

DRAFT MARIJUANA OVERLAY DISTRICT
Originally Endorsed by the Planning Board on July 13, 2023
Draft as of August 21, 2023

TOWN CLERK BOURNE
2023 AUG 21 PM 4:01
RECEIVED

ARTICLE _____. To see if the Town will vote to amend the **Bourne Zoning Bylaw** as follows or take any other action in relation thereto:

2/3rds Vote

Planning Board Sponsored

Section 4850-4858 Other Special Districts, Marijuana Overlay District (MOD), Zoning Map showing the overlay district, Section 2110 Type of Districts, Section 2140 District Purposes.

Add the following section:

4850 Marijuana Overlay District (MOD)

4851. Purpose

To provide for and regulate the placement, siting, and operation of Medical-use Marijuana and Adult-use Marijuana Retailers that have been recognized as having operational characteristics requiring their siting and operation in such a way as to ensure the health, safety, and general well-being of the Bourne residents, the general public, patients seeking treatment, and customers seeking to purchase marijuana for adult-use, in a manner that meets or exceeds applicable state regulations.

4852. Applicability

The Marijuana Overlay District (MOD), which shall include both Medical-use Marijuana and Adult-use Marijuana Retailers, is herein established as an overlay district. The boundaries of the MOD are shown on the MOD Zoning Map and on file with the Town Clerk entitled "Town of Bourne, Marijuana Overlay District; North Sagamore, South Sagamore, Downtown Buzzards Bay, and MacArthur Boulevard". The MOD shall overlay all underlying districts so that any parcel of land lying in the MOD shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in this Zoning Bylaw. All regulations of the underlying district shall apply, except to the extent any such requirement is specifically modified or supplemented by the regulations of the MOD.

All Marijuana Establishments sited in the MOD shall be subject to the provisions of this Zoning Bylaw, and shall comply with all applicable state regulations and licensing requirements, including but not limited to those of the Massachusetts Cannabis Control Commission ("State CCC").

- a) The Planning Board is the Site Plan Review/Special Permit Granting Authority

(SPGA) under this section and in accordance with section 1230 of this Bylaw.

- b) All sale, trade, distribution, cultivation, production, processing, manufacturing, testing, research, studying, dispensing, and other activities and uses relating to marijuana, whether commercial, retail, or wholesale, are prohibited in the Town of Bourne unless a Marijuana Establishment: (i) is a Medical-use Marijuana or Adult-use Marijuana Retailer; (ii) is sited in the MOD; (iii) fully complies with all provisions of this section 4850; (iv) fully complies with all applicable state and local laws and regulations; and (v) fully complies with all applicable licensing and permitting requirements, including but not limited to those of the Town of Bourne and the Commonwealth of Massachusetts.
- c) Medical-use Marijuana and Adult-use Marijuana Retailers shall be allowed by Site Plan Review in the MacArthur Boulevard area of the MOD and by Site Plan Review/Special Permit in Downtown Buzzards Bay, North Sagamore, and South Sagamore areas of the MOD.
- d) The number of Medical-use and Adult-use Marijuana Retailers shall be limited to a maximum of three [3] separate retailers within the Town of Bourne. A Medical-use Marijuana and Adult-use Marijuana retailer that are co-located on the same parcel or adjoining parcels shall be considered one retailer for purposes of this provision.
- e) Nothing in this Bylaw is intended to regulate or prohibit uses or activities related to personal use of marijuana in accordance with MGL c. 94G.
- f) Consumption of Medical-use Marijuana and Adult-use Marijuana products at licensed marijuana establishments is prohibited.
- g) Social consumption of Adult-use marijuana is prohibited at patriotic, fraternal or social organization lodges or clubs, and properties used for general lodging or boarding, but not operating as a licensed marijuana social consumption establishment.
- h) Patriotic, fraternal or social organization lodges or clubs, and general lodging or boarding properties shall not offer marijuana for social consumption.
- i) Marijuana Establishments consistent with G.L. c.94G,§3(a)(2), all types of “marijuana establishments” as defined in G.L. c.94G,§1, to include craft marijuana cooperative, marijuana cultivators, independent testing laboratory, marijuana product manufacturers, social consumption establishment, or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of

Bourne except Adult-use Marijuana Retailers.

4853. Application Requirements

- a) Medical-use Marijuana and Adult-use Marijuana Retailers shall conform to 105 CMR 725 et seq. and 935 CMR 500.000 et seq. "Adult-use of Marijuana", in addition to any requirements herein as adopted, et seq., including any subsequent updates.
- b) In addition to the submittal requirements and review standards provided in this Bylaw, each applicant under this section shall submit:
 1. Copy of a fully executed Host Community Agreement between the applicant and the Town of Bourne.
 2. Evidence of site control and right to use the site for Medical-use Marijuana and/or an Adult-use Marijuana Retailer in the form of a deed or valid purchase and sales agreement, or in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement.
 3. A wastewater allocation commitment letter from the Board of Sewer Commissioners for proposed developments in the Downtown District.
 4. A map depicting all properties and land uses within the distance requirements set forth in section 4854(a) of the project site, whether such uses are located in Bourne.
 5. A written description of the status of its applications to the CCC relative to the establishment at issue, or a copy of such license, as applicable.
 6. A list of any waivers of regulations that the applicant seeks to obtain from the CCC, or a copy of any such waivers that the CCC has issued to the applicant, as applicable.
 7. Copies of all licenses, permits, or other legal authorizations issued by the Commonwealth of Massachusetts or any of its agencies to the applicant for the proposed Medical-use Marijuana and/or Adult-use Marijuana Retailer.
 8. In addition to what is otherwise required to be shown on a site plan pursuant to this Zoning Bylaw, details on a plan showing all exterior proposed security measures for the premises, including but not limited to lighting, fencing, and gates to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity. The site plan shall further delineate various areas of the site (indoors and outdoors) such as public access areas, employee only access areas, storage, cultivation, preparation, waste disposal, administrative, transportation, loading and parking areas. Site plans and/or application narrative shall contain sufficient information so that the SPGA can evaluate the design and operational standards contained in this section.

- c) Upon the filing of the Site Plan Review or Site Plan Review/Special Permit application with the SPGA, the applicant shall simultaneously submit an electronic copy to the Planning Department.

4854. Location Requirements

- a) Medical-use Marijuana and Adult-use Marijuana Retailers buffer zones shall comply with all buffer zones as stated in Massachusetts 105 CMR 725 et seq. and 935 CMR 500 et seq.
- b) In performing Site Plan Review and/or Special Permit, and taking into consideration site conditions, the Planning Board may authorize exceptions to dimensional requirements of Section 2500 including buffer zone requirements of 935 CMR 500.110. The departure shall be the minimum necessary to afford relief to provide a viable project.
- c) No Medical-use Marijuana or Adult-use Retailer shall be located in the Scenic Development District.
- d) Use variances are prohibited for any Marijuana Establishment.
- e) Special Permits granted to the owner/operator of a Marijuana Establishment shall transfer with a change in ownership of the business and/or property. The Planning Board, Planning Office, and Building Inspector shall be notified in writing within fourteen [14] calendar days of the permit holder business change, property change, discontinuance of use, or if the permit holder's CCC Licensures expires, is not renewed or is terminated. Any failure to meet the requirement of the CCC, a local license, the Zoning Bylaw, or any term or condition of a Special Permit or Site Plan Approval shall be grounds for revocation of the same and may result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities cease immediately.

4855. Site Development Standards

- a) Medical-use Marijuana and Adult-use Retailer shall conform to all applicable provisions of the Zoning Bylaw, including but not limited to section 1230, and any other any requirements herein as adopted, and any amendments thereto.
- b) All aspects of the Medical-use Marijuana or Adult-use Retailer shall take place at a fixed location within a fully enclosed building.
- c) If provided, fencing and gates shall be a maximum of 6' high, and shall be decorative style wherever viewed from a public way, abutting property, or other area accessible to the public. The style of fencing and gates shall be approved by the SPGA. Chain link fencing is prohibited wherever visible from the public way or abutting property.
- d) Medical-use Marijuana and Adult-use Retailers shall comply with the Parking and Loading requirements in section 3300. The use shall be classified as "Office, Stores" under section 3320 Table of Requirements and as "Retail/commercial use" under

section 2853 Table DTD-3: Required Parking Spaces in the Downtown District.

- e) All security measures for the building shall comply with State CCC regulations and, further, shall be reviewed for appropriateness by the SPGA to ensure patron and community safety and deter unauthorized access to the premises.
- f) No products shall be displayed in any Medical-use Marijuana or Adult-use Retailer's window or otherwise be visible from any street, parking lot, or other area accessible to the public.
- g) All signage for Medical-use Marijuana or Adult-use Retailer must meet the requirements of section 2800 and section 3200 of this Bylaw. Any exterior sign may identify the Medical Marijuana or Adult-use Retailer, but shall not contain any other text. The SPGA may impose additional restrictions on signage as appropriate for the site, provided such regulations and restrictions do not conflict with State law or any State CCC regulations.

4856. Limitations

Any other type of licensed Medical-use Marijuana or Adult-use Retailer not expressly defined herein is prohibited.

4857. Marijuana Definitions

For the purpose of this Bylaw, the following definitions shall apply. Where not expressly defined in the Zoning Bylaw, terms herein shall be interpreted as defined in G.L. c 94G. et seq. (Regulation of the Use and Distribution of Marijuana not Medically Prescribed); the Cannabis Control Commission Regulations promulgated thereunder, 935 CMR 500 et seq. (Adult-use of Marijuana); 935 CMR 501 et seq. (Medical-use Marijuana); and the Department of Public Health Regulations 105 CMR 725 et seq. (Humanitarian Medical-use of Marijuana Act) and otherwise by their plain language, as they may be amended or superceded, and any successor or re-codified version, of any regulation issued by an agency of the Commonwealth of Massachusetts with jurisdiction for certifying or regulating the production and/or sale of marijuana.

Buffer Zone:

The buffer zone distance of 500 feet shall be measured in a straight line from the geometric center of the Medical Marijuana or Adult-use Retail building to the geometric center of the nearest School Entrance, unless there is an Impassable 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 Medical Marijuana or Adult-use Retail building entrance to the geometric center of the nearest School Entrance.

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

Independent Testing Laboratory:

A laboratory that is licensed by the Commission and is:

- (a) Currently and validly licensed under 935 CMR 500.001, or formerly and validly registered by the Commission;
- (b) accredited to the International Organization for Standardization 17025 (ISO/IEC 17025: 2017) 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;
- (c) Independent financially from any MTC Marijuana Establishment or Licensee; and
- (d) 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).

Manufacture:

To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

Marijuana (or Cannabis):

Means all parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002(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.

Marijuana Cultivator:

An entity licensed to cultivate, process and package marijuana, and 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 (Indoor or Outdoor), Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Microbusiness, Independent Testing Laboratory, Marijuana Retailer, Marijuana Transporter, Delivery Licensee, Marijuana Research Facility Licensee (as defined in 935 CMR 500.002: Marijuana Research Facility 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 Product Manufacturer:

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

Marijuana products:

Marijuana Products (or Cannabis Products) means Marijuana and its products, unless otherwise indicated. Marijuana Products includes products that have been Manufactured and contain Cannabis, 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 Edibles, Beverages, topical products, ointments, oils and Tinctures. Marijuana Products include Marijuana-infused Products (MIPs) defined in 935 CMR 500.002.

Marijuana Retailer:

An entity licensed to purchase, Repackage, White Label, and transport Marijuana or Marijuana Product from Marijuana Establishments and to Transfer or otherwise Transfer this product to Marijuana Establishments and to sell to Consumers. 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 Marijuana Treatment Center: Medical Marijuana Treatment Center (MTC), (formerly known as a Registered Marijuana Dispensary (RMD)), means an entity licensed under 935 CMR 501.101: Application Requirements that acquires, cultivates, possesses, Processes (including development of related products such as Edibles, MIPs, Tinctures, aerosols, oils, or ointments), Repackages, 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.

Medical-use Marijuana (or Medical-use Cannabis): means Marijuana that is cultivated, Processed, Transferred, tested or sold in compliance with M.G.L. c. 94I, and 935 CMR 501.000: Medical Use of Marijuana.

Medical-use Marijuana or Marijuana Products: means Marijuana Products that are Manufactured, Transferred, tested or sold in compliance with M.G.L. c. 94I, and 935 CMR 501.000: Medical Use of Marijuana.

Social Consumption Establishment: an entity licensed to sell Marijuana or Marijuana Products and allow Consumers to consume Marijuana or Marijuana Products solely on its Premises.

4858. Severability

If any provision of this Bylaw or the application of any such provision to any person or circumstance, shall be held invalid, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Bylaw are severable. If any provision of this bylaw is invalidated by subsequent legislation or regulation, or held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION V DEFINITIONS

Add: Marijuana: "See section 4850 for all applicable definitions".

Fraternal or Social Organization Lodge definition - delete: "*applies only to the Downtown Bylaw-section 2800*".

SECTION 2110: TYPES OF DISTRICTS.

Amend section 2110. Types of Districts by inserting "**Marijuana Overlay District (MOD)**" after the row "Floodplain Overlay District".

SECTION 2140: DISTRICT PURPOSES

Amend section 2140. District purposes by inserting the following after:

FLOODPLAIN OVERLAY DISTRICT FOD: To enable the Town of Bourne to participate in the

National Flood Insurance Program (NFIP) and ensure compliance with the NFIP regulations in all areas as defined as 100-yr floodplain on the Flood Insurance Rate Map (FIRM) provided by FEMA, and further defined by the Flood Insurance Study (FIS) and as regulated in Section 3110 of this Bylaw.

Marijuana Overlay District (MOD): To give the Town the ability to impose requirements designed to encourage appropriate land use and reasonable safeguards to govern the place and manner for Medical-use Marijuana and Adult-use Retailers.