



City of Marlborough Legal Department

140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610
LEGAL@MARLBOROUGH-MA.GOV

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2024 APR -4 AM 11:20

JASON D. GROSSFIELD
CITY SOLICITOR

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

April 4, 2024

- U/A -
- Planning Board
- P/A - 5/6/24
- Advances

Michael H. Ossing, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: Proposed Zoning Ordinance Amendment re: Medical and Adult Use Marijuana

Dear Honorable President Ossing and Councilors:

At the request of Councilor Robey, enclosed please find a proposed zoning ordinance amendment relative to updating provisions regarding medical and adult use marijuana.

I have reviewed the proposed amendment and it is in proper legal form. Please contact me if you have any questions or concerns.

Respectfully,

Jeremy P. McManus
Assistant City Solicitor

Enclosure

cc: J. Christian Dumais, Mayor

ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED BE FURTHER AMENDED BY ADDING THERETO AS FOLLOWS:

I. Section 650-17, entitled “Table of Uses” is hereby amended as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):

	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	WAYSIDE
Medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, er-transporter (47) <u>craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter (47)</u>	N	N	N	N	N	N	<u>N</u>	<u>N</u>	N	N	SP	SP	N	<u>N</u>

II. Section 650-18, entitled “Conditions for Uses,” is hereby amended as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(47) Medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter:

(b) Shall be limited in number to one of each type (cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter), but in no event fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the City of Marlborough;

(d) All aspects of a medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter concerning marijuana or products containing marijuana, related supplies or educational

materials must take place in a fixed location within a fully enclosed building, with the exception of the actual transport of marijuana, marijuana products and related supplies, and shall not be visible from the exterior of the building; and

III. The following portions of Section 650-32 are hereby amended as follows (new text shown as underlined, deleted text shown as ~~strikethrough~~):

§ 650-32. Medical and Adult Use Marijuana ~~marijuana treatment centers; adult use marijuana retail; marijuana accessories retail; medical and/or adult use marijuana cultivator; independent testing laboratory product manufacturer or transporter.~~

A. Medical marijuana treatment centers. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, Chapter 94I of the Massachusetts General Laws, and ~~105 CMR 725.000~~935 CMR 501.101, all as amended, the City of Marlborough Zoning Ordinance will not prohibit the location of a center for medical marijuana treatment within the City of Marlborough, but will instead regulate such centers. A medical marijuana treatment center should provide medical support, security, oversight by a physician, and standards that meet or exceed said regulations~~105 CMR 725.000~~. These centers should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these centers are located in such a way as to not pose a direct threat to the health or safety of either qualifying patients or the public at large, the provisions of this section will apply to all such centers.

(A.2) Medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, Chapter 94I of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws, ~~105 CMR 725.000, 935 CMR 500.000~~regulations promulgated pursuant to said general laws, and the ordinances and regulations of the City of Marlborough, its boards and commissions, all as amended, the City of Marlborough Zoning Ordinance will not prohibit the location of craft marijuana cooperatives, cultivators, microbusinesses, independent testing laboratories, product manufacturers, ~~or~~ marijuana transporters, marijuana courier, marijuana delivery operator, or marijuana research facilities for the purposes of medical marijuana or adult use marijuana, within the City of Marlborough, but will instead regulate such businesses. To ensure that these businesses are located in such a way as to not pose a direct threat to the health or safety of children and other vulnerable populations, the provisions of this section will apply to all such businesses.

B. In the interpretation of this chapter, the meanings of words and phrases shall be according to the definitions included in this § 650-32 of the Code of the City of Marlborough, ~~entitled~~

~~"medical marijuana treatment centers," Chapter 94I of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws, and regulations promulgated pursuant to said general laws Chapter 334 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 105 CMR 725.000, MGL c. 94G and 935 CMR 500.002, all as amended, and unless the context shows another sense to be intended. For purposes of this chapter, the following definitions shall also apply:~~

~~MEDICAL AND/OR ADULT USE MARIJUANA INDEPENDENT TESTING LABORATORY~~

~~A laboratory that is licensed by the Cannabis Control Commission and is (i) currently and validly licensed under 935 CMR 500.101, or formerly and validly registered by the Commission; (ii) accredited to ISO 17025: 2017 or the International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; (iii) independent financially from any MTC marijuana establishment or licensee; and (iv) qualified to test marijuana and marijuana products, including MIPs, in compliance with M.G.L. c. 94C, § 34; M.G.L. c. 94G, § 15; 935 CMR 500.000; 935 CMR 501.000: Medical Use of Marijuana; and Commission protocol(s).~~ ~~accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission;~~ ~~(ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test, and (iii) qualified to test marijuana in compliance with 105 935 CMR 725.031 501 and MGL c. 94C, § 34 and/or 935 CMR 500.160 and MGL c. 94G, § 34.~~

~~ADULT USE MARIJUANA (including the words "MARIJUANA" AND "or CANNABIS" as those words pertain to adult use marijuana)~~

~~Means all parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana (a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; Clones of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in MGL c. 946G, § 1, as amended, provided that adult use marijuana, marijuana or cannabis shall does 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 cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

MARIJUANA ACCESSORIES (or CANNABIS ACCESSORIES)

Equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, injecting, inhaling or otherwise introducing marijuana or cannabis into the body.

~~MEDICAL AND/OR ADULT USE MARIJUANA CULTIVATOR~~

~~An entity licensed and registered under 105 CMR 725.100 and/or 935 CMR 500.000, as amended, to cultivate, process and package marijuana, and to transfer deliver to medical marijuana treatment centers and/or to other marijuana establishments, but not to consumers. A craft marijuana cooperative is a type of marijuana cultivator.~~

MARIJUANA ESTABLISHMENT (ME)

~~A licensed marijuana cultivator (indoor or outdoor), craft marijuana cooperative, marijuana product manufacturer, marijuana microbusiness, marijuana retailer, independent testing laboratory, marijuana research facility licensee (as defined in 935 CMR 500.002: Marijuana Research Facility Licensee), marijuana transporter, delivery licensee, social consumption establishment (as defined in 935 CMR 500.002: Social Consumption Establishment) or any other type of licensed marijuana-related business, except a medical marijuana treatment center (MTC).~~

MARIJUANA-INFUSED PRODUCT (MIP)

~~A marijuana product infused with marijuana that is intended for use or consumption, including, but not limited to, edibles products, ointments, aerosols, oils, and tinctures. A marijuana-infused These product_s(MIP), when created or sold by a medical marijuana establishment or an MTC treatment center business, shall not be considered a food or drug as defined in MGL c. 94, § 1. MIPs are a type of marijuana product.~~

~~MEDICAL AND/OR ADULT USE MARIJUANA MARIJUANA PRODUCT MANUFACTURER~~

~~An entity licensed to obtain, manufacture, process and package marijuana or and marijuana products, to deliver marijuana and marijuana products and to transfer these products to other marijuana establishments and/or to medical marijuana treatment centers, but not to consumers.~~

~~ADULT USE MARIJUANA RETAILER~~

An entity licensed and registered under 935 CMR 500.050, as amended, as a marijuana retailer to purchase repackaged, white label, and transport marijuana or marijuana product from marijuana establishments a craft marijuana cooperative, marijuana cultivator, independent testing laboratory, product manufacturer or transporter and to sell or otherwise transfer or otherwise transfer this product to marijuana establishments and sell the marijuana to consumers, and to marijuana establishments. Unless licensed, retailers are prohibited from offering marijuana or marijuana products for the purposes of on-site social consumption on the premises of a marijuana establishment.

MEDICAL AND/OR ADULT USE MARIJUANA TRANSPORTER

An entity, not otherwise licensed by the Cannabis Control Commission, that is licensed to purchase, obtain, and possess marijuana and marijuana products solely for the purpose of transporting, temporary storage, sale and distribution to marijuana establishments or MTCs and/or to medical marijuana treatment centers, but not for sale to consumers. Marijuana transporters may be an existing licensee transporter or third-party transporter.

MEDICAL MARIJUANA TREATMENT CENTER (MTC) (FORMERLY KNOWN AS A REGISTERED MARIJUANA DISPENSARY (RMD))

Refers to the site(s) of dispensing, cultivation, and preparation of marijuana; shall mean a not for profit An entity or a for profit entity registered licensed under 10935 CMR 725.100 501.101 and known thereunder as a registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes [including development of related products, such as edibles, marijuana infused products (MIPs), tinctures, aerosols, oils, or ointments], repackages, transfers, transports, sells, distributes, delivers, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of marijuana for medical use.; and shall be subject to the regulations under § 650 32 of this chapter.

MEDICAL USE OF MARIJUANA (OR MEDICAL-USE CANNABIS)

Marijuana that is cultivated, processed, transferred, tested or sold in compliance with M.G.L. c. 94I, and 935 CMR 501.000.

The acquisition, cultivation, possession, processing [including development of related products such as marijuana infused products (MIPs) that are to be consumed by eating or drinking, tinctures, aerosols, oils, or ointments], transfer, transport, sale, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

PERSON

An individual or, non-profit entity, or for-profit entity under the laws of the Commonwealth.

ADULT-USE CANNABIS OR MARIJUANA

Marijuana that is cultivated, processed, transferred, tested or sold to adults 21 years of age or older pursuant to M.G.L. c. 94G.

ADULT-USE CANNABIS OR MARIJUANA PRODUCTS

Marijuana product that are processed, manufactured, transferred, tested or sold to adults 21 years of age or older pursuant to M.G.L. c. 94G.

COLOCATED MARIJUANA OPERATIONS (CMO)

An MTC operating under a license pursuant to 935 CMR 501.000: *Medical Use of Marijuana* and a marijuana establishment operating under at least one license pursuant to 935 CMR 500.000 on the same premises. Colocated marijuana operations pertain to cultivation, product manufacturing, and retail licenses, but not any other adult-use license.

COMMUNITY IMPACT FEE (CIF)

Impact fee(s) claimed by a host community in relation to the operations of a particular marijuana establishment or MTC which have been certified by the Commission or ruled upon by a court of competent jurisdiction, as being reasonably related to the actual costs imposed on a host community by a marijuana establishment or MTC's operations.

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, brand and transfer marijuana or marijuana products to marijuana establishments, but not to consumers.

HOST COMMUNITY

A municipality in which a marijuana establishment, MTC or independent testing laboratory is located or in which a license applicant has proposed locating an establishment.

HOST COMMUNITY AGREEMENT (HCA)

An agreement entered into and executed between a host community and a license applicant or between a host community and a marijuana establishment or MTC pursuant to M.G.L. c. 94G § 3(d).

HOST COMMUNITY AGREEMENT (HCA) WAIVER

A written statement executed by a host community and a license applicant, or by a host community and a marijuana establishment or an MTC, which expresses the parties' mutual intent to waive the regulatory requirement to have a host community agreement.

LICENSE APPLICANT

A person or entity pursuing a license to operate a marijuana establishment or MTC who has submitted or intends to submit a license application to the Commission. A license applicant may also be considered a prospective marijuana establishment.

MARIJUANA COURIER

An entity licensed to deliver finished marijuana products, marijuana accessories and branded goods directly to consumers from a marijuana retailer, or directly to registered qualifying patients or caregivers from an MTC, but is not authorized to sell marijuana or marijuana products directly to consumers, registered qualifying patients or caregivers and is not authorized to wholesale, warehouse, process, repack, or white label. A marijuana courier is an additional license type under M.G.L. c. 94G § 4(b)(1) that allows for limited delivery of marijuana or marijuana products to consumers; and shall not be considered to be a marijuana retailer under 935 CMR 500.002 or 500.050 and shall be subject to 935 CMR 500.050(1)(b).

MARIJUANA DELIVERY ENDORSEMENT

Delivery endorsement means authorization granted to licensees in categories of marijuana establishments identified by the Commission to perform deliveries directly from the establishment to consumers.

MARIJUANA DELIVERY OPERATOR OR DELIVERY OPERATOR

An entity licensed to purchase at wholesale and warehouse finished marijuana products acquired from a marijuana cultivator, marijuana product manufacturer, microbusiness or craft marijuana cooperative, and white label, sell and deliver finished marijuana products, marijuana accessories and marijuana branded goods directly to consumers, but is not authorized to repack, marijuana or marijuana products or operate a storefront under this license. A delivery operator is an additional license type under M.G.L. c. 94G § 4(b)(1) that allows for limited delivery of marijuana or marijuana products to consumers; and shall not be considered to be a marijuana retailer under 935 CMR 500.002 or 500.050 and shall be subject to 935 CMR 500.050(1)(b).

MARIJUANA RESEARCH FACILITY

An academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth, including a licensed marijuana establishment or MTC, that is licensed to conduct research by the Massachusetts Cannabis Control Commission.

MARIJUANA RESEARCH FACILITY LICENSEE OR RESEARCH LICENSEE

An academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth, including a licensed marijuana establishment or MTC, that is licensed to conduct research.

MICROBUSINESS

An entity that can be either a tier 1 marijuana cultivator or marijuana product manufacturer or both, in compliance with the operating procedures for each license and, if in receipt of a delivery endorsement issued by the Commission, may deliver marijuana or marijuana products produced at the licensed location directly to consumers in compliance with established regulatory requirements for retail sale as it relates to delivery. A microbusiness that is a marijuana product manufacturer may purchase no more than 2,000 pounds of marijuana per year from other marijuana establishments for the purpose of marijuana product manufacturing by the licensee.

REASONABLY RELATED

A demonstrable nexus between the actual operations of an ME or MTC and an enhanced need for a host community's goods or services in order to offset the impact of operations. Fees customarily imposed on other non-marijuana businesses operating in a host community shall not be considered reasonably related.

WHITE LABELING

To affix a product label that includes the branding, including the name and logo, of a specific marijuana establishment licensee to a finished marijuana product that was previously produced and packaged by a licensed product manufacturer, cultivator, microbusiness or craft marijuana cooperative for sale to consumers. Vaporizer devices shall not be white labeled. White labeled products shall be required to comply with 935 CMR 500.105(5), and (6), 935 CMR 500.130(6) and 935 CMR 500.146(7).

MEDICAL MARIJUANA

All parts of the plant Cannabis sativa L., 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. It does 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, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which

~~is incapable of germination. The term also includes MIPs except where the context clearly indicates otherwise.~~

C. In such zoning districts where a special permit is required for medical marijuana treatment center, adult use marijuana retail business, marijuana accessories business, or medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter, upon application, the special permit granting authority shall grant the special permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this chapter, the determination shall include, but is not limited to, consideration of each of the following:

- ~~(C)(9) To the extent permitted by law, R~~requiring payment of a community impact fee;
- ~~(C)(16) Signs and signage; and~~
- ~~(C)(17) Names of businesses, business logos and symbols, subject to state and federal law and regulations; and~~
- ~~(C)(18) If applicable, reduce energy and water usage, engage in energy conservation and mitigate other environmental impacts.~~

F. A medical marijuana treatment center, adult use marijuana retail business, marijuana accessories retail business, medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter shall not be located:

- (1) Within a radius of 500 feet of a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough; and
- (2) Within a radius of 500 feet of a day-care center (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough.

The five-hundred-foot distance is measured in a straight line from the geometric center of the above-referenced medical marijuana treatment center or marijuana establishment entrance to the geometric center of the nearest school or day-care center entrance, unless there is an impassible barrier within those 500 feet; in these cases, the buffer zone distance shall be measured along the center of the shortest publicly-accessible pedestrian travel path from the geometric center of the proposed medical marijuana treatment center or marijuana establishment to the geometric center of the nearest school or day-care center entrance. Terms

referenced herein shall be interpreted consistent with 935 CMR 500 and 935 CMR 501, as applicable.

~~The five hundred foot distance in this Subsection F is measured in a straight line from the nearest point of the building in which the school or day care center in question is located to the nearest point of the building within which the proposed medical marijuana treatment center would be located.~~

~~F.1.~~

~~An adult use marijuana retail business, marijuana accessories retail business, medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter shall not be located:~~

~~[Added 5-21-2018 by Ord. No. 18-1007163-2D]~~

~~(1)~~

~~Within a radius of 500 feet of a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough; and~~

~~(2)~~

~~Within a radius of 500 feet of a day care center (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough.~~

~~The five hundred foot distance in this Subsection F.1 is measured in a straight line from the nearest point of the building in which the school or day care center in question is located to the nearest point of the building within which the proposed adult use marijuana retail business, marijuana accessories retail business, and medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter would be located.~~

G. Chapter 412 of the Code of the City of Marlborough, as amended, prohibiting the smoking, ingesting, or other use or consumption of marijuana in any place accessible to the public, shall be construed as applying to the medical use of marijuana inside a medical marijuana treatment center (except for the administration of marijuana for the purposes of teaching use of vaporizers, or demonstration of use of other products as necessary), an adult use marijuana retail business, a marijuana accessories retail business, and to a medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter.

I. An adult use marijuana retail business, marijuana accessories retail business, medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer ~~or~~, craft marijuana cooperative, marijuana microbusiness, marijuana courier, marijuana delivery operator, marijuana research facility, or transporter shall not be an allowable home occupation use or an allowable accessory use.

K. Direct delivery to a consumer or client from a marijuana cultivator or product manufacturer is prohibited. Notwithstanding, a marijuana establishment (including an existing establishment previously authorized by special permit) which obtains a marijuana delivery endorsement may deliver only if authorized by a special permit (or amendment to an existing special permit) granted by the City Council.

L. No special permit shall be granted without first having an executed host community agreement (to the extent applicable by law) with the City of Marlborough.

M. The hours of operation of a medical marijuana treatment center or marijuana establishment may be further conditioned by the City Council, but in no event shall a marijuana medical treatment center or marijuana retailer be open before 10:00 a.m. or remain open after 10:00 p.m. In no case shall a marijuana courier, holder of a marijuana delivery endorsement, or marijuana delivery operator deliver to Marlborough locations before 8:00 a.m. or after 9:00 p.m.

ADOPTED
In City Council
Order No. 24-XXX
Adopted

Approved by Mayor
J. Christian Dumais
Date:

A TRUE COPY
ATTEST: