



Terri A. Guarino
Health Agent

TOWN OF BOURNE BOARD OF HEALTH

24 Perry Avenue

Buzzards Bay, MA 02532

www.townofbourne.com/health

Phone (508) 759-0600 ext. 1513

Fax (508) 759-0679



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Regulations Restricting the Sale of Marijuana

A. Statement of Purpose:

Whereas, the citizens of Massachusetts voted in November of 2012 to approve the legal cultivation, processing, distribution, sale, and use of marijuana through Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana; and the regulation of the use and distribution of marijuana not medically prescribed on November 8, 2016 pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and

Whereas, the Acts and state regulations at 935 CMR 500.000, 935 CMR 501.000, and 935 CMR 502.000 (formerly 105 CMR 725.000) allow for lawful local oversight and regulation, including local inspection and fee requirements; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority and within the legal authority of boards of health to protect public health, safety, and welfare; and

Whereas the Massachusetts Supreme Judicial Court had 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

Whereas, the Town of Bourne aims to abide by the aim of this law and ensure that Registered Marijuana Dispensaries and Marijuana Establishments abide by further regulations to ensure the public health and public safety of our Town.

Now, therefore it is the intention of the Town of Bourne Board of Health to regulate the sale of marijuana.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Bourne Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

C. Definitions:

Unless otherwise indicated, terms used throughout this regulation may be defined as they are in 935 CMR 500.000, 935 CMR 501.000, and 935 CMR 502.000 (formerly 105 CMR 725.000) and in General Law, Chapter 94, §§G&I.

Application of Intent for a License means an interim application submitted for review by the Board of Health prior to issuance of a letter of support or non-opposition, and prior to any similar submissions to the State.

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

Cannabis or Marijuana or Marihuana, means all parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana(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 M.G.L. c. 94G, § 1; provided that cannabis shall not include: (a) 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; (b) hemp; or (c) the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.

Cannabis or Marijuana Accessories means 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, ingesting, inhaling or otherwise introducing cannabis or marijuana into the human body.

Cannabis or Marijuana Products means cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or marijuana or an extract from cannabis or 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.

Certificate of Registration means the certificate formerly and validly issued by the Department of Public Health or currently and validly issued by the Commission that confirms that an RMD, caregiving institution or independent testing laboratory has met all applicable requirements pursuant to M.G.L. c. 94I, and 935 CMR 501.000, and was formerly and validly registered by the Department or is currently and validly registered by the Commission. An RMD may be eligible for a provisional or final certificate of registration.

Colocated Marijuana Operations (CMO) means an entity operating under both an RMD registration pursuant to 935 CMR 501.000 and 935 CMR 500.000: Adult Use of Marijuana on the same premise. Colocated marijuana operations pertain to cultivation, product manufacturing, and retail, but not any other adult-use license.

Edible Marijuana Products or Edible Marijuana-Infused Products means a Marijuana-infused Product (MIP) that is to be consumed by eating or drinking. When created, sold, processed, or transported by an adult-use establishment in the Town of Bourne, these products may be considered as food.

Fee means the license or permit cost established by the Bourne Board of Health's Fee Schedule, which has been assessed in order to support execution of the responsibilities set forth in this regulation.

Hemp means the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

License or Operating License means the annual certificate(s) issued to any marijuana-related business by the Bourne Board of Health including Marijuana Establishments and Registered Marijuana Dispensaries which sell, cultivate, deliver, or otherwise commercially distribute marijuana or marijuana products within the Town of Bourne according to Section D of these regulations. There are two classifications of operating licenses; those for adult use marijuana establishments, and for medical use treatment centers.

Limited Access Area means a building, room, or other indoor or outdoor area on the registered premises of an RMD or Marijuana Establishment where marijuana, MIPs, or marijuana by-products are cultivated, stored,

weighed, packaged, processed, or disposed, under control of an RMD or Marijuana Establishment, with access limited to only those designated Agents.

Local Licensing Authority as referenced in the Regulations, shall indicate the Bourne Board of Health.

Marijuana Establishment means a marijuana cultivator, craft marijuana cooperative, independent testing laboratory, marijuana product manufacturer, marijuana retailer, marijuana research facility, marijuana transporter, or any other type of licensed marijuana-related business.

Registered Marijuana Dispensary (RMD) or Medical Marijuana Treatment Center means an entity formerly and validly registered under 105 CMR 725.000: Implementation of an Act for the Humanitarian Medical Use of Marijuana or currently and validly registered under 935 CMR 501.100, that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, 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 marijuana.

Registration Card means a Medical Use of Marijuana Program identification card issued by the Department to a registered qualifying patient, personal caregiver, institutional caregiver, dispensary agent, or laboratory agent. The registration card facilitates verification of an individual registrant's status. The registration card allows access into appropriate elements of a Department-supported, interoperable database in which detailed information regarding certifications and possession criteria are stored. The registration card facilitates identification for the Department and law enforcement authorities, of those individuals who are exempt from Massachusetts criminal and civil penalties for the medical use of marijuana in compliance with 105 CMR 725.000 and St. 2012, c. 369.

D. License to Operate a Marijuana Establishment or Registered Marijuana Dispensary (RMD):

1. No person shall operate a marijuana related business or sell, cultivate, deliver, or otherwise commercially distribute marijuana or marijuana products within the Town of Bourne without first obtaining a License to Operate a Registered Marijuana Dispensary or Marijuana Establishment (hereinafter "License" or "Operating License") issued annually by the Bourne Board of Health. Only Registered Marijuana Dispensaries or Marijuana Establishments with a permanent, non-mobile location in Bourne, meeting zoning restrictions, are eligible to apply for an Operating License to maintain a supply of marijuana or marijuana products at the specified location in Bourne except:
 - i. A marijuana delivery-only establishment, if authorized and licensed under state regulation shall not be required to have a permanent, non-mobile location, but shall have an in-state permanent business office address and contact information available. Upon request, the establishment must share information about the current location and destination of its employees with the Bourne Board of Health.
2. As part of the License application or renewal process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and shall certify that they are in compliance with all local, and state laws, regulations, bylaws or ordinances, and be prepared to show proof if requested. That applicant shall be responsible for instructing any and all Dispensary Agents who will be responsible for sales as to ensure full compliance. A copy of this regulation must be retained on site at the Licensed facility.
3. All RMDs and Marijuana Establishments must have and follow a set of detailed operating procedures which are submitted to the Board of Health for a new license. For annual renewals thereafter, it is the responsibility of the owner/ operator to provide to the Town any changes to the business or written operating procedures inclusive of 935 CMR 500.105, 935 CMR 501.105, and/or 935 CMR 502.101.
4. All applicants for Operating Licenses must acknowledge that the sale of all other products by a marijuana related business must be merely incidental. Therefore, it is specifically prohibited for a RMD or Marijuana Establishment to:

- i. Be in possession of a liquor license and/ or Common Victualler license or otherwise sell or serve alcohol at the licensed dispensary or establishment; and
 - ii. Prepare, sell, vend, or provide foods to the public for on-premise consumption which are not considered marijuana infused products; and
 - iii. Sell tobacco products and/ or Nicotine Delivery Products or be in possession of a tobacco sales permit; and
 - iv. No RMD or Marijuana Establishment is permitted to be a Massachusetts lottery dealer; unless
 - v. The state approves and/ or a variance is applied for and granted in writing by the Bourne Board of Health.
5. Licenses will be classified as adult use or medical use and tailored to include the specific types of business conducted. A separate License, displayed conspicuously, is required for each classification and location of a marijuana establishment and/ or medical marijuana treatment center where the owner is approved by the state to cultivate, dispense, or prepare marijuana or MIPs. A License Holder may possess two Licenses for the same address if they are collocated marijuana operations and participate in both adult-use and the medical marijuana program.
6. Each applicant for a local License to sell, cultivate, prepare, test, manufacture, deliver or otherwise distribute marijuana or MIPs in the Town of Bourne is required to provide proof of either a current Registered Marijuana Dispensary registration issued by the Commonwealth of Massachusetts, or valid License(s) issued by the Cannabis Control Commission before a Marijuana Operating License(s) can be issued.
7. Applicants agree to comply with the Security Requirements for Marijuana Establishments and/ or Security Requirements for Registered Marijuana Dispensaries and to promptly provide information or video recordings to any law enforcement official or municipal agent who requests such recording.
8. All license holders must utilize digital ID scanners to check identification.
9. A License is non-transferable. The Bourne Board of Health must be notified of any changes or reclassifications, and pay the appropriate fee. Any such change or conversion shall not be permitted until approved in writing by the Board of Health or their duly authorized Agent. No new License(s) will be issued unless and until all outstanding violations or penalties incurred by the previous License Holder are satisfied in full.
10. Issuance and maintaining a License shall be conditioned on the License Holder's:
 - i. Consent to unannounced, periodic inspections of his/her establishment by the Bourne Board of Health or their authorized Agent including business conducted off site; and
 - ii. Ongoing compliance with current local and state laws, rules, regulations, and policies regarding marijuana sales; and
 - iii. Agreement that a Registered Marijuana Dispensary, Cultivation Center, or Marijuana Establishment may be subject to reasonable business hours as determined by the Board of Health.
11. No License shall be issued, renewed, converted, expanded, or modified until it is approved by the Bourne Board of Health or their authorized agent. Licenses shall not be granted if the facility has unresolved compliance issues, unpaid fines, and/ or has not satisfied any outstanding license suspensions.
12. At any given time, there shall be no more than ten Licenses for adult use marijuana establishments issued in the Town of Bourne. At least two or greater of these licenses will be reserved for marijuana retailers.
13. After receiving a completed application of intent for a License, including the required interim application fee and any known requests for relief, the Board of Health shall have 45 days to act on

said application and issue a letter of non-opposition which will be valid for a period of time not to exceed 2 years.

14. After receiving a final, completed application for a License, including the required license fee, the Board of Health shall have 45 days to act on said application.
15. All fees are nonrefundable, may not be prorated, and are subject to change annually.

Fee Schedule

Change in Building Structure or Ownership or Control	\$500.00 per business
Interim Application Fee	\$500.00 per business
Adult Use Marijuana Retailer License	\$300.00
Marijuana Transporter (3rd party or existing)	\$300.00
License for Medical Marijuana Treatment Center/ Registered Marijuana Dispensary engaging in Retail Sale	\$300.00
Marijuana Cultivator including Craft Marijuana Cooperatives	Tier I (includes Microbusiness) \$300.00
	Tier 2 \$400.00
	Tier 3 – 11 \$600.00
Marijuana Product Manufacturer	\$300.00
Research Facility	\$300.00
Testing Laboratories	\$300.00

16. All Licenses, unless otherwise established by the Board of Health, expire annually on June 30th.

E. Marijuana Sales by Registered Marijuana Dispensaries and Marijuana Establishments:

1. No person shall sell marijuana from any location in the Town of Bourne other than at a Registered Marijuana Dispensary or Marijuana Establishment that possesses a valid License to Operate issued by the Bourne Board of Health for that type and classification of business.
2. Limited Access Areas shall be limited to specifically authorized personnel, and meet the state requirements. Records on persons who access these areas must be maintained and provided to any law enforcement official or municipal agent upon request.
3. Excluding transactions at RMDs which are in accordance with the provisions of 935 CMR 501.000 relative to patients with documented, verified financial hardship, no person shall:
 - i. Distribute, or cause to be distributed, any free samples of marijuana or marijuana products;
 - ii. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any marijuana product without charge;
 - iii. Gift marijuana or marijuana products to a consumer contingent upon the sale of any other product or item; and
 - iv. Allow any retail sales to take place other than face-to-face with the Dispensary or Marijuana Establishment Agent present.
4. RMDs and Marijuana Establishments are prohibited from using self-service displays, vending machines, and non-residential roll-your-own machines.

5. Marijuana Accessories shall only be sold in RMDs, marijuana establishments, or adult-only stores which possess tobacco sales permits.
6. No person under the minimum sales age of 21 shall be permitted to enter an establishment with an Operating License except those individuals in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program if the establishment is co-located with a medical marijuana treatment center.

F. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:

1. Marijuana establishments and agents within the Town of Bourne shall comply with local requirements of 105 CMR 500.000: "Good Manufacturing Practices for Food", 105 CMR 590.000: "Minimum Sanitation Standards for Food Establishments", Bourne Board of Health Food Establishment Regulations, and any other local food service permit requirement which may be applicable to edible marijuana products.
2. The sale or distribution of edible marijuana products in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any edible marijuana product or MIP for retail sale.
3. Marijuana-infused Products (MIP), edible cannabis products or edibles which are products infused with marijuana that is intended for use or consumption including, but not limited to, edible products, ointments, aerosols, oils, and tinctures when created or sold by an RMD, shall not be considered a food or a drug as defined in M.G.L. c. 94, § 1 and are therefore exempt from §G. (1-3) of these regulations.

G. Compliance with Local and State Laws:

1. All cultivation, processing, manufacturing, delivery, transportation, sale and use of marijuana shall be conducted in compliance with all local and state laws, ordinances, regulation or policies applicable to similar activities.
2. The smoking of any marijuana is prohibited in locations governed by the Massachusetts Smoke-Free Workplace Law (MGL Ch. 270 §22) and by any local laws or regulations that further ban smoking and electronic cigarette use. Including, but not be limited to, the use of marijuana by all persons, including Card Holders, is strictly prohibited in public schools, on public school grounds, on public school buses, playgrounds, and at public and semi-public bathing beaches.
3. The Bourne Board of Health may require mitigation plans for reducing odor and ensuring compliance with nuisance laws for certain types of marijuana related businesses.
4. The Bourne Board of Health may require the holder of an Operating License to submit written plans demonstration compliance with the Bourne Board of Health Blight Regulations.
5. Infusing or otherwise adding cannabinoid extract in alcoholic beverages is considered adulteration of alcohol under M.G.L. c. 270, § 1 and it is prohibited to manufacture and/or sell alcoholic beverages containing any cannabinoid extracts, including tetrahydrocannabinol ("THC") and cannabidiol ("CBD"), regardless of whether it is derived from the cannabis plant or industrial hemp.

H. Variances:

1. A variance from this regulation may be requested in writing to the Bourne Board of Health. A variance may be granted by the Bourne Board of Health after a hearing at which time the applicant establishes the following:
 - i. Strict enforcement of this regulation would do manifest injustice; and

- ii. The granting of a variance shall not in any way impair the public health and safety or the environment.
2. The Board of Health may impose any conditions, safeguards and other limitations on a license or variance when it deems it appropriate to protect the public health and safety or the environment.
3. The Board of Health shall have 60 days to act on written requests for relief from this regulation.

I. Enforcement and Penalties:

1. Authority to inspect marijuana establishments and RMDs for compliance and to enforce this regulation shall be held by the Bourne Board of Health and its duly authorized agents or contractors.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Bourne Board of Health and its designees. Unscheduled compliance inspections shall be conducted at a minimum of two inspections annually.
3. It shall be the responsibility of the License Holder, and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her marijuana related business. The violator shall receive:
 - i. In the case of a first violation, a fine of three hundred dollars (\$300.00).
 - ii. In the case of a second violation within 18 months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the License or Permit may be suspended for fourteen (14) consecutive business days.
 - iii. In the case of three or more violations within an 18 month period, a fine of three hundred dollars (\$300.00) and the License or Permit may be suspended for up to thirty (30) consecutive business days.
 - iv. In the case of four violations, or repeated, egregious violations, the Bourne Board of Health may hold a hearing to permanently revoke the License or Permit.
4. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the License or Permit for thirty (30) consecutive business days.
5. In addition to the monetary fines set above, any License Holder or Permit Holder who engages in the sale or distribution of marijuana or marijuana products while his or her License or Permit is suspended shall be subject to the suspension of all town-issued permits and licenses for thirty (30) consecutive business days.
6. The Bourne Board of Health shall provide notice of the intent to suspend a License or Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The License Holder or its business agent or Permit Holder shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and the reasons therefore in writing. After a hearing, the Bourne Board of Health shall suspend the License or Permit if the Board finds that a violation of this regulation occurred. For purposes of such suspensions, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All marijuana and marijuana products shall be removed from the retail establishment upon suspension of the License. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this regulation.
7. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D, by filing a criminal complaint at the appropriate venue, or by Board of Health meeting vote to issue fines pursuant to local regulations and bylaws. Each day any violation exists shall be deemed to be a separate offense.

J. **Severability**

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

K. **Effective Date:**

This regulation was originally adopted on April 12, 2017 by the Bourne Board of Health and revised on March 28, 2018 and August 22, 2018. On October 23, 2019, the Bourne Board of Health held a public meeting and approved the amendments contained herein. This regulation shall take effect upon publication on October 25, 2019.

-The Bourne Board of Health

Kathleen Peterson

Kathleen Peterson
Chair

Stanley Andrews

Stanley Andrews
Vice-Chairman

Donald Uitti

Donald Uitti
Member

Galon Barlow Jr.

Galon Barlow Jr.
Member

Kelly Mastria

Kelly Mastria
Member