

ZONING BYLAW ARTICLES

ARTICLE # RE: Establishment of a Retail Marijuana Retail Overlay

To see if the Town will vote to amend the Zoning Bylaws as follows:

1. Article III Section 1 “Districts” by amending (~~striketrough~~ to be removed, **underlined and bold** is new);
2. Article IV Section 4.2.0 Principal Use Regulation Schedule to add a new use (**underlined and bold** is new); and
3. Article X Section 10.6.0 Registered Marijuana Dispensary, by amending (**underlined and bold** is new, ~~striketrough~~ is removed) as follows:

1. Article III DISTRICTS SECTION 3.1.0 DISTRICTS Overlay Districts

The following special districts are hereby established and are set forth in Article 8.0:

FP 100 Year Flood Plain Districts
WR Water Resources Districts
W Wetlands Districts
A Aquifer Districts
WC Wireless Communications Districts
CC Civic Center District
CBD Central Business District
MR Marijuana Retail

SECTION 3.2.0 LOCATION OF DISTRICTS

Marijuana Retail District: As shown on the map entitled, “Town of Burlington Marijuana Overlay District” prepared by the Town of Burlington, and dated XXXXXXXX

2. 4.2.0 PRINCIPAL USE REGULATION SCHEDULE

	USE DESIGNATION	DISTRICT												OVERLAY DISTRICTS				
	INSTITUTIONAL AND RECREATIONAL USES	RO	RG	RC	BN	BL	BT	BG	IG	I	IR	OS	A	WR	CC	CBD	MR	
4.2.2.31	Marijuana Establishment (See 10.8.0)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	
4.2.2.32	Marijuana Retail (See 10.8.0)	NO	NO	NO			SP	SP	SP	SP	SP	NO		NO	NO	NO	SP	

3. ARTICLE X: MISCELLANEOUS AND SPECIAL REGULATIONS

SECTION 10.6.0 REGISTERED MARIJUANA DISPENSARY AND **MARIJUANA RETAILERS**

10.6.1 Purpose and Intent

Applications for a Registered Marijuana Dispensary (RMD) **and/or Marijuana Retailer (MR)** shall be subject to additional criteria herein.

10.6.2 Procedures

All requests for consideration by the Planning Board for Special Permit approval of an RMD/MR shall be consistent with this section and Section 9.2.0 of the Zoning **Bylaws**. All RMDs/**MRs** must be licensed by the state Department of Public Health (DPH), **Cannabis Control Commission (CCC)**, or successor agency. At the time of application for approval of a Special Permit, the proponent is required to submit documentation to the Town that the state DPH or CCC has issued a valid license and/or permit to operate a Registered Marijuana Dispensary **or Marijuana Retailer**.

10.6.2.1 Notification

The abutter notification requirement is hereby extended to a distance of one thousand feet (1000), to correspond with the buffer requirements below.

10.6.3 Approval criteria

In addition to the approval criteria for Special Permit in Section 9.2.4 of the Zoning **Bylaws**, the Planning Board shall incorporate the recommendations of the Board of Health, Police Department, Fire Department, Building Department as conditions of approval for any Registered Marijuana Dispensary or **Marijuana Retailer**

10.6.4 Additional Dimensional Requirements

In addition to the dimensional requirements set forth in Section 5.2.0 Density Regulation Schedule of the Zoning Bylaws, the following requirements shall apply.

10.6.4.1 Buffer Requirement

Purpose and Intent

The purpose and intent of these requirements is to assist in preventing minors' access to marijuana and eliminating exposure to odor, noise, advertisement, or other nuisance due to the operation of marijuana establishments.

The building within which a Registered Marijuana Dispensary **or Marijuana Retailer** is located shall not be:

1. Within one thousand (1000) feet of the nearest parcel boundary of another RMD or **MR**;
2. Within five hundred (500) feet of the nearest parcel boundary of a religious institution;
3. Within one thousand (1000) feet of the nearest parcel boundary of a place where children commonly congregate.

- 3.1. 3.1 For these purposes, a place where children commonly congregate shall include: Dance schools; gymnastic schools; technical schools; vocational schools; public and private K-12 schools; facilities that offer tutoring or after school instruction; licensed daycare facilities (including private home daycare); parks that have play structures and athletic fields intended for use by children; accredited Headstart facilities; commercial establishments that host children's parties. This bylaw regulates intentional congregation of children--such as at schools, play structures, athletic fields, and the like, rather than incidental congregation of children, such as at ice cream parlors, pediatrics offices, and shopping venues, and the like. The applicant shall demonstrate compliance with buffer requirements under this regulation by provision of maps, and by an inventory of tenants and owners within the buffer, or by any other means the Planning Board might require. The buffer requirement applies to facilities in adjacent communities as well as facilities within Burlington.

10.6.4.2 Amending the buffer requirement

The Planning Board shall have discretion to amend the buffer requirement as follows:

Where the Planning Board finds that the intent of the buffer requirement can be met, as set forth in 10.6.4.1 above, the Board, in the exercise of its reasonable discretion, shall waive or reduce the buffer requirement.

10.6.4.3 Adjacency to residentially zoned land

A RMD **or MR** shall not be located on a parcel that touches residentially zoned property (excluding Town-owned property that is zoned RO and is not used for residential purposes).

10.6.4.4 Buffer Zone Measurement Criteria:

Buffer zone shall be measured based upon provisions set forth in 935 CMR 500.00 as follows:

The buffer zone distance shall be measured in a straight line from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, Religious Institution Entrance, or entrance to place where children commonly congregate unless there is an Impassable Barrier within said buffer; 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 Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, Religious Institution Entrance, or entrance to place where children commonly congregate. Where no distinct entrances are present (i.e. a park, playground, or other outdoor area), the location of measurement shall be up to The Planning Board and their reasonable discretion to determine whether or not the purpose and intent of the buffer requirement can be satisfied.

10.6.5 Parking Requirements

Parking requirements shall be regulated under 7.2.5.12 "Other Uses" of the Zoning Bylaws.

10.6.6 Nuisance

No equipment or process shall be used in such Registered Marijuana Dispensary **or MR** which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the parcel.

10.6.7 Compliance and Suspension of License

The Special Permit for this use is subject to review for compliance on an annual basis by the Planning Board. Any new owner and or operator shall require a new Special Permit. In the event that the state Department of Public Health (DPH)/ **Cannabis Control Commission (CCC)** (or any successor agency) suspends the license or registration of a RMD or MR, the Planning Board may require the licensee's appearance at a public meeting.

A10.6.8 Limitations on Licenses

The town will limit the number of MR licenses granted to 20% of liquor licenses issued, pursuant to M.G.L. ch. 138, §15, for sales for consumption off-premises (including “package stores”)- not to include beer and wine only licenses. MRs shall only be located within the Marijuana Overlay District as shown on the zoning map.

Section 10.7.2 DEFINITIONS

The definitions contained in the AN INITIATIVE PETITION FOR A LAW RELATIVE TO THE REGULATION AND TAXATION OF MARIJUANA shall be the definitions used in the Moratorium. These definitions include but are not limited to the following:

"Marijuana" or "Marihuana", all parts of any plant of the genus Cannabis, not excepted below and 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 including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws; provided that "Marijuana" shall not include: (1) 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; (2) Hemp; or (3) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

"Marijuana 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, ingesting, inhaling or otherwise introducing marijuana into the human body.

"Marijuana establishment", a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, or any other type of licensed marijuana-related business, **Excepting Marijuana Retailers for zoning purposes.**

"Marijuana products", 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 retailer", an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

Section 10.7.3 TEMPORARY MORATORIUM

~~For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaws to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Marijuana Retail Sale (which includes dispensing, processing, and cultivation activities, the on-site consumption of marijuana and marijuana products, and other related activities to the sale, storage and distribution of marijuana for non-medical use and the operation of a marijuana establishment for non-medical use). The moratorium shall be in effect through December 31, 2018 or six (6) months after the effective date of the Cannabis Control Commission regulations, whichever is later. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the regulations of the Cannabis Control Commission regarding recreational Marijuana and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Marijuana Retail Sale (which includes dispensing, processing, and cultivation activities, and other related activities to the sale, storage and distribution of marijuana for non-medical use and the operation of a marijuana establishment for non-medical use); or to take any action relative thereto.~~

Section 10.8. PROHIBITION ON MARIJUANA ESTABLISHMENTS

Prohibition on Marijuana Establishments, **not to include Marijuana Retailers,** In accordance with Massachusetts General Laws Chapter 94G, Section 3(a)(2), all types of marijuana establishments, **excepting and excluding marijuana retailers,** as defined in Massachusetts General Laws Chapter 94G, Section 1 and as may otherwise be defined by Massachusetts law, to include, without limitation, all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, ~~marijuana retailers,~~ and any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Burlington. This prohibition shall not be construed to affect the medical use of marijuana as expressly authorized by the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.000 (as the same may be amended from time to time), nor shall it be construed to include registered marijuana dispensaries as defined by

Article II, Section 2.18.2.1 of the Zoning Bylaws **or marijuana retailers as defined by Article II, Section 2.13.1 of the Zoning Bylaws**; or to act in any other manner in relation thereto.

Section 10.9 PROHIBITIONS AND LIMITATIONS

It shall be unlawful for any person to operate a ME without obtaining a special permit and undergoing site plan approval pursuant to the requirements of this Zoning Bylaw.

MRs may only be located in buildings containing other retail, commercial, residential, industrial, or any other uses, if the MR is separated by full walls from any and all other uses.

On-site or “social” consumption, is prohibited as a use.

MEs shall be prohibited as an Accessory Use or Home Occupation in all zoning districts.

No marijuana or Marijuana Product shall be smoked, eaten, ingested, consumed or otherwise used on the premises of any MR.

No MRs may be operated in a mobile facility or outside of a fully enclosed building or structure, excepting deliveries to off-site MRs and home deliveries to consumers permitted or licensed by applicable state and local regulations.

No MR may be operated in such a manner as to cause or create a public nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

The issuance of a special permit and site plan review pursuant to this chapter does not create an exception, defense, or immunity to any person or entity in regard to any potential criminal liability the person or entity may have for the production, distribution, or possession of marijuana.

10.10 ADDITIONAL REQUIREMENTS

In addition to the materials required under Section 9.2.4. (Criteria for Approval) applicant shall submit the following:

Proof of provisional licensure approval from the Commonwealth of Massachusetts for the proposed ME by submitting copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the proposed ME.

The name, address, email address, and phone number of all owners of the ME, together with a criminal background check of such owners and other evidence of Moral Character.

Proof that the detailed security plan, operation and management plan, and emergency response plans have been submitted to the Burlington Police Department and the Department of Planning and Community Development for comment and review at the same time or prior to the submission of the application, and any comment or response received by the applicant.

Proof that the applicant provided notification in writing at the same time or prior to the submission of the application to all property owners within one-thousand (1000) feet of its proposed location and use, to provide them with the opportunity to comment to the Planning Board, as well as any and all comment or response received by the applicant.

Evidence demonstrating that the MR will be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the Town or the immediate neighborhood where the MR is located.

Upon receipt of a completed application, the Planning Board shall refer copies of the application to the Building Department, Fire Department, Police Department, Board of Health, Conservation Commission, and the Engineering Division of the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 30 days of referral of the application shall be deemed lack opposition.

After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other municipal boards and departments, the Planning Board may act upon the application for special permit and approval of site plan.

The applicant has demonstrated that the MR has or will meet all of the permitting requirements of all applicable agencies within the Commonwealth and is or will be in compliance with all applicable state laws and regulations, including, but not limited to G.L. c. 94G, §12 General Marijuana Establishment Operation.

The applicant has entered into an approved Host Community Agreement with Burlington Select Board.

The grant of the special permit will not exceed the limitation on permitted MRs set forth in Section 10.6.8.

The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that location is adequately secured.

The facility will not place an undue burden on public safety services of the town as may be adequately established to the satisfaction of the Planning Board, which shall consider the facility's lighting, whether or not all of the facility is visible. from a public way, whether or not

the parking is contiguous with the facility or the parking arrangements are capable of being monitored by the applicant or the town, and whether or not the facility is or can be set up to promote the effective monitoring by Police Department patrols, as well as any other factors affecting public safety.

The facility meets all criteria required for a Special Permit under Section 9.2.4 of this Zoning Bylaw, with the exceptions that

The applicant has demonstrated, by substantial evidence of Moral Character and other evidence, that it will operate the MR in conformity with all applicable municipal ordinances, state laws and regulations and that its policies and procedures are designed to prevent violation of such laws.

The Planning Board shall conduct special permit review and shall impose conditions reasonably appropriate to improve site design, traffic flow, and public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section.

In addition to any specific conditions applicable to the applicant's MR, the following conditions shall be included in any site plan review or special permit granted under this bylaw:

Hours of operation shall be set forth within the special permit, and shall generally be consistent with those for package stores licensed under G.L. c. 138. c.

The provisions regarding signage and its limitations.

The provisions revoking a special permit.

All business signage shall be subject to the requirements to be promulgated by the CCC and the requirements of **Section ____** of this Zoning Bylaw.

The ME shall not violate any provision of the Zoning Bylaw.

Display of marijuana, Marijuana Products and Marijuana Accessories shall be limited to an area which is accessible only by persons aged twenty-one (21) years or older, and the applicant shall establish such controls and monitoring as are necessary to ensure that this area is not accessed by persons under the age of twenty-one (21) years.

The Planning Board may impose specific conditions relating to the preservation or improvement of public safety, including but not limited to lighting, visibility, surveillance, security cameras, parking arrangements, and accessibility for police patrol.

MR shall be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located.

10.11 TERMINATION AND MODIFICATION

A special permit or site plan approval may be terminated due to violation of any of its conditions. In addition, a special permit or site plan approval shall terminate upon:

Failure of the permit holder to commence operations at the MR within twenty-four (24) months of the date of approval; or

Termination of the Host Community Agreement or failure to pay local taxes.

A special permit or site plan approval may be modified by the Planning Board after public hearing.

No modification is permitted for a change of location; a special permit holder must submit a new application for a change in location.

Any changes in the application materials from the original materials must be submitted with a request for modification.

No transfer of ownership, except a transfer to an affiliated entity, shall be permitted for two years after the date of approval of the special permit or site plan review unless required due to the death or disability of an owner.

If the special permit holder requests approval of a transfer of ownership, then the holder must submit proof:

That the new owner will operate the MR in accordance with the terms of the special permit, as shown by evidence of Moral Character and other substantial evidence; and

That all amounts due under the Host Community Agreement have been timely paid and no taxes, fines, penalties, fees, or other charges due to the City are currently unpaid.

Severability. The provisions of this Zoning Bylaw are severable. If any provision, paragraph, sentence, or clause of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Submitted by the Select Board at the request of
Name

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()