

## Town of Ayer, Massachusetts

### 8.6 Marijuana Establishment Zoning Bylaw for June 10, 2019 Special Town Meeting

#### 8.6.1 Purpose

The **Marijuana Establishment Zoning Bylaw**. This MEZB is enacted to allow State-licensed adult use Marijuana Establishments (ME) to locate within the Town of Ayer in accordance with applicable State Laws, Rules and Regulations and to impose reasonable safeguards to govern the time, place and manner of Marijuana Establishments to ensure proper consideration of public health, safety, well-being, and undue impacts on the natural environment as it relates to cultivation, processing, manufacturing, testing, transportation and retail sales of adult use marijuana, subject to the provisions of this Zoning Bylaw and M.G.L. c. 40A, and M.G.L. c.94G. It is the intent of this section to minimize adverse impacts on adjacent properties, residential neighborhoods, schools and other places where children congregate and other land uses potentially incompatible with adult use marijuana activities.

#### 8.6.2 Definitions

**MARIJUANA** or **MARIHUANA**: means 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; 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 also includes marijuana products except where the context clearly indicates otherwise.

**MARIJUANA CULTIVATOR**: an entity licensed to cultivate, process and package marijuana, and to transfer marijuana to marijuana establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

**MARIJUANA ESTABLISHMENT**: For purposes of this Bylaw, the term Marijuana Establishment shall comprehensively include all permitted marijuana uses including a Non-Retail Marijuana Establishment, a Retail Marijuana Establishment and a Medical Marijuana Treatment Center.

**MARIJUANA ESTABLISHMENT, NON-RETAIL**: a licensed Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility, Marijuana Transporter, Marijuana Micro-Business or any other type of licensed non-retail marijuana-related business or businesses at a single location.

**MARIJUANA ESTABLISHMENT, RETAIL**: an entity licensed to purchase and transport 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 cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

**MARIJUANA PRODUCT MANUFACTURER:** an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, and to transfer these products to marijuana establishments but not to consumers.

**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 SOCIAL CONSUMPTION FACILITY:** a commercial establishment which either sells single servings of marijuana and marijuana products for consumption on the premises or allows patrons to bring their own marijuana or marijuana products for on-site social consumption.

**MARIJUANA TESTING FACILITY:** An Independent Testing Laboratory as defined in 935CMR 500.002 licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

**MARIJUANA TRANSPORTATION OR DISTRIBUTION FACILITY:** an entity with a fixed location that is licensed by the Cannabis Control Commission to purchase, obtain and possess marijuana or marijuana products solely for the purpose of transporting and temporary storage on the premises for sale and distribution to Marijuana Establishments, but not consumers.

**MEDICAL MARIJUANA TREATMENT CENTER:** an entity formerly and validly registered under 105 CMR 725.100, or currently and validly registered under 935 CMR 501.100, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible 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 for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana for medical use.

## 8.6.3 Location

Marijuana Establishments must be located as provided in the following Table of Uses which describes what uses are allowed by right (Y) with issuance of a building permit; allowed through Site Plan review (SI); allowed by Special Permit with Site Plan review (SP); or prohibited (N) in each of Ayer's nine (9) major zoning districts.

Principal Use	A1	A2	GR	DB	MUT	GB	LI	I	HCS
Medical Marijuana Treatment Center	N	N	N	N	N	SI	SI	N	N
Marijuana Establishment, Retailer #	N	N	N	N	N	SP#	SP#	N	N
Marijuana Establishment, Non-Retail *	N	N	N	N	N	SP	SP	SP	N
Marijuana Social Consumption Facility	N	N	N	N	N	N	N	N	N

# Subject to the provisions of section 8.6.4 L below.

\* includes all Marijuana Establishments, Non-Retail as listed in the Definitions above.

## 8.6.4 Use and Operating Regulations

- A. General: Marijuana Establishments must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building. No outside storage of marijuana, related supplies, or educational materials is permitted. Marijuana Establishments are not permitted as a home occupation. Site Plan Review is required for all Marijuana Establishments, including when the facility will reuse an existing structure.
- B. 1. Buffers and Location Standards: No Marijuana Establishment may be located within 200 feet from the residential zoning districts (A1, A2, GR) and pre-existing public or private schools (pre-school through grade 12). For residential zoning districts, distance shall be measured in a straight line as the shortest distance between the Marijuana Establishment building and residential district boundaries. For schools, distance shall be measured as 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.

2. No Marijuana Establishment shall operate in existing or proposed agricultural greenhouses, nor shall any commercial marijuana cultivation take place outdoors in open fields or outdoors on existing or cleared agricultural lands.

3. No Marijuana Establishment is permitted to use or provide a drive-through service.

- C. Signage: All business signage shall be subject to the requirements of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and the requirements of the Ayer Zoning Bylaw.
- D. Ventilation/Odor: All Marijuana Establishments shall install odor control technology, as necessary, in order to control ventilation at the establishment in such a manner that no odor from marijuana cultivation, its processing or the manufacturing of products can be detected by a person with an unimpaired and otherwise normal sense of smell, to be determined by the Building Commissioner or their designee, at the exterior of the Medical Marijuana Treatment Center or Marijuana Establishment or at any adjoining use or property. All Marijuana Establishments shall additionally comply with the emissions standards found in Section 9.4 A., Environmental Performance Standards, of the Ayer Zoning Bylaw.
- E. Security: The applicant shall submit a security plan to the Ayer Police Department to demonstrate that there is limited burden on the Town public safety officials as a result of the proposed Marijuana Establishment. The security plan shall include all security measures for the site and transportation of marijuana and marijuana products to and from off-site premises to ensure the safety of employees and the public and to protect the premises from theft or other criminal activity. A letter from the Ayer Police Department to the Planning Board acknowledging receipt and approval of such a security plan shall be submitted as part of the Special Permit application and or Site plan review. All Marijuana Establishments shall provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and location of cultivation of marijuana is adequately secured in enclosed, locked facilities.
- Safety plans should mitigate any potential harm to the employees and the public including ensuring all customers are at least 21 years of age.
- F. Hours: Marijuana Retailers shall be open and/or operating to the public only between the hours of 8:00 AM and 8:00 PM, unless otherwise determined with the Board of Selectmen in the Host Community Agreement.
- G. Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the Marijuana Establishment is located and Marijuana Establishments shall comply with the requirements of 935 CMR 500 with respect to visibility of marijuana and marijuana products.
- H. Permitting: All Marijuana Establishments shall meet all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and operate in compliance with all applicable state laws and regulations.
- I. Private Clubs: Clubs, lodges, or other private grounds (non-profit and private) allowing on-site consumption of marijuana or marijuana products as a principal or accessory use, but not operating as a licensed marijuana social consumption facility, are prohibited.

- J. Conversion: The conversion of a Medical Marijuana Treatment Center that is engaged in the cultivation, manufacture or sale of marijuana or marijuana products in Ayer to a Marijuana Establishment for adult use (also known as recreational use) engaged in the same type of activity shall require a special permit.
- K. Nuisance: Marijuana Establishments shall be managed in a manner to protect against nuisance conditions in parking areas, sidewalks, streets, and areas surrounding the premises and at adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of cannabis, pedestrian or vehicular queuing that results in obstruction of sidewalks or public ways, littering, loitering, illegal parking, loud noises, citations for violations of State or local traffic laws and regulations.
- L. Limitations on Marijuana Retailers: There shall be no more than one (1) non-medical "marijuana retailer" as defined in M.G.L. c. 94G, sec.1 as "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."
- M. All Marijuana Establishments, with the exception of Medical Marijuana Treatment Centers, are prohibited from delivering cannabis or marijuana products to consumers. No Marijuana Establishment shall offer marijuana or marijuana products for consumption on the premises of any Marijuana Establishment.
- N. Annual Inspection: Any operating Marijuana Establishment within the Town shall be inspected annually by the Building Inspector, the Fire Chief, the Police Department, or their designee(s), to ensure compliance with this Section and with any conditions imposed by the SPGA as a condition of the Special Permit approval.

## 8.6.5 ADMINISTRATION AND PROCEDURES

- A. A Marijuana Establishment may be allowed in locations set forth in Section 8.6.3 above by special permit from the Planning Board (the "SPGA") in accordance with M.G.L. c.40A, §9, subject to the procedures, regulations, requirements, conditions and limitations set forth herein. Only an applicant who has obtained a Provisional License or Provisional Certificate of Registration from the Cannabis Control Commission issued pursuant to M.G.L. c. 94G and 935 CMR 500 et. seq., or M.G.L. c.94I and 935 CMR 501 et. Seq., is eligible to apply for a site plan and/or special permit pursuant to this Article.
- B. Applicants for a special permit pursuant to this Article are strongly encouraged to meet with the SPGA at a public meeting to discuss the proposed application for a new Marijuana Establishment and to discuss in general terms of the proposed Marijuana Establishment prior to the formal submission of an application.
- C. In addition to the standard Special Permit Application form and the submittal requirements for Site Plan applications as listed in **Section 3.5**, Site Plan Review of the Zoning Bylaw, an applicant for a Special Permit under this Article shall also submit the following:
  - (1) The name, address and contact information of each owner and operator of the Marijuana Establishment. Where the owner is a business entity, the names and address of each Controlling Person, as defined in 935 CMR 500.002 shall be provided.

- (2) A copy of the final, executed Host Community Agreement ("HCA") between the applicant and the Town of Ayer, as well as any Provisional License or Provisional Certificate of Registration from the Cannabis Control Commission pursuant to 935 CMR 500 or 935 CMR 501.
- (3) A written description of the status of its application to the Cannabis Control Commission relative to the Marijuana Establishment at issue, or a copy of such license, as applicable.
- (4) A list of any waivers of regulations that the applicant seeks to obtain from the Cannabis Control Commission, or a copy of any such waivers that the Commission has issued to the applicant, as applicable.
- (5) Copies of all policies and procedures approved by the Cannabis Control Commission including without limitation the Marijuana Establishment's operating and safety procedures, or copies of such policies and procedures that the applicant intends to submit to the Commission, as applicable.
- (6) For applications for a Non-Retail Marijuana Establishment, information demonstrating that the applicant has considered the following factors in its design and its operating plan:
  - i. Identification of potential energy use reduction opportunities (such as natural lighting and energy efficiency measures), and a plan for implementation of such opportunities;
  - ii. Consideration of opportunities for renewable energy generation, including, where applicable, submission of building plans showing where energy generators could be placed on the site, and an explanation of why the identified opportunities were not pursued, if applicable;
  - iii. Strategies to reduce electric demand (such as lighting schedules, active load management, and energy storage);
  - iv. Engagement with energy efficiency programs offered pursuant to M.G.L. c.25, §21
  - v. Odor control technology; and
  - vi. Water reclamation systems or other technology to reduce water usage.
- (7) The approximate quantity and source or sources of all marijuana and marijuana products that will be cultivated, processed, manufactured, packaged, transported, tested, studied or sold at the proposed Marijuana Establishment, as applicable.
- (8) Written statement confirming that no marijuana or marijuana products will be smoked, burned, or consumed on the premises as part of the cultivation, manufacturing, testing or researching operations, as applicable, or a statement explaining how any such uses have been authorized by the Cannabis Control Commission.
- (9) If applicable, a copy of the Applicant's Articles of Organization, a current Certificate of Legal Existence from the Commonwealth, and the most recent annual report.
- (10) Copies of all licenses and permits issued to the Applicant by the Commonwealth of Massachusetts and any of its agencies, other than those specified in sub-section (2) above.

- (11) Evidence that the applicant has site control and the right to use the proposed site as a Marijuana Establishment. Such evidence shall be in the form of a deed, purchase and sale agreement, lease, or other legally binding document.
- (12) In addition to what is otherwise required to be shown on a site plan pursuant to Section 3.5 of the Ayer Zoning Bylaw and Site Plan Regulations, the applicant shall provide security details to the Ayer Police Department showing all exterior proposed security measures for the premises, including but not limited to lighting, fencing, gates and alarms to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity. The Ayer Police Department will issue their review on such security measures to the Ayer Planning Board. For confidentiality and security reasons, these security measures will only be submitted to and reviewed by the Ayer Police Department, who may consult with the Ayer Fire Department on pertinent items as needed.
- (13) The site plan shall further delineate various areas of the Marijuana Establishment (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 Article, provided however that such information pertaining to the safety and security of the building and persons employed therein shall be kept confidential to the extent permitted by law.
- (14) Certification to the SPGA that the applicant has filed copies of the special permit application as required by this section.

D. Upon the filing of the special permit application with the SPGA, the Applicant shall simultaneously deliver copies of the full application to the Board of Selectmen, the Building Commissioner, the Board of Health, the Police Department and the Fire Department.

### **8.6.6 SPECIAL PERMIT REQUIREMENTS**

The Planning Board shall be the Special Permit Granting Authority (SPGA) for all Marijuana Establishments. Applications shall be submitted in accordance with the Planning Board's Special Permit Regulations. In addition to the special permit approval criteria for the applicable zoning district and the Planning Board's Special Permit Regulations, the Planning Board shall find that the proposed use meets the requirements of this section and the specific requirements as described below:

- A. The Marijuana Establishment is fully permitted by all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all State laws and regulations; provided, however, that issuance of a valid license pursuant to M.G.L. c.94G or Certificate of Registration pursuant to M.G.L. c.94I may be a condition of the special permit.
- B. The proposed use is designed to minimize any adverse impacts on the residents of the Town;

- C. For a Retail Marijuana Establishment, there shall be a secure indoor area for all customers.
- D. The Marijuana Establishment adequately addresses issues of vehicular and pedestrian traffic, circulation and parking, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

### **8.6.7 SPECIAL PERMIT CONDITIONS OF APPROVAL**

- A. In addition to compliance with M.G.L. c.94G, and 935 CMR 500 and M.G.L. c.94I and 935 CMR 501, the SPGA may impose reasonable conditions to improve site design, traffic flow, public safety, water quality, air quality, protection of significant environmental resources and the preservation of community character of the surrounding area including, without limitation, the following:
  - (1) Minimization of the impacts of increased noise and traffic.
  - (2) Minimization of the impacts of any odors generated from the facility.
  - (3) Imposition of security precautions related to the high value of products and case transactions.
  - (4) Deterring the presence of unauthorized or ineligible persons at, or near, the Marijuana Establishment.
  - (5) Imposition of measures to prevent diversion of marijuana and marijuana products.
  - (6) Conditions related to the design and construction of the facility to improve safety, security and conformance with community character.
  - (7) Conditions, consistent with the State Building Code, relating to energy efficiency and conservation.
- B. The SPGA shall include conditions concerning the following in any special permit granted pursuant to this Article:
  - (1) Hours of operation.
  - (2) The submission of a copy of the Final License or Certificate of Registration from the Cannabis Control Commission with the SPGA and the Building Commissioner prior to the issuance of a building permit, certificate of occupancy, or commencement of use, whichever occurs first.
  - (3) The reporting of any incidents to the Building Commissioner as required pursuant to 935 CMR 500.110(7) within 24 hours of their occurrence. Such reports may be redacted as necessary to comply with any applicable state or federal laws or regulations.
  - (4) The reporting to the Building Commissioner of any cease and desist order, quarantine order, suspension order, limiting sales order, notice of hearing or final action by the Cannabis Control Commission or the Division of Administrative Law Appeals, as applicable, regarding the Marijuana Establishment within 48 hours of the applicant's receipt.
  - (5) Copies of all reports submitted to any state agency, including, but not limited to, the reports required by 935 CMR 500.105(10)(d) describing the establishment's liability insurance coverage and the annual security system audits required by 935



CMR 500.110(8) shall be submitted to the SPGA within 5 business days of submission to the State.

Such reports may be redacted as necessary to comply with any applicable state or federal laws or regulations.

- (6) Documentation to the SPGA that each Marijuana Establishment Agent has completed training regarding the proper handling of marijuana prior to performing job functions. Such documentation must be provided to the Board within 5 business days of the completion of such training. Annually, the establishment shall provide documentation to the SPGA and the Board of Selectmen that all Marijuana Establishment Agents have received at least eight hours of on-going training.

C. The issuance of a special permit pursuant to this Article shall also be subject to the following:

- (1) The special permit shall expire within five (5) years of the date of issue. If the applicant wishes to renew the special permit, an application to renew must be submitted at least 120 days prior to the expiration of the special permit
- (2) Special permits shall be limited to the original applicant(s) and shall expire on the date the special permit holder ceases operation of the Marijuana Establishment. Any change in the Company's ownership, including without limitation a takeover, merger, sale of assets and equity, sale to another entity for which the original applicant and or the individuals defined as Controlling Persons do not maintain a controlling equity interest or other change in ownership or status of the Company shall be reported to the SPGA, and the SPGA shall determine whether the change in ownership requires a new special permit or modification of the existing permit for the succeeding owner of the Marijuana Establishment.
- (3) The holder of a special permit shall annually file an affidavit with the Building Commissioner demonstrating that it is in good standing with respect to its license from the Cannabis Control Commission and any other applicable State licenses.
- (4) The holder of a special permit shall notify the Building Commissioner and the SPGA in writing within 48 hours of the cessation of operation of the Marijuana Establishment or the expiration or termination of the permit holder's license from the Cannabis Control Commission.
- (5) Special permits shall lapse upon the expiration or termination of an applicant's license from the Cannabis Control Commission.

#### **8.6.8 SEVERABILITY**

The provisions of this bylaw are severable. The invalidity of any section, sub-section, paragraph, sentence, clause, phrase or word of this Bylaw shall not be held to invalidate any other section, sub-section, paragraph, sentence, clause, phrase or word of this Bylaw.

