

TOWN OF WEBSTER
RULES AND REGULATIONS
BOARD OF HEALTH

REGULATION OF MARIJUANA BUSINESSES TO PREVENT NUISANCE

SECTION I. STATEMENT OF PURPOSE AND AUTHORITY:

On November 6, 2012, Massachusetts voters approved the legal use of medical Marijuana, allowing patients meeting certain conditions to obtain marijuana produced and distributed by new state-regulated centers.

On November 8, 2016, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for adult use, not medically prescribed, through Chapter 334 of the Acts of 2016, an Act for The Regulation and Taxation of Marijuana.

On July 28, 2017, Governor Baker signed the General Court's revised law on the subject, "An Act to Ensure Safe Access to Marijuana" adopted as Chapter 55 of the Acts of 2017 (the "Act") codified in Massachusetts General Law as Chapter 94G.

Massachusetts, acting through the Department of Public Health ("DPH"), amended regulatory framework for the regulation of the use of medical Marijuana through 105 CMR 725.000 *et seq.* on December 1, 2017 (the "DPH Regulations")

Massachusetts, acting through the Cannabis Control Commission (the "CCC"), implemented regulatory framework for the regulation of the adult use of Marijuana Establishments through 935 CMR 500.000 *et seq.* on March 23, 2018 (the "CCC Regulations").

The release of odors, vibration and noise from Marijuana Businesses has been documented by several Massachusetts host communities.

It is known that excessive noise, vibration, or odor may be harmful to area inhabitants, injurious to their estates, dangerous to the public health, or otherwise injurious.

The Massachusetts Supreme Judicial Court has held that ". . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means."¹

This regulation is intended to regulate the operation of Marijuana Businesses which may be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by injurious odors.

In furtherance of its mission to protect, promote, and preserve the health and well-being of all Webster residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §§ 31,

¹ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

122 and 143, the Board of Health of Webster enacts a Regulation of Operations of Marijuana Businesses to Prevent Nuisance in the Town of Webster.

SECTION II. DEFINITIONS

For the purposes of this regulation, the following words and phrases shall have the following meanings:

Ambient Noise Level: The all-encompassing noise level associated with a given environment, excluding any alleged condition of noise pollution.

A-Weighted Sound Level: The sound pressure measured on a sound-level meter using the A-weighting network. The level read is designated DBA.

Board of Health: means the Town of Webster Board of Health and its designated Board of Health agents.

Decibel: The unit by which sound is measured.

Marijuana Business: A Marijuana Establishment or a Medical Marijuana Treatment Center.

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, licensed by the Cannabis Control Commission pursuant to 935 CMR 500.000, except a Medical Marijuana Treatment Center.

Marijuana-infused Product (MIP): A product infused with marijuana that is intended for use or consumption including, but not limited to, edible products, ointments, aerosols, oils, and tinctures. MIPs are the equivalent of marijuana products under 935 CMR 500.000.

Medical Marijuana Treatment Center: An entity registered under 105 CMR 725.100, to be known as a registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, (Marijuana Infused Products) tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of medical Marijuana.

Noise: means sound of sufficient intensity and/or duration as to cause or contribute to a condition of air pollution

Nuisance: An act or failure to perform a legal duty which causes or permits a condition to exist which injures or endangers the public health, safety or welfare of the inhabitants of the Town of Webster, or which annoys or disturbs a reasonable person of normal sensitivities, or which interferes with a person's reasonable, peaceable and quiet enjoyment of their property.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Pure Tone: Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this chapter, a "pure tone" shall exist if an octave-band analysis indicates one (1) octave band three (3) dB or more over both the band above and below.

SECTION III. OFFENSIVE OR NOISOME MARIJUANA ESTABLISHMENTS

This regulation is intended to prevent all nuisances from noise, odor or otherwise which may be injurious to the public health, safety, or welfare of the inhabitants of the Town of Webster. Specifically, the following Marijuana Establishment operations shall be deemed a nuisance, namely those which:

1. create a noise when measured at the property boundary of the receiving land use in excess of 10 DBA above ambient noise level; under 310 CMR 7.00
2. create a which endangers the safety of or could cause injury to the health of humans or animals; or
3. create a noise which annoys or disturbs a reasonable person of normal sensitivities; or
4. create a noise which endangers or injures personal or real property; or
5. create a noise which interferes with a person's reasonable, peaceable and quiet enjoyment of their property; or
6. emit an odor which is discernible at the property boundary of the receiving land use; or
7. emit an odor which annoys or disturbs a reasonable person of normal sensitivities; or
8. emit an odor which endangers the safety of or could cause injury to the health of humans or animals; or
9. emit an odor which endangers or injures personal or real property; or
10. emit an odor which interferes with a person's reasonable, peaceable, and quiet enjoyment of their property.

SECTION IV. ORDER OF REMOVAL AND APPEALS

If the Board of Health receives three (3) or more complaints within thirty (30) days, it may order the Marijuana Business to submit to independent testing to verify or refute the existence of the complained nuisance at the expense of the Marijuana Business.

The Board of Health of the Town of Webster shall order a Marijuana Business, at its own expense, to remove any nuisance found thereon within twenty-four hours or such other time the Board of Health deems reasonable.

If the owner or operator of a Marijuana Business fails to comply with such order, subject to the appeal rights below, the Board of Health of the Town of Webster may revoke its operating permit issued by the Board of Health pursuant to its Regulation to Ensure the Sanitary and Safe Operations of Marijuana Businesses and the Sale of Marijuana.

The Board shall notify a Marijuana Business in writing of any order taken pursuant to this section IV of the Board's regulations. The Marijuana Business shall have seven (7) days after receipt of such written notice in which to comply with the Board's order or request a hearing before the Board. If the Marijuana Business fails to either comply with the order or request a hearing before the Board after said seven (7) days, the Board of Health of the Town of Webster may cause the nuisances to be removed, and all expenses incurred thereby shall constitute a debt due the Town of Webster.

SECTION V. ENFORCEMENT

The Board of Health, its agents, officers, and employees, shall have the authority, consistent with the laws of the Commonwealth to enter upon privately owned land for the purpose of performing their duties for the administration and review of this regulation, and may make or cause to be made such examinations, surveys, or samples as the Board of Health deems necessary at the expense of the Marijuana Business. The Marijuana Business shall submit to the same.

Unless stated otherwise, any Person who violates any provision of this regulation issued hereunder, shall be subject to a fine as follows: \$100.00 for the first offense; \$200.00 for the second offense; \$300.00 for the third offense; and \$300.00 for the fourth and each subsequent offense. Each day or portion thereof during which a violation occurs or continues shall constitute a separate offense, and each provision of the regulation that is violated shall constitute a separate offense.

The Board of Health shall have the authority to enforce these regulations issued thereunder by violation notices, administrative orders, and civil and criminal court actions. As an alternative to criminal prosecution, the Board of Health may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Chapter 40, Section 21D.

SECTION VI. APPEAL

Unless otherwise provided, any Person aggrieved by the decision of the Board of Health may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the Commonwealth of Massachusetts.

SECTION VII. SEVERABILITY

If any portion, or sentence, clause or phrase of this regulation shall be held invalid for any reason, the remainder of this regulation shall continue in full force and effect.

SECTION VIII. EFFECTIVE DATE:

This regulation shall take effect immediately upon passage by the Board of Health.

Paul J. Zales
Wanda Lee
James L. Smith
Matthew S. Smith
Janet Hoica