

Section III-K: Marijuana Establishments

~~A. Purpose.~~

~~This moratorium is intended to provide restrictions that will allow the Town of Natick (“Town”) adequate time to consider whether and/or how to allow or prohibit marijuana establishments and related uses, in accordance with applicable state laws and regulations, and to undertake a planning process as described herein. By vote at the Massachusetts state election on November 8, 2016, the voters of the Commonwealth approved “The Regulation and Taxation of Marijuana Act,” which was subsequently codified as Chapter 334 of the Acts of 2016, and subsequently amended, in part, by Chapter 351 of the Acts of 2016, entitled “An Act Further Regulating the Cultivation of Marijuana and Marihuana,” and by Chapter 55 of the Acts of 2017, entitled “An Act to Ensure Safe Access to Marijuana” (collectively, the “Acts”). Among other requirements, pursuant to the Acts, the Cannabis Control Commission is charged with promulgating future regulations regarding administration and implementation of the Acts. Regulations to be promulgated by the Cannabis Control Commission are expected to provide guidance in the licensing and regulation of marijuana establishments.~~

~~The regulation of marijuana establishments raises novel and complex legal, planning, and public safety issues, among others. In turn, the Town needs time to study and consider the regulation of marijuana establishments and other related uses, so that it will have the opportunity: to address such novel and complex issues; to study and consider the potential impacts of such establishments and other related uses on adjacent uses and on the general public health, safety and welfare; to consider and address the potential impact of the Acts, and any future regulations on local zoning; and to undertake a planning process to appropriately address these considerations through zoning bylaws and other applicable bylaws and regulations, consistent with state laws and future regulations. A temporary moratorium on the use of land and structures in the Town for marijuana establishments and related uses will allow the Town sufficient time to engage in a planning process to address zoning issues and the effects of such establishments and uses in the Town, and to enact bylaws in a manner consistent with sound land use planning goals and objectives, the Acts, and future regulations.~~

~~B. Temporary Moratorium~~

~~The use of land and/or structures for marijuana establishments as defined in Massachusetts General Laws Chapter 94G, Section 1 and as may otherwise be defined by Massachusetts law or regulation, to include, without limitation, all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers, on-site consumption of marijuana at a marijuana retailer location, any other types of licensed marijuana-related businesses, and the conducting of any such activity for commercial purposes by whichever name used, and any related use, shall not be permitted in any zoning district in the Town so long as this moratorium is effective, as set forth in Section C below. Use variances shall be strictly prohibited. During this moratorium, the Town shall undertake a planning process consistent with the purposes set forth herein.~~

~~C. Expiration~~

~~For the reasons set forth above and to ensure Natick has a comprehensive Zoning By-Law on Adult Use Marijuana in place and notwithstanding any other provision of the Natick Zoning~~

~~Bylaws to the contrary, the temporary moratorium set forth in Section B above shall be in effect through June 30, 2019, unless extended, modified or rescinded by a subsequent action of Town Meeting. (Art. 3, Fall STM#2, 10/4/2018)~~

~~D. Conflict of Laws~~

~~In the event of any conflict between the provisions of this Bylaw and any other applicable state or local law, regulation, by law, or approval by the voters, the stricter provisions shall control.~~

~~E. Severability:~~

~~The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of this Bylaw is found to be invalid, such invalidity shall not affect the other provisions or application of this Bylaw, to the extent permitted by law.~~

~~(Art. 26, Fall A.T.M., 10/17/17)~~

~~Section III-K.2: Adult Use Marijuana Establishments~~

1. Purpose.

In addition to Section 100, the purpose of this Section is to regulate the time, place and manner of Adult Use Marijuana Establishments. The zoning will serve to preserve the character of the community and create a place for the public to have access to legal marijuana while mitigating community impact. This Bylaw shall provide regulations and criteria that will support the public's right to access legal marijuana, protect the public health, safety, and well-being and expand new growth for the tax base.

2. Relationship to underlying districts and regulations

2.1 The Adult Use Marijuana Overlay Districts shall overlay all underlying districts so that any parcel of land lying in an Adult Use Marijuana Overlay District shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in this Zoning Bylaw.

2.2 All regulations of the underlying zoning districts shall apply within the Adult Use Marijuana Overlay Districts, except to the extent that they are specifically modified or supplemented by other provisions of the applicable Adult Use Marijuana Overlay District.

3. Scope.

This Section III-K relates only to Marijuana Establishments authorized by General Laws, Chapter 94G, and not to Registered Marijuana Dispensaries authorized by General Laws, Chapter 94I; the location and operation of which is governed by Section III.323.8 of these Bylaws, nor to marijuana-related businesses not required to be licensed by Chapter 94G, except as otherwise provided for herein.

4. Definitions.

The terms used herein shall be interpreted as defined in the regulations governing Adult Use of Marijuana (935 CMR 500.00) and otherwise by their plain language, and shall apply only to this Section III-K.2

Commission: The Cannabis Control Commission established by M.G.L. c.10, s.76 with authority to implement the state marijuana laws, including, M.G.L. c.94I, and M.G.L. c.94G, and all related regulations, including 935 CMR 500.00, 935 CMR 501.00 and 935 CMR 502.00.

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

Delivery Courier: An entity licensed by the Commission to deliver marijuana products from a licensed marijuana retailer to customers. A delivery courier is not authorized to actually sell marijuana products to consumers—only to deliver from retailers, who make the sales themselves.

Delivery Operator: An entity licensed by the Commission to purchase marijuana products at wholesale, to warehouse the products, label them (but not repackage them), sell them and deliver them. It may not operate a storefront retail operation; all sales must be through delivery.

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

Host Community Agreement: An agreement, pursuant to M.G.L. c.94G, s.3(d), between a Marijuana Establishment and a municipality setting forth additional conditions for the operation of a Marijuana Establishment, including stipulations of responsibility between the parties.

Independent Testing Laboratory: A laboratory that is licensed by the Commission in accordance with 935 CMR 500.00.

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

Marijuana Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, preparing and maintaining soil and other media and promoting the growth of marijuana by a marijuana cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for marijuana cultivation. Such use is not agriculturally exempt from zoning.

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

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a Medical Marijuana Treatment Center (Registered Marijuana Dispensary).

Marijuana Microbusiness: A Marijuana Establishment that can be either a Marijuana Cultivator or Product Manufacturer or both, licensed in accordance with the requirements of 935 CMR 500.00.

Marijuana Products: Marijuana and its products unless otherwise indicated. These include 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 Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana or marijuana products and to transfer these products to other Marijuana Establishments, but not directly to consumers.

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

Third Party Marijuana Transporter: An entity, that is licensed to purchase, obtain, and possess marijuana or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not directly to consumers.

Premises: Any indoor or outdoor location over which a Marijuana Establishment or its agents may lawfully exert substantial supervision or control over entry or access to the property or the conduct of persons.

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

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

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5.3 No Marijuana Establishment shall be located within a building containing residential units, including transient housing and group housing.

5.4 No Marijuana Retailer shall be located within 500 feet of another Marijuana Retailer. Distance shall be measured by a straight line from the nearest point of the building in question to the nearest point of the building where the Marijuana Establishment is or will be located.

5.5 With the exception of a licensed Marijuana Transporter, no Marijuana Establishment shall be permitted to operate from a moveable, mobile or transitory location.

5.6 Home Occupation: Marijuana Establishments are not permitted as a Home Occupation, as defined within the Zoning Bylaw.

5.7 Use Variances: Notwithstanding any other provision of this Bylaw, no use variances shall be allowed for any Marijuana Establishment in the Town of Natick.

6. Time and Manner.

6.1 Odor: No Marijuana Establishment shall allow the escape of odors or gases from the cultivation, processing, storage, or manufacturing of marijuana or marijuana products. Every Marijuana Establishment shall incorporate odor control technology, to the extent necessary, to ensure that emissions do not violate M.G.L c. 111, s. 31 C.

6.2 Signage: All signage shall comply with the requirements of 935 CMR 500, and Section V of this Zoning Bylaw.

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6.4 Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the Marijuana Establishment is located and Marijuana Establishments shall comply with the requirements of 935 CMR 500 with respect to visibility of marijuana and marijuana products. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen and the SPGA shall consider the surrounding landscape and viewshed to determine if an artificial screen would be out of character with the neighborhood.

6.5 Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding the Premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, excessive pedestrian or vehicular traffic, littering, loitering, illegal parking, loud noises, excessive citation for violations of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public or private way (sidewalks and streets).

6.6 Security: The applicant shall submit a security plan to the Police Department to demonstrate that there is limited undue burden on the Town public safety officials as a result of the proposed Marijuana Establishment. The security plan shall include all security measures for the site and transportation of marijuana and marijuana products to and from off-site locations to ensure the safety of employees and the public and to protect the Premises from theft or other criminal activity. A letter from the Natick Police Department to the Planning Board acknowledging receipt and approval of such a security plan shall be submitted as part of the Special Permit application.

Safety plans should mitigate any potential harm to the employees and the public including ensuring all customers are at least 21 years of age.

7. Adult On-Site Social Consumption.

7.1 On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments unless permitted by a local ballot initiative process, as allowed by M.G.L. c.94G s.3(b). The prohibition of on-site social consumption shall include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the Premises, regardless of whether the product is sold to consumers on site.

8. Criteria for Issuance of Special Permit.

8.1 Host Community Agreement: No Special Permit shall be granted without first having an executed Host Community Agreement with the Town of Natick.

8.2 Community Outreach Meeting: No Special Permit application shall be deemed complete until a Community Outreach Meeting in accordance with 935 CMR 500 has occurred.

8.3 State Law: Marijuana Establishment operations shall conform at all times to M.G.L., c.94G, and regulations issued thereunder.

8.4 License requirements:

8.4.1 The applicant shall submit proof that the application to the Commission has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as part of the application to the SPGA, and no Special Permit application shall be deemed complete until this information is provided.

8.4.2 No Special Permit shall be granted by the SPGA without the Marijuana Establishment first having been issued a Provisional License from the Commission pursuant to 935 CMR 500.

8.4.3 No person shall operate a Marijuana Establishment without having a license in good standing from the Commission.

8.5 Energy Use: All Marijuana Cultivators shall submit an energy use plan to the SPGA to demonstrate best practices for energy conservation. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.

8.6 Line Queue Plan: The applicant shall submit to the SPGA a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along the public right of ways will not be obstructed.

8.7 Traffic Impact Statement: Any Marijuana Establishment open to the general public shall submit a detailed Traffic Impact Statement to the SPGA.

8.8 Parking: The Site Plan shall be in accordance with Section V-D Off-Street Parking and Loading Requirements

8.9 Permitting: The Planning Board shall be the Special Permit Granting Authority (SPGA). In addition to this section, the Special Permit shall also be governed by the requirements of Section VI-DD, Special Permit Procedures and Site Plan Review of the Zoning Bylaw. A special permit granted under this Section shall have a term limited to the duration of the applicant's control and/or use of the Premises as a Marijuana Establishment. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit.

8.10 Hemp: For the purposes of this Bylaw, the cultivation of hemp shall require a Site Plan Approval from the Planning Board in accordance with Section III-A.7 "Regulation of Land or Structures for Purposes Otherwise Exempted from Permitting" and comply with all applicable sections herein.

Use of land or buildings for hemp processing and/or product manufacture shall be subject to such zoning controls as apply to other (non-marijuana) processing and product manufacture operations.

8.11 Notice of Enforcement Order: A Marijuana Establishment shall file notice with the Town Administrator, Director of the Health Department, Police Chief, and the Building Commissioner within 24 hours of receipt of any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state agency (including, but not limited to, the Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment or the Marijuana Establishment's Cannabis Control Commission license.

8.12 Annual Inspection: Any operating Marijuana Establishment within the Town shall be inspected annually by the Building Inspector, the Fire Chief, the Police Department, or their designee(s), to ensure compliance with this Section and with any conditions imposed by the SPGA as a condition of the Special Permit approval.

9. Severability.

If any provision of this Section III-K is found to be invalid by a court of competent jurisdiction, the remainder of Section III-K shall not be affected but shall remain in full force. The invalidity of any provision of this Section III-K shall not affect the validity of the remainder of this Zoning Bylaw.

(Art. 2, STM#2, October 4, 2018)