

MARIJUANA BY-LAW

Whereas, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for medical purposes through Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana; and

Whereas, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for Adult Use purposes through Chapter 334 of the Acts of 2016, The Regulation and Taxation of Marijuana Act, as amended by Chapter 55 of the Acts of 2017, and otherwise:

Whereas; the prevention of the illegal sale and use of marijuana, particularly by the town’s youth, is a public health priority; and

Whereas; the legalization and sale of marijuana in other jurisdictions have been found to present unique and challenging threats to public health and safety; and

Whereas, the state regulation at 105 CMR 725.600 and at 935 CMR 500, allows for lawful local oversight and regulation, including fee requirements; and

Whereas, reasonable and effective local oversight of the cultivation, processing, distribution, sale and use of marijuana for is needed to protect community health and safety while ensuring legitimate patient access;

Therefore, in furtherance of its mission to protect, promote, and preserve the health and wellbeing of all Billerica residents, particularly the most vulnerable, and pursuant to the authority granted to it under M.G.L. c 111 § 31, M.G.K. c30, §21, and all other applicable authority Town enacts a Regulation to Ensure Safe Access to Medical Marijuana in the Town of Billerica as follows:

1. GUIDELINES

1.1 The Billerica Board of Health (“BOH”) and the Billerica Board of Selectmen (BOS) may issue guidelines for the implementation of this By-Law, including but not limited to definitions of terms used in the State regulations and in the guidelines. In the event of a conflict between this By-Law and the guidelines, as either may be amended, the By-Law shall control.

2. PERMITTING

2.1. Any proposed Registered Marijuana Dispensary (“RMD”) as that term is defined in Chapter 369 of the Acts of 2012, M.G.L. Chapter 941, and all regulations which have or may be issues thereunder, and any proposed Marijuana Establishment as that term is defined in An Act To Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, and M.G.L. Chapter 94G, and all regulations which have or may be issued thereunder, shall obtain an Operating Permit in the form and manner prescribed by the Board of Health and a Marijuana License in the form and manner prescribed by the Board of Selectmen, as may be further set forth in the Guidelines.

2.2 In order to support execution of responsibilities set forth in this regulation, an annual Operating Permit fee shall be assessed in an amount that shall be set by the Board of Health and may be amended by the BOH following a public meeting on the fee structure.

2.3 The RMD operator and the Marijuana Establishment operator shall post the Operating Permit in a clear and conspicuous manner.

- 2.4 No RMD or Marijuana Establishment Agent shall sell or otherwise distribute marijuana or marijuana products within the town of Billerica without first obtaining a Dispensary Agent Permit issued annually by the BOH. For purposes of this regulation, Dispensary Agent will include a board member, director, employee, executive, manager, or volunteer of a Registered Marijuana Dispensary of Marijuana Establishment, who is at least 21 years of age and who has received approval from the Commonwealth of Massachusetts Department of Public Health (“DPH”) under 105 CMR 725.030. or the Cannabis Control Commission, as applicable. Employee includes a consultant or contractor who provides on-site services to a Registered Marijuana Dispensary or Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.
- 2.5 As part of the Permit application process, the applicant will be provided with all appropriate By-Laws and regulations. Each applicant is required to sign a statement declaring that the applicant has read said By-Laws and regulations.
- 2.6 Each applicant is required to provide proof by means of a valid government-issued photographic identification containing the bearer’s date of birth that the applicant is 21 years old or older.
- 2.7 Each applicant is required to provide proof of a current Dispensary Agent registration, issued by the CCC or DPH, before an Operating Permit can be issued.
- 2.8 In order to support execution of responsibilities set forth in this regulation, a Dispensary Agent Permit fee shall be assessed in an amount that shall be set by the Board of Health.
- 2.9 All Dispensary Agent and Operating Permits, and all Marijuana Licenses, expire annually on December 31st and shall be valid for a maximum term of one year, renewable annually on January 1st.
- 2.10 No permit or license issued under this regulation may be transferred to any other person or entity.
- 2.11 Limitation on Licenses. The number of Adult Use Marijuana Retailers, as defined in G.L. c. 94G, § 1 and 935 CMR 500.00, permitted to be located in the Town shall be limited to twenty percent (20%) of the number of year round licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold pursuant to G.L.c. 138 §15 In the event that 20% of said licenses are not a whole number, the limit shall be rounded up to the nearest whole number.

3. REQUIREMENTS AND PROHIBITIONS

- 3.1 The cultivation, processing, distribution, sale and use of marijuana for ~~medical~~ any purposes shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not be limited to compliance with Food Service Health Permit requirements, Weights and Measures requirements, Noise Regulations, Public Nuisance bylaws, Clean Air bylaws, Workplace Smoking and E-Cigarette Regulations, State and local Building Codes, and any and all requirements associated with zoning and permitting.
- 3.2 No RMD or Marijuana Establishment shall be located within 500 feet of those uses listed in Section 4B, 4C, and 4D of the Adult Use Marijuana Overlay District zoning by-law, other than as may be allowed thereunder.

- 3.3 The cultivation, processing, distribution, or sale of marijuana ~~for medical purposes~~ shall not exempt any person or entity from complying with all state and local laws, ordinances, regulation and policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this Regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.
- 3.4 The issuance of an Operating Permit under this regulation shall be conditioned on Registration approval by the Massachusetts CCC & DPH as required by state law and regulation. Any revocation of state registration shall result in an automatic suspension of the Operating Permit and Marijuana License.
- 3.5 RMDs and Marijuana Establishments shall submit a security plan for review to the BOS, BOH, Planning Board and Billerica Police Department detailing all security measures taken to ensure patient and community safety and eliminate unauthorized access to the premises. The BOH and/or Police Department may issue guidelines or other procedure setting forth specific security requirements. Unless specified by any other state or local requirement or agreement as to the hours of operation ~~of a RMD~~, the Board of Health, in consultation with the Board of Selectmen, Planning Board, and Police Department, may set limitations on the hours of operation of any RMD or Marijuana Establishment.
- 3.6 Each RMD must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the RMD's operating practices, policies and plans.
- 3.7 RMDs must offer a secure patient or personal caregiver home delivery system that serves every address within Billerica and provides patient or personal caregiver home delivery service to any patient or personal caregiver residing in Billerica who suffers a physical incapacity to access transportation as described by 105 CMR 725.035(A)(2).
- 3.8 A RMD shall submit a plan for review to the BOH detailing its plans to provide reduced cost or free marijuana to patients with documented verified financial hardship as required by 105 CMR 725.100(A)(6). If said plan is deemed insufficient to ensure adequate patient access, no Operating Permit shall be issued.
- 3.9 The BOH may set further limitations on signage and advertising of RMDs, and may require the distribution of educational materials. Signage limitations may include, but need not be limited to those set forth in 105 CMR 725(105)(L), including restrictions on the use of images related to marijuana or marijuana paraphernalia, size and visibility of marijuana displays from outside a RMD. Educational materials to be distributed may include a "patients' bill of rights" along with information on addiction and treatment resources.
- 3.10 The BOH may set further limitations on signage and advertising of Marijuana Establishments but not more restrictive than those applied to retail establishments selling alcoholic beverages within the municipality. Signage limitations may include those set forth in 935CMR 500 including restrictions on the use of images related to marijuana or marijuana paraphernalia, size and visibility of marijuana displays from outside a Marijuana Establishment.
- 3.11 A RMD may not sell any products other than marijuana. For purposes of this subsection, "marijuana" may include Marijuana Infused Products, marijuana seeds, and other products that facilitate the use of marijuana for medical purposes, such as vaporizers. RMDs and Marijuana Establishments may not sell any tobacco product, or other nicotine delivery product, including e-cigarette cartridges or liquids that contain nicotine.

- 3.12 RMDs and Marijuana Establishments shall submit annual reports to the BOH, BOS, Planning Board and Police Department in a form and manner determined by the BOH.
- 3.13 The issuance or renewal of an Operating Permit or Marijuana License may be conditioned up the approval of any plan or compliance with this By-Law or any guideline or requirement issued under the authority of this By-Law.
- 3.14 Issuance and maintaining a Dispensary Agent Permit shall be conditioned on an applicant's ongoing compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
- 3.15 A Dispensary Agent Permit will not be renewed if the Permit Holder has failed to comply with any corrective action plan and/or has not satisfied any outstanding Permit suspensions.
- 3.16 Dispensary Agents must present their state Registration Card and Dispensary ~~Agent~~ Permit to any law enforcement official or municipal agent who questions the agent concerning their marijuana-related activities.
- 3.17 Inhaling, exhaling, burning or carrying any lighted or vaporized marijuana substance, or using it in any other manner or form, including marijuana used for medical purposes in a workplace shall constitute a violation of this regulation and shall be subject to the fines and penalties of applicable laws and regulations.
- 3.18 Consumption of Marijuana in public places is prohibited in the Town of Billerica.

4. ENFORCEMENT AND PENALTIES

- 4.1 Authority to inspect RMDs and Marijuana Establishments for compliance and to enforce this regulation shall be granted to the Health Department, the Building Commissioner, and the Billerica Police Department.
- 4.2 Any person may register a complaint under this By-Law to initiate an investigation and enforcement with the Health Department, the Building Commissioner, and the Billerica Police Department. Unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.
- 4.3 It shall be the responsibility of the Occupancy Permit holder and/or individual in charge of the RMD or Marijuana Establishment to ensure compliance with all applicable sections of this By-Law. Any RMD or Marijuana Establishment found to be in violation of any of the provisions of this By-Law may receive a written warning citation, or suspension or revocation of an Operating Permit, or Marijuana License. For any violation, the Health Department or BOS may order the permit or license holder to appear for a hearing and/or enter into a corrective action plan to address any and all violations and prevent future violations.
- 4.4 No provision, clause or sentence of this section of this By-Law shall be interpreted as prohibiting the BOH, Health Department, Building Commissioner or Planning Board from suspending or revoking any license or permit issued by and within the jurisdiction of such department or agency for repeated or egregious violations of this regulation.
- 4.5 The Health Department and the BOS may file a complaint in any court of competent jurisdiction and/or pursue any other remedy as warranted by law to enforce the provisions of this regulation.

- 4.6 A violation of Section 3.17 Consuming Marijuana in Public will be liable for a fine of \$100 for the first offense, \$200 for the second offense, and \$300 for the third, and any subsequent offense.

5. APPEALS

- 5.1 Any Operating Permit or Marijuana License holder, Dispensary Agent, or any person or entity charged with violation of any provision of this regulation shall receive a citation from a designated agent of the. Town of Billerica. Such citation and any subsequent hearing notification shall be deemed a Notice of Action within the meaning of 801 CMR 1.02(6).
- 5.2 Any Operating Permit holder, Dispensary Agent, or any person or entity cited for violation of this regulation wishes to appeal the findings or rulings of the Town of Billerica shall file a written appeal, and any supporting memoranda and documents, within twenty-one (21) days of the date the violation notice is issued. The appropriate Town Agency shall conduct an Administrative Hearing in accordance with procedures in its guidelines to determine the facts of the violation, the appropriate corrective action measures, term of suspension, if any, and/or issue a permit revocation order. Such Town Agency shall file any response to the appeal within fifteen (15) days after the hearing is closed.
- 5.3 Failure to comply with any corrective action plan, suspension or revocation, shall result in automatic suspension of the permit.

6. RETALIATION

- 6.1 No person, retailer, or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

7. SEVERABILITY

- 7.1 If any provision, clause, sentence, paragraph or word of this By-Law or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provisions or application and to this end the provisions of this By-Law are declared severable.

8. EFFECTIVE DATE

- 8.1 This By-Law shall take effect on January 1, 2019.

(ASTM 05/2014 – Art. 27
(Amended: AFTM 10/3/2018- Art. 31)

SEVERABILITY

It is hereby declared that sections, paragraphs, sentences, clauses and phrases of these By-Laws are severable and if any phrase, clause, sentence, paragraph or section of these By-Laws shall be declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections of these By-Laws.

Up-dated 9/14/2021