

**(DRAFT 3) PB Meeting 02-06-18**

**Article 6.12**

**Medical/Recreational Marijuana Facilities and the Retail Overlay District**

*1. Purpose.*

- 1.1. To provide for the limited establishment of Medical/ Recreational Marijuana Facilities (known hereafter as Marijuana Facilities) in appropriate places and under strict conditions in acknowledgment of the passage of Initiative Petition 11-11 (Question #3 on the November, 2012 state ballot and Question #4 on the November, 2016 State Ballot.)
- 1.2. To minimize the adverse impacts of Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said Facilities.
- 1.3. To regulate the siting, design, placement, safety, monitoring, modification, and removal of Marijuana Facilities.
- 1.4. To limit the overall number Marijuana Facilities in the Town of Winchendon to what is essential to serve the public convenience and necessity.

*2. Applicability.*

- 2.1 The cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use or Recreational Use is prohibited unless permitted as a Marijuana Facility under this Bylaw.
- 2.2. No Marijuana Facility shall be established except in compliance with the provisions set forth herein.
- 2.3 Nothing in this Bylaw shall be construed to supersede state laws governing the sale and distribution of narcotic drugs.
- 2.4 If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

*3. Administration*

- 3.1 The administration of the Special Permit and Site Plan Review—the Special Permit Granting Authority (SPGA), for the Medical/Recreational Marijuana Facilities and the Marijuana Retail Overlay District shall be the Planning Board.
- 3.2 A special permit for a Marijuana Facility shall be limited to one or more of the following uses that shall be prescribed by the Special Permit Granting Authority:

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- (a) cultivation of Marijuana for Recreational and Medical Use (horticulture);
- (b) processing and packaging of Marijuana for Recreational and Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
- (c) retail sale or distribution of Marijuana for Recreational and Medical Use;
- (d) wholesale sale of Marijuana for Recreational and Medical Use to other Marijuana Facilities located within Winchendon or in another municipality.
- (e) research and testing facilities for Recreational and Medical Use
- (f) distribution and transportation facility associated with for Recreational and Medical Use.

*4. Definitions.*

*Enclosed, Locked Building* – means a greenhouse, building, or structure composed of walls and a roof, equipped with locks or other security devices, accessible only to consumers 21 of age or older, employees or owners of a Marijuana Facility or agents thereof, registered qualifying patients that are 18 years or older, or care givers.

*Marijuana establishment or facility* – A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, wholesale sale, trade, distribution or any other type of licensed marijuana-related business.

*Marijuana for Medical Use* – Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

*Marijuana* – The same substance defined as “marihuana” under Chapter 94C and 94G of the Massachusetts General Laws.

*Marijuana cultivator* - An entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

*Marijuana product manufacturer* - An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

*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 testing facility* - An entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

*Marijuana retailer* - An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and

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marijuana products to marijuana establishments and to consumers; includes Medical and Recreational retail establishments.

*5. Eligible Locations for Marijuana Facilities.*

5.1 Non-Retail Uses which include cultivation, production, processing, assembly, packaging, trade, distribution or dispensing of Marijuana for Medical Use or Recreational Use is hereby limited to certain zoning districts as identified in the Zoning Bylaw Article 5 Use Regulations.

**5.2 Recreational/Medical Marijuana Facilities Retail Overlay District**

5.2.1 Establishment

The Medical/Recreational Marijuana Facilities Retail Overlay District is hereby established and is identified on a map entitled **Recreational/ Medical Retail Facilities Overlay Map.**

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, and CMR 725.000 and M.G.L. Chapter 94G, Marijuana retailers will be permitted to provide medical support, security and physical oversight that meet or exceeds state regulation as established by the Massachusetts Department of Health (DPH) and to provide retail sales of marijuana for non-medical use in a manner that meets or exceeds state regulations.

**6. Application Requirements for all Marijuana Facilities.** All proposed Marijuana Facilities shall be subject to application requirement set forth in Rules and Regulations for the Review and Approval of Site Plans and Site Development in Winchendon, Ma. – Formal Site Plan Review.

6.1 In addition to the application requirements set forth in in the Regulations for Site Plan Review, a special permit/site plan application for a Marijuana Facility shall include the following:

- (a) a statement from the Applicant under oath, setting forth the following information:
  - (i) the name and address of each owner, manager, member, partner and employee of the Facility.
  - (ii) the source of all marijuana that will be sold or distributed at the Facility, if applicable;
  - (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Facility, if applicable;
  - (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Facility; and
  - (v) If marijuana is to be cultivated, processed, and/or packaged at the Facility, the name and address of each purchaser of said marijuana.
  
- (b) If the Applicant is a non-profit organization, a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a for-profit corporate entity, a copy of its

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Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a public agency, evidence of the agency's authority to engage in the development of the Facility as proposed by the application;

- (c) Copies of all documentation, **application submissions**, licenses and permits issued by the Commonwealth of Massachusetts and any of its agencies for the Facility demonstration appropriate application status under state law;
- (d) evidence of the Applicant's right to use the site of the Facility for the Facility, such as a deed, lease, purchase and sale agreement or other legally-binding document;
- (e) if the Applicant is business organization, a notarized statement disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
- (f) A Management Plan including a description of all activities to occur on site, including all the provisions for the delivery or distribution of marijuana and related products;
- (g) A market study demonstrating sufficient demand for the Marijuana for Medical Use proposed to be sold or distributed by the Facility;
- (h) The resume(s) of the Applicant and all members of the Facility's management, including company history, references, and relevant experience;
- (i) Marijuana Facilities shall provide the Special Permit Granting Authority and all neighbors located within 500 feet of the establishment with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.

6.2 Additional Requirements

6.2.1 Use Requirements

(a) No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises unless the applicant has been approved with Cannabis Control Commission to do so through the procedures set forth in MA. Gen. Law Chapter 94G Sec. 3.4B and 935 CMR 500.145.

(b) The hour of operation of **Retail Marijuana Facilities shall be set by the Special Permit Granting Authority.** ~~but in no event shall said Facilities be open and/or operating between the hours of 8:00 PM and 8:00 AM, nor shall any sale or other distribution of marijuana occur upon the premises or via delivery from the premises, between the hours of 8:00 PM and 8:00 AM.~~

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- (c) Limitation on number of Recreational Retail Marijuana Facilities – No more than two (2) Recreational Marijuana Retailers shall be permitted to be located in the Town of Winchendon.

6.2.2 Locational and Physical Requirements

- (a) All aspects of a Marijuana Facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
- (b) No outside storage of marijuana, related supplies, or educational materials is permitted.
- ~~(c) No Non-Retail Marijuana Facility shall have a gross floor area in excess of 25,000 square feet.~~
- (d) No Retail Marijuana Facility shall have a gross floor area accessible to patients or customers which is in excess of 2,500 square feet. Space which is dedicated to administration or operations and is accessible only to employees of the facility shall not be included in this limitation.
- ~~(e) In the R80 District all Marijuana Facilities will be subject to siting on a parcel no less than 5 acres.~~

6.2.3 Ventilation – all facilities shall be ventilated in such a manner that:

- a) No pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere; and
- b) No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

6.2.4 Buffer. No Marijuana Facility shall be located within **500 feet** of any of the following structures or uses:

- (a) any school attended by children under the age of 18;
- ~~(b) any licensed child care facility;~~
- (d) any drug or alcohol rehabilitation facility;
- (e) any correctional facility, half-way house, or similar facility; or
- (f) any other Marijuana Facility.
- ~~(g) any playground, public athletic field or similar public recreational facility, including the parking areas for the bike path.~~

**Comment [CF1]:** This area here needs more discussion along with the Draft Overlay Map.

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6.2.5 No Marijuana Facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.

6.2.6 Plans must show all proposed security measures for the Marijuana Facility, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

~~6.2.7 Signage for Marijuana Facilities will be subject to the Town of Winchendon Zoning Bylaw Article 9 and the provisions for marketing set forth in 935 CMR 500.105 (D). for the Marijuana Facility shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with a registration card issued by the state Department of Public Health may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height. The proposed use shall not display on premises signage, or other marketing or visible marijuana products on the exterior of the building and windows or in any manner visible from the public way, which, in the opinion of the Special Permit Granting Authority may promote or encourage the use of marijuana or other drugs by minors.~~

**7. Reporting Requirements**

7.1 All Special Permit holders for uses under this section shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, and Special Permit Granting Authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this section. All such contact information shall be updated as needed to keep it current and accurate.

7.2 The designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health and Special Permit Granting Authority in writing a minimum of thirty (30) days prior to any change in ownership or management of a facility regulated under this section.

7.3 The designated representatives of permitted facilities shall file an annual report with the Special Permit Granting Authority and shall appear before said Authority to present the report no later than January 31st of each year, providing a copy of all current applicable state licenses for the owners and facilities, to demonstrate continued compliance with the conditions of the Special Permit.

7.4 The designated contact persons shall be required to respond by phone or email within twenty-four (24) hours of the time of contact and inquiry regarding operation of the facility by a town official to the telephone number or email address provided as the contact for the business.

**8. Transfer/Discontinuance of Use**

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8.1 A Special Permit granted under this Section is non-transferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as an Marijuana Facility

8.2 Any Marijuana Facility permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia in compliance with 105 CMR 725.105 (J), (O) prior to the expiration of its DPH Registration or immediately following revocation or voiding of its DPH Registration or following expiration, revocation or voiding of its license issued by the Cannabis Control Commission.

9. Outside Consultants and Review Fees.

An outside consultant review escrow deposit shall accompany the Application for special permit. The escrow for review fees is intended to cover the Board's potential cost of hiring consultants to review the Applicant's compliance with the special permit requirements under this Bylaw, and may include legal counsel. The initial escrow deposit amount shall be set by the Special Permit Granting Authority on a case-by-case basis, when such consultants or counsel are deemed necessary. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an Application incomplete and be considered sufficient grounds for its denial.

9.1 The Applicant may appeal the selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Pursuant to M.G.L. c. 44, § 53G, the required time limits for action upon the Application by the Special Permit Granting Authority shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the Special Permit Granting Authority's selection shall stand.

9.2 The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account shall be administered in accordance with M.G.L. c. 44, § 53G, and may be expended only for the purposes described above.

10. Findings. The Special Permit Authority shall not issue a special permit for a Marijuana Facility unless it finds that:

(a) the Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;

(b) the Facility is fully permitted by all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations;

(b) in the case of retail sale or distribution, the Facility is serving a measurable demand for Marijuana for Medical Use that is currently unmet within the municipality;

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- (c) the applicant has not provided materially false documents or testimony; and
- (d) the applicant has reasonably satisfied all of the conditions and requirements set forth herein;
- (e) Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations;
- (f) Will provide copies of registrations and licenses and a copy of a signed Host Agreement with the Town of Winchendon, in accordance with M.G.L. Chapter 94G and subsequent regulations to the Building Commissioner prior to the issuance of a Certificate of Occupancy;

~~(g) Provides a secure waiting area;~~

- (h) Provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities;
- (j) Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

11. Waiver. The Planning Board may, in its discretion, may waive or modify any of the requirements set forth in this section, if the Board determines that such a waiver does not derogate from the purpose of this bylaw, and is in the public interest.

12. Any violation of this Section shall be grounds for revocation of a special permit issued under this Section.