

PLANNING BOARD SPRING 2018 PROPOSED ZONING ARTICLES

1. Delete section 6.12, TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS, and replace with a new section 6.12 entitled MEDICAL/ADULT USE MARIJUANA FACILITIES AND THE MEDICAL/ADULT USE MARIJUANA RETAIL OVERLAY DISTRICT and to further to amend the Table of Contents to rename Section 6.12, “Medical/Adult Use Marijuana Facilities and the Medical/Adult Use Marijuana Retail Overlay District.”

Article 6.12 Medical/Adult Use Marijuana Facilities and the Medical/Adult Use Marijuana Retail Overlay District

1. Purpose.

- 1.1. To provide for the limited establishment of Medical/Adult Use Marijuana Facilities (collectively, known hereafter as Marijuana Facilities) in appropriate places for such use and under conditions in accordance with Chapter 334 of the Acts of 2016, entitled, “Regulation and Taxation of Marijuana Act”, as amended by Chapter 55 of the Acts of 2017, “An Act to Ensure Safe Access to Marijuana”, and all regulations which have or may be issued by the Department of Public Health (“DPH”) and the Cannabis Control Commission (“CCC”), including, but not limited to 105 CMR 725.00, et seq. and 935 CMR 500.00, et seq.
- 1.2. To minimize the adverse impacts of Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with Marijuana 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 commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use or Adult Use is prohibited unless licensed by all applicable Massachusetts licensing authorities and 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.

2.4 If any provision of this Section or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Section and to this end the provisions of this Section are severable.

3. Administration

3.1 The Planning Board shall be the Special Permit Granting Authority (SPGA) and shall also conduct Site Plan Review for an applicant for a Marijuana Facility.

3.2 A special permit is required for all Marijuana Facilities.

4. Definitions.

Any term not specifically defined herein shall have the meaning as defined in 105 CMR 725.00 and 935 CMR 500.00 as such regulations may from time to time be amended.

Designated contact persons – Any and all persons whose names appear on the Special Permit and Formal Site Plan Approval Applications as the applicant’s designee.

Independent Testing Laboratory - An entity licensed to test marijuana and marijuana products.

Locked Area –An area equipped with locks or other security devices, which is accessible only to consumers 21 years 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 – The same substance defined as “marihuana” or “marijuana” under Chapter 94C and 94G of the Massachusetts General Laws.

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

Marijuana for Adult Use – Marijuana that is regulated by 925 CMR 500.00 and cultivated, processed, manufactured, transported or sold for recreational purposes for individuals 21 years of age or older.

Marijuana Facility – A commercial marijuana cultivator, independent testing laboratory, product manufacturer, research facility, transporter, retailer, or any other type of licensed marijuana-related business, including a Marijuana Treatment Center.

Marijuana for Medical Use – Marijuana that is regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

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

Marijuana products - Products that have been manufactured and contain marijuana or an extract from marijuana, including, but not limited to 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 retailer - An entity licensed to purchase and transport marijuana and marijuana products from Marijuana Facilities and to, sell or otherwise transfer marijuana and marijuana products to Marijuana Facilities and to consumers.

Medical Marijuana Treatment Center – An entity register under 105 CMR 725.100 that acquires, cultivates, possesses, processes, transfers, transports, sells distributes, dispenses, or administers marijuana, products containing marijuana for medical use, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

Non-Medical Marijuana- Any marijuana that is NOT regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

5. Eligible Locations for Marijuana Facilities.

5.1 Non-Retail Marijuana Facilities which shall include marijuana cultivator, product manufacturer, independent testing laboratory, research facility, transporter of marijuana and Medical Marijuana Treatment Centers engaged in any of the above-listed non-retail uses may be permitted in certain zoning districts pursuant to a Special Permit and Site Plan Approval as set forth in the Zoning Bylaw Article 5.2.8, Use Regulations.

5.2 Adult Use/Medical Marijuana Facilities Retail Overlay District

5.2.1 Establishment

The Medical/Adult Use Marijuana Facilities Retail Overlay District (the “MFROD”) is hereby established and is identified on the Town of Winchendon Zoning Map. The boundaries of the MFROD are shown on the Zoning Map on file with the Town Clerk.

Within the MFROD, all requirements of the underlying zoning district remain in effect, except where these regulations provide an alternative to such requirements. Land within the MFROD may be used for adult use marijuana retailers and Medical Marijuana Treatment Centers engaged only in the dispensing of medical use-marijuana for retail sale, in which case the requirements set forth in this section shall apply; or a use allowed in the underlying district, in which case the requirements of the underlying district shall apply. If the provisions of the MFROD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MFROD conflict with the requirements of the underlying district, the requirements of the MFROD shall control. A Medical Marijuana Treatment Center that is proposing to operate all of the uses permitted under its license in a single location will be permitted only on sites located within the MFROD.

6. Application Requirements for all Marijuana Facilities.

6.1 All Marijuana Facilities shall be subject to the application requirements set forth in Rules and Regulations for the Review and Approval of Site Plans and Site Development in Winchendon, Ma. for Formal Site Plan Review.

6.1.2 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 also include the following:

- (a) a statement from the Applicant, setting forth the following information:
 - (i) the name and address of each owner of the Facility.
 - (ii) the source of all marijuana that will be sold or distributed at the Marijuana Facility, if applicable;
 - (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Marijuana Facility, if applicable;
 - (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Marijuana Facility; and

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.

(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 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:-

(c) Copies of all licenses issued by the CCC or DPH, and any materials submitted to these entities by the Applicant for purposes of seeking licensing.

(d) A detailed floor plan of the premises of the proposed Marijuana Facility that identifies the square footage available and describes the functional areas of the facility, along with a deed, lease, purchase and sale agreement or other legally-binding document for the site of the proposes Marijuana Facility;

(e) The resume(s) of the Applicant, including company history, references, and relevant experience, where applicable;

6.2 Additional Requirements

6.2.1 Use Requirements

- (a) No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Marijuana Facility absent a positive vote by ballot question presented to the voters of the city or town at a biennial state election pursuant to G.L. c.94G, §3(b). The prohibition on on-site consumption shall also 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.
- (b) Marijuana Facilities shall provide the Special Permit Granting Authority and all abutters located within 500 feet of the Marijuana Facility 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.

- (c) The hour of operation of Retail Marijuana Facilities shall be set by the Special Permit Granting Authority.

6.2.2 Limitation on number of Retail Marijuana Facilities – No more than three (3) Adult Use Marijuana Retailers and no more than one (1) Medical Marijuana Treatment Center retail dispensary shall be permitted to be located in the Town of Winchendon.

6.2.3 Locational and Physical Requirements

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.

No outside storage of marijuana, related supplies, or educational materials is permitted.

- (a) 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 Retail Marijuana Facility shall not be included in this limitation.
- (b) In the R80 District all Marijuana Facilities shall be subject to siting on a parcel no less than 5 acres. In addition, all Marijuana Facilities in the R80 district shall be subject to double the setback distance requirements to those outlined in Article 7.2 of the Winchendon Zoning Bylaws.

6.2.4 All Marijuana Facilities shall provide adequate ventilation such that the application of pesticides shall be performed in compliance with M.G.L. c. 132B and the regulations promulgated at 333 CMR 2.00 through 333 CMR 14.00.

No use shall be allowed at a Marijuana Facility which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

6.2.5 Buffer. No Marijuana Facility shall be located within 500 feet of any of the following pre-existing uses:

- (a) any public or private school providing education in kindergarten or grades 1 through 12;
- (b) any drug or alcohol rehabilitation facility;
- (c) any correctional facility, half-way house, or similar facility; or
- (d) any playground or athletic fields, recreational facilities, youth centers such as a YMCA, and parking areas for the bike path, or similar facility in which children commonly congregate.

6.2.6. The distance specified above shall be measured by a straight line from the point of the front door for which the proposed Marijuana facility is to be located to the property line of the facility in question.

6.2.7. 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.

6.2.8 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 (4).

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 All Marijuana Facilities shall file an annual report with the Special Permit Granting Authority and owner or operations manager for the Marijuana Facility 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 to demonstrate continued compliance with the conditions of the Special Permit.

7.4 Within twenty-four hours of contact by a municipal official concerning the operation of a Marijuana Facility, the designated contact persons shall be required to respond by phone or email to any such inquiry.

8. Transfer/Discontinuance of Use

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 a Marijuana Facility.

8.2 Any Marijuana Facility permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia upon registration or licensure revocation, expiration, termination, relocation to a new site or any other cessation of operation as regulated by the CCC or DHP in compliance with applicable state regulations.

9. Outside Consultants and Review Fees.

9.1 An outside consultant review escrow deposit shall accompany the Application for special permit. The escrow for review fees is intended to cover the Planning Board's potential cost of hiring consultants to review the Applicant's compliance with the special permit requirements under this Bylaw to include provisions set forth in Section 6.2.2 of the Winchendon Planning Board Site Plan Rules and Regulations 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.

9.2 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.

9.3 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 impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- (b) the Facility has received a provisional certificate of registration or provisional license from the appropriate licensing authority and is in compliance with all applicable state laws and regulations;
- (c) the applicant has provided a copy of a signed Host Agreement with the Town of Winchendon, in accordance with M.G.L. Chapter 94G;
- (d) the applicant has provided adequate security measures to protect the health and safety of the public, and that the storage and/or location of cultivation of marijuana is adequately secured in an enclosed, locked area;
- (e) the applicant has adequately addressed issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility.

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. *Violations.*

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

Or act in relation thereto:

2. To amend the TOWN OF WINCHENDON ZONING MAP to include a new overlay titled: Medical/Adult Use Marijuana Facilities Retail Overlay District (the “MFROD”).

See Attached Zoning Map

Or act in relation thereto:

3. To amend ARTICLE 5 USE TABLE to add a new Section entitled 5.2.8 *Principal Use Category – Special Uses*, providing new line item A with the following description: *A. Non-retail Marijuana Facilities. Non-retail Marijuana Facilities are subject to the provisions set forth in Art. 6.12.* The uses addressed above will be allowed by Special Permit in the following Zoning Districts: *Residential - 80 (R80 with restrictions as defined in note 14), Commercial-1 (C1), Commercial-2 (C2), Industrial (I), and Planned Development (PD)*; and further prohibited in the following Zoning Districts: *Residential -40 (R40), and Residential-10 (R10).*

Article 5 USE TABLE

Article 5.2.8

Special Uses	R80	R40	R10	C1 Hwy Comm.	C2 Nbhd Bus.	I	PD
A. Non-retail Marijuana Facilities. Non-retail Marijuana Facilities are subject to the provisions set forth in Art. 6.12.	SP*	N	N	SP	SP	SP	SP

** see note 14*

Note 14: R80 zone requires a minimum five (5) acre lot with double the setback distance as outlined in Art. 7.2

Or act in relation thereto: