No person shall sell marijuana accessory or permit marijuana accessory, as defined therein, 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 Dudley is twenty-one (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 Dudley without first obtaining a Marijuana Operating Permit issued annually by the Dudley Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Dudley are eligible to apply for an operating permit to be used exclusively at the specified location in the Town of Dudley, except:
 - a. All applicants shall certify that they are in compliance with all local and state laws, regulations, bylaws, and ordinances, including proof of a current license with the CNB and be prepared to show proof if 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 Town of Dudley Board of Health.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product, including marijuana accessories as defined herein.
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 any marijuana or a marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with the Town of Dudley regulation. Each applicant is required to sign a statement declaring that the applicant has read said 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 and 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 Town of Dudley Board of Health annually.

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 unannounced, periodic inspection 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 may 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 J 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 co-located with a medical marijuana treatment center as defined in 935 CMR 500.002, 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 105 CMR 725.000 (Implementation of the Act for the Humanitarian Medical Use of Marijuana).
11. A retail marijuana establishment shall sell primarily marijuana and edible marijuana products. 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. 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.
13. All Marijuana Operating Permits expire annually on December thirty-first (31st). No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

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

The manufacturing 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 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 sanitary 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. 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, regulation, or policies. These shall include, where applicable but not be 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.
2. Violation of any such law, not including federal laws related to marijuana, 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.
3. A Marijuana Establishment shall submit a security plan for review to the Town of Dudley Board of Health detailing all security measures taken to ensure patient, consumer, and community safety and eliminate unauthorized access to the premises.

4. The Town of Dudley Board of Health, in consultation with the Town of Dudley Police Department, and other Town of Dudley officials and departments, may set limitations on the hours of operation of any Marijuana Establishment.
5. The Town of Dudley Board of Health may require the distribution of additional educational materials in Marijuana Establishments.

J. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Town of Dudley Board of Health, its designees, and the Town of Dudley Police Department.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement by the Town of Dudley Board of Health and its designees. Unscheduled compliance inspections shall be conducted at a minimum of two (2) inspections annually.
3. If permissible by local bylaws or ordinance, 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 related to the operation of marijuana establishments or 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 establishment 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 permit holder or any person or entity charged with violation of any provision of this regulation shall receive a notice of violation from the Town of Dudley Board of Health or its designated agent. Unless an appeal of such violation 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 Town of Dudley 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 Town of Dudley

Board of health shall 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 of Dudley's General By-laws.
8. Each day any violation exists shall be deemed a separate offense.

K. Variances:

1. A variance from this regulation may be requested in writing to the Town of Dudley Board of Health. A variance may be granted by the Town of Dudley 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.

L. Severability:

If any provision of this regulation 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 shall take effect immediately upon passage by the Board of Health.

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



11/27/18



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