

Regulation of Adult Use Marijuana Establishments

Proposed zoning bylaw language:

Section 3.13: Adult Use Marijuana Establishments

3.13

A. Purpose

The purpose of this Section is to regulate the time, place, and manner of adult use Marijuana Establishments in West Boylston in accordance with the provisions of Massachusetts General Law Chapter 94G. This Section serves to preserve the character of the community and create a place for the public to responsibly access legal marijuana while mitigating impacts on adjacent properties, residential neighborhoods schools and other sensitive land uses by regulating the siting, design, placement, security, safety, monitoring, modification, and discontinuance of Marijuana Establishments.

B. Scope

1. Section 3.13 relates only to Marijuana Establishments authorized by General Laws, Chapter 94G, and does not apply to Medical Marijuana Treatment Centers authorized by General Laws, Chapter 94I, the location and operation of which are governed locally by Section 3.12 of these Bylaws, nor to marijuana-related businesses not required to be licensed by Chapter 94G, except as otherwise provided herein.

C. Definitions

The terms used herein shall be interpreted as defined in the regulations governing Adult Use of Marijuana (935 CMR 500.02) and otherwise by their plain language.

Adult On-Site Marijuana Social Consumption Operator: A marijuana retailer licensed to purchase marijuana and Marijuana Products from a Marijuana Establishment and to sell marijuana and marijuana products on its premises and to allow customers to consume marijuana and marijuana products on its premises only.

Marijuana Cultivation: Use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media promoting the growth of marijuana by a Marijuana Cultivator, Microbusiness, Marijuana Research Facility, Craft Marijuana Cultivator Cooperative, or other entity licensed by the Cannabis Control Commission for Marijuana Cultivation. Such use shall not be considered exempt from zoning as an agricultural use.

Marijuana Cultivator: An entity licensed to cultivate, process, and package marijuana, to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

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, except a Medical Marijuana Treatment Center.

Marijuana Membership Club: An organization, club, lodge or other private grounds (non-profit and private) allowing on-site consumption of marijuana or marijuana products, regardless of whether marijuana or marijuana products are sold on the premises, but not operating as a licensed Adult On-Site Marijuana Social Consumption Operator.

Marijuana Product: 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 Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

Marijuana Retailer: An entity licensed to purchase and transfer marijuana or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering marijuana or marijuana products to consumers and from offering marijuana or marijuana products for the purposes of onsite social consumption on the premises of a Marijuana Establishment.

Marijuana Transporter or Distribution Facility: An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess marijuana or marijuana products solely for the purposes of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. A Marijuana Transporter may be an Existing Licensed Transporter or Third Party Transporter.

Commission: The Massachusetts Cannabis Control Commission (CCC) established by M.G.L.c.10 Section 76, or its designee.

Host Community Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Marijuana Establishment and a municipality setting forth additional conditions for the operation of a Marijuana Establishment, including stipulations of responsibility between the parties.

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 and brand marijuana or marijuana products and to transport marijuana to Marijuana Establishments, but not to consumers.

Family Day Care Home: Any residence licensed by the Commonwealth of Massachusetts which, on a regular basis, receives for temporary custody and care during part or all of the day children under seven years of age or children under sixteen years of age if such children have special needs..

Independent Testing Laboratory: A laboratory that is licensed by the Commission to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

Microbusiness: A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Process or Processing: To harvest, dry, cure, trim and separate parts of the marijuana plant by manual or mechanical means, except that it shall not include manufacture as defined in 935 CMR 500.002.

Research Facility: An entity licensed to engage in research projects by the Commission.

D. Place

1. Allowed Uses - Marijuana Establishments shall be permitted to locate as specified in Section 3.2 Schedule of Use Regulations and in accordance with the specific requirements of this Section of the Bylaw.
2. All Marijuana Establishments shall be contained within a building or structure. No Marijuana Establishment shall be located in a trailer, cargo container, motor vehicle, or other similar nonpermanent enclosure.
3. Marijuana Establishments shall not have a drive-thru services.
4. No Marijuana Establishment shall be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12; licensed day-care center; Family Day Care Home, place of worship; library; park; or playground establishment in operation at the time of application for a Special Permit or Site Plan approval. Distance shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located. In any case, the Planning Board requires verification of distances by a Registered Land Surveyor as part of the permit submittal package.
5. No Marijuana Establishment shall be located within a building containing residential units. This prohibition includes transient housing such as motels and dormitories, and group housing. Additionally, with the exception of a Marijuana Transporter, no Marijuana Establishment shall be permitted inside a movable or mobile structure such as a van or truck.
6. The number Marijuana Retailers permitted in the Town shall be limited to no more than two (2). Special Permit applications will be considered in the order in which the Planning Board receives a completed Special Permit application accompanied by confirmation that a completed license application has been received by the Commission.

E. Time and Manner

1. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of a Marijuana Establishment. All Marijuana Establishments permitted under this section shall comply with all state and local laws, rules and regulations, including those governing the smoking of tobacco.
2. Odor: No Marijuana Establishment shall allow the escape of noxious odors or gases. Marijuana Establishments shall incorporate odor control technology to ensure that emissions do not violate MGL Chapter 1111, Section 31C. All Marijuana Establishments shall be ventilated in such a manner that no:
 - i. Pesticides, insecticides, or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere.
 - ii. Odor from marijuana can be detected by a person with a normal sense of smell at the exterior of the marijuana establishment or at any adjoining use or property.
3. Signage: All signage shall comply with the requirements of 935 CMR 500, and Section 5.6 of the West Boylston Zoning Bylaws.
4. Hours: Unless otherwise specified in the conditions of a Special Permit, Marijuana Retailers shall be open to the public no earlier than 8:00AM or later than 8:00pm.
5. Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from the outside of the building in which the marijuana establishment is located and shall comply with the requirements of 935 CMR 500. No outside storage of marijuana, related supplies, or promotional material is permitted. Any artificial screening device erected to eliminate the view from a public way shall also be subject to a vegetative screen and the Planning Board shall consider the surrounding landscape and views to determine if an artificial screen would be out of character with the neighborhood.
6. Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets, and areas surrounding the premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of marijuana, excessive pedestrian or vehicular traffic, illegal drug activity under state or local law, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) or other obstructions in the public or private way (sidewalks and streets).
7. Home Occupation: Marijuana Establishments are not permitted as a Home Occupation, as defined in Section 3.5 of the West Boylston Zoning Bylaw.
8. Security: Every application for a Special Permit for the operation of a Marijuana Establishment shall include a security plan describing all security measures. This should include site security and security for the transportation of marijuana and marijuana products. Safety plans should mitigate any potential harm to employees and the public including insuring customers are at least 21 years of age. The security plan shall meet all security requirements of 935 CMR 500.110.

9. Host Community Agreement: No Special Permit shall be granted without the applicant first having an executed Host Community Agreement with the Town of West Boylston.
10. Community Outreach Meeting: No Special Permit application shall be deemed complete by the Planning Board until a Community Outreach Meeting in accordance with 935 CMR 500.101 has occurred.
11. State Law: Marijuana establishment operations shall conform at all times to General Laws, Chapter 94G, and regulations issued thereunder.
12. License requirements:
 - i. The Applicant shall submit proof that the application to the Commission has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as an integral component of the application to the Planning Board and no Special Permit application shall be deemed complete by the Planning Board until this information is provided.
 - ii. No Special Permit shall be granted by the Planning Board to an applicant without the Marijuana Establishment first having been issued a Provisional License from the Commission pursuant to 935 CMR 500.102.
 - iii. No person shall operate a marijuana establishment without having a license in good standing from the Commission.
13. Energy Use: All marijuana cultivators shall submit an energy use plan to the Planning Board to demonstrate best practices for energy conservation, water usage, and waste disposal. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.
14. Line Queue Plan: The applicant shall submit a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along the public right of ways will not be unreasonably obstructed.
15. Traffic Impact Statement: Any Marijuana Establishment open to the general public shall submit a detailed Motor Vehicle Access Statement in accordance with West Boylston Zoning Bylaw Section 3.6.
16. Parking: Parking shall be in accordance with West Boylston Zoning Bylaw Section 3.6.
17. Permitting: The Planning Board shall be the Special Permit Granting Authority. The application requirements and procedures shall be conducted pursuant to West Boylston Zoning Bylaw Section 6.2 Special Permits.

F. Special Permit Requirements

1. A Marijuana Establishment shall only be allowed by Special Permit from the Planning Board in accordance with MGL c.40A § 9 and Section 6.2 Special Permits of this chapter's subject to the following statements, regulations requirements, conditions, and limitations.
2. No Special Permit for any marijuana establishment shall be issued without Site Plan Review approval having been obtained from the Planning Board, Section 3.6 Site Plan Review. In addition to the standards set forth within, the site plan must meet all dimensional, parking,

landscaping, and signage requirements within this chapter and comply with Section 3.6 of the Zoning Bylaws.

3. A Special Permit for a Marijuana Establishment shall be limited to one or more of the following uses:
 - i. Marijuana Cultivator
 - ii. Marijuana Product Manufacturer
 - iii. Marijuana Retailer
 - iv. Independent Testing Laboratory
 - v. Marijuana Research Facility
 - vi. Marijuana transporter or distribution facility
 - vii. Any other type of licensed marijuana-related business
4. In addition to the application requirements set forth above, a Special Permit application for a Marijuana Establishment shall include the following:
 - i. The name, email, phone number, and address of each owner of the Marijuana Establishment
 - ii. Copies of all required licenses and permits issued to the applicant by the Commission and any other applicable regulatory body;
 - iii. Evidence of the applicant's right to use the site of the Marijuana Establishment for the proposed use, such as a purchase of sale agreement, deed, owner's authorization, or lease;
 - iv. Proposed security measures for the Marijuana Establishment, including lighting, fencing, gates, and alarms to ensure the safety of persons and to protect the premises from theft. A letter from the Town of West Boylston Police Chief, or designee, acknowledging review and approval of the Marijuana Establishment security plan is required. To the extent allowed by law, all such security documents shall be confidential.
 - v. All application requirements for Site Plan Review are as specified in Section 3.6 of West Boylston Zoning Bylaw unless certain non-applicable requirements are waived by the Planning Board.
5. Mandatory findings. The Planning Board shall not issue a Special Permit for a Marijuana Establishment unless it finds that:
 - i. The Marijuana Establishment is designed to minimize any adverse impacts on abutters and the general public.
 - ii. The Marijuana Establishment demonstrates that it will meet all the permitting requirements of all applicable agencies and will comply with all applicable state laws and regulations; and
 - iii. The applicant has satisfied all of the conditions and requirements set forth herein.
6. A Special Permit granted under this Section shall have a term limited to the duration of the applicant's ownership of the premises as a Marijuana Establishment. A Special Permit may be transferred only with the approval of the Planning Board in the form of an amendment to the Special Permit with all information required in Section 3.13.F.4.

G. Severability

If any provision of Section 3.13 is found to be invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected but shall remain in full force. The invalidity of any provision of this Section shall not affect the validity of the remainder of this zoning Bylaw.

H. Abandonment or Discontinuance of Use

1. A special permit granted hereunder shall lapse at the end of one (1) year from the date of issuance, not including such time required to pursue or await the determination of an appeal, referred to in G.L.c.40A, § 9, from grant thereof, if a substantial use thereof has not commenced, except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
2. A Marijuana Establishment shall be required to remove all material, plants, equipment and other paraphernalia within thirty (30) days of ceasing operations.

End of Section 3.13

And, amend the Zoning Schedule of Use table in Section 3.2 of the Zoning Bylaws to add the following new Section I entitled Marijuana Establishments:

Marijuana Establishments		SR	GR	B	I	C	CLI
1	Retail sale of marijuana and marijuana products and accessories	N	N	SPR	SPR	N	SPR
2	Independent testing laboratory	N	N	SPR	SPR	N	SPR
3	Marijuana product manufacturer	N	N	SPR	SPR	N	SPR
4	Marijuana cultivator - indoor	N	N	SPR	SPR	N	SPR
5	Marijuana cultivator - outdoor	N	N	SPR	SPR	N	SPR
6	Marijuana social consumption establishment	N	N	N	N	N	N
7	Marijuana membership club	N	N	N	N	N	N
8	Marijuana research facility	N	N	SPR	SPR	N	SPR
9	Marijuana transporter or distribution facility	N	N	SPR	SPR	N	SPR

For informational purposes only:

SR = Single Residence

GR = General Residence

B = Business

I = Industrial

C = Conservation

CLI = Commercial/Limited Industrial