



MEDICAL MARIJUANA BYLAW (TEMPLATE)

EXPLANATION

With the recent legalization of marijuana for medical use in Massachusetts, municipalities will be under unique pressure from marijuana proprietors seeking to establish retail dispensaries and places to cultivate, process and package medical marijuana. Many communities are concerned with residual effects from the commercialization of a drug that has historically been illegal to possess, let alone distribute, and which will still be illegal to possess and distribute under federal law.

Massachusetts communities have faced similar pressures from controversial land uses in the past, often the result of new legal rulings or the adoption of new laws that permit what was previously forbidden, including cell towers, adult entertainment, tattoo parlors and mixed-income housing immune from local zoning.

It is unlikely that municipalities will have the authority to regulate medical marijuana under their general health and safety regulatory powers, given the state law doctrine of pre-emption. Until the Commonwealth develops a regulatory framework, the best tool municipalities have to control the proliferation of medical marijuana is zoning. Through amendments to their existing zoning bylaws, municipalities can stipulate where medical marijuana facilities will be located, and under what conditions. Importantly, a zoning bylaw can make the establishment of a medical marijuana facility subject to the owner receiving a “special permit” from the local zoning or planning board, through which the local board can hold a hearing to receive testimony on the details of the proposed marijuana facility, and impose reasonable conditions regulating various aspects of the facility, such as the hours of operation, parking, signage and other design elements.

The following bylaw template is meant to “fold into” an existing zoning bylaw, and doing so will require a substantial amount of tailoring. As such, a municipality should not simply adopt it verbatim. It is strongly advised that municipalities consult with competent land use counsel on how to best incorporate the type of regulatory framework proposed here into their existing legal structure. For assistance in this regard, local officials may contact Hill Law at 617-494-8300.



BYLAW

1. Special Requirements for Medical Marijuana Facilities

1.1 *Purposes*

- 1.1.1 To provide for the limited establishment of Medical Marijuana Facilities in appropriate places and under strict conditions in acknowledgment of the passage of Initiative Petition 11-11 (Question #3 on the November, 2012 state ballot).
- 1.1.2 To minimize the adverse impacts of Medical Marijuana Facilities on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said Facilities.
- 1.1.3 To regulate the siting, design, placement, safety, monitoring, modification, and removal of Medical Marijuana Facilities.
- 1.1.4 To limit the overall number Medical Marijuana Facilities in the [town/city] to what is essential to serve the public convenience and necessity.

1.2 *Applicability*

- 1.2.1 The cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use is prohibited unless permitted as a Medical Marijuana Facility under this Section 1.
- 1.2.2. No Medical Marijuana Facility shall be established except in compliance with the provisions of this Section 1.
- 1.2.3 Nothing in this Bylaw shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.
- 1.2.4 If any provision of this Section or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Section, 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 Section are severable.



1.3 *Definitions*

- 1.3.1 *Medical Marijuana Facility* – A facility for the cultivation, production, processing assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of Marijuana for Medical Use, whether located inside a structure or building or not.
- 1.3.2 *Marijuana for Medical Use* – Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.
- 1.3.3 *Marijuana* – The same substance defined as “marihuana” under Chapter 94C of the Massachusetts General Laws.

1.4 *Eligible Locations for Medical Marijuana Facilities.*

** Municipalities have a variety of options for restricting the locations of Facilities. Regardless of how restrictive a municipality chooses to be, it will probably want to allow Facilities only by special permit or site plan review (as opposed to “by right”), to allow for a meaningful administrative review of the proposed Facility.

Options for restricting the location of Facilities include:

- (a) limiting Facilities to existing zoning districts, such as business/commercial districts, industrial districts, or specialized districts such as a medical use overlay district;
- (b) allowing Facilities by special permit in any business or commercial district, deferring the discretion to deny the establishment to the special permitting process;
- (c) creating a new overlay district for Medical Marijuana Facilities, targeting specific parcels of land in the community.

****** It is strongly recommended that municipalities consult an attorney with experience in zoning related matters to tailor this Bylaw so that it fits within the existing framework of the town’s zoning bylaw.***



1.5 *General Requirements and Conditions for all Medical Marijuana Facilities.*

***** comment – these are merely examples of the type of general requirement a municipality can place on such facilities.***

- 1.5.1 No Medical Marijuana Facility shall have a gross floor area in excess of 2,500 square feet. A Medical Marijuana Facility may be located in buildings that exceed 2,500 square feet of floor area, provided that the gross floor area of the Facility shall not exceed 2,500 square feet.
- 1.5.2 All Medical Marijuana Facilities shall be contained within a building or structure, provided that the Special Permit Granting Authority may, by special permit, allow a temporary Medical Marijuana Facility located outdoors, which shall not operate for more than three (consecutive) days per year, and which shall not consume an area of land in excess of 5,000 square feet.
- 1.5.3 The hour of operation of Medical Marijuana Facilities shall be set by the Special Permit Granting Authority, but in no event shall said Facilities be open and/or operating between the hours of 9:00 PM and 8:00 AM.
- 1.5.4 No special permit for a Medical Marijuana Facility shall be issued to a person who has been convicted of a felony or a violation of a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs. Further, no special permit for a Medical Marijuana Facility shall be issued to a business or non-profit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of a felony or a state or federal statute prohibiting the unlawful possession, sale or distribution of narcotic drugs or prescription drugs.
- 1.5.5 No special permit for a Medical Marijuana Facility shall be issued to a person who has been convicted of a violation of Massachusetts General Law Chapter 119, Section 63 or Massachusetts General Law Chapter 272, Section 28. Further, no special permit for a Medical Marijuana Facility shall be issued to a business or non-profit corporation in which an owner, shareholder, member, officer, manager, or employee has been convicted of a violation of Massachusetts General Law Chapter 119, Section 63 or Massachusetts General Law Chapter 272, Section 28.
- 1.5.6 No Medical Marijuana Facility shall be located within 300 feet of a residential zoning district.
- 1.5.7 No Medical Marijuana Facility shall be located within 1000 feet of any of the following structures or uses:



- (a) any school attended by children under the age of 18;
 - (b) any licensed child care facility;
 - (c) any drug or alcohol rehabilitation facility;
 - (d) any correctional facility, half-way house, or similar facility; or
 - (e) any other Medical Marijuana Facility.
- 1.5.8 No Medical Marijuana Facility shall be located within ¼ mile of any playground, public athletic field or similar public recreational facility.
- 1.5.9 No smoking or burning of marijuana or marijuana-related products shall be permitted on the premises of a Medical Marijuana Facility.
- 1.5.10 No Medical Marijuana Center shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.
- 1.5.11 Medical Marijuana Facilities shall not sell, distribute or dispense more than one ounce of dried cannabis per qualified patient to a qualified patient or primary caregiver per visit to the Facility. Medical Marijuana Facilities may not maintain or store more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area. If a qualified patient or a primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or the primary caregiver may possess and the Medical Marijuana Facility may dispense an amount of dried cannabis and maintain a number cannabis plants consistent with those needs. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this Section.
- 1.5.12 Signage for the Medical Marijuana Facility shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with a registration card issued by the state Department of Public Health may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height.
- 1.5.13 All print and electronic advertisements for Medical Marijuana Facilities, including but not limited to flyers, general advertising signs, and newspaper and magazine advertisements, shall include the following language: "Only individuals



with a registration card issued by the state Department of Public Health may obtain cannabis from medical cannabis dispensaries.” Oral advertisements for medical cannabis dispensaries, including but not limited to radio and television advertisements shall include the same language.

- 1.5.14 Medical Marijuana Facilities shall provide the Special Permit Granting Authority and all neighbors located within 500 feet of the establishment with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.
- 1.5.15 Medical Marijuana Facilities may sell or distribute cannabis only to individuals possessing a medical cannabis registration card issued by the Department of Public Health.
- 1.5.16 All employees of the Medical Marijuana Facility shall be at least 18 years of age.
- 1.5.17 No person who is not at least 18 years of age shall be permitted on the premises of a Medical Marijuana Facility during hours of operation unless that person is a qualified patient or caregiver with a valid registration card.

1.6 *Special Permit Requirements*

- 1.6.1 A Medical Marijuana Facility may only be allowed by special permit from the Special Permit Granting Authority in accordance with G.L. c. 40A, §9, subject to the following statements, regulations, requirements, conditions and limitations.
- 1.6.2 A special permit for a Medical Marijuana Facility shall be limited to one or more of the following uses that shall be prescribed by the Special Permit Granting Authority:
 - (a) cultivation of Marijuana for Medical Use (horticulture);
 - (b) processing and packaging of Marijuana for Medical Use, including Marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments, and other products;
 - (c) retail sale or distribution of Marijuana for Medical Use to Qualifying Patients;
 - (d) wholesale sale of Marijuana for Medical Use to other Medical Marijuana Facilities located in the same [city/town] or in another municipality.



1.6.3 In addition to the application requirements set forth in Sections 1.5 and 1.6 of this Bylaw, a special permit application for a Medical Marijuana Facility shall include the following:

- (a) a statement from the Applicant under oath, setting forth the following information:
 - (i) the name and address of each owner, manager, member, partner and employee of the Facility, and a statement indicating whether the application conforms to Sections 1.5.4 and 1.5.5 above;
 - (ii) the source of all marijuana that will be sold or distributed at the Facility, if applicable;
 - (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Facility, if applicable;
 - (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Facility; and
 - (v) If marijuana is to be cultivated, processed, and/or packaged at the Facility, the name and address of each purchaser of said marijuana.
- (b) If the Applicant is a non-profit organization, a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a for-profit corporate entity, a copy of its Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report; if the Applicant is a public agency, evidence of the agency's authority to engage in the development of the Facility as proposed by the application;
- (c) copies of all licenses and permits issued by the Commonwealth of Massachusetts and any of its agencies for the Facility;
- (d) evidence of the Applicant's right to use the site of the Facility for the Facility, such as a deed, lease, purchase and sale agreement or other legally-binding document;



- (e) if the Applicant is business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
- (f) a certified list of all parties in interest entitled to notice of the hearing for the special permit application, taken from the most recent tax list of the town and certified by the Town Assessor;
- (g) a market study demonstrating sufficient demand for the Marijuana for Medical Use proposed to be sold or distributed by the Facility;
- (h) Proposed security measures for the Medical Marijuana Facility, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.
- (i) the resume(s) of the Applicant and all members of the Facility's management, including company history, references, and relevant experience;

1.6.4 Outside Consultants and Review Fees. An outside consultant review escrow deposit shall accompany the Application for special permit. The escrow for review fees is intended to cover the Board's potential cost of hiring consultants to review the Applicant's compliance with the special permit requirements under this Bylaw, and may include legal counsel. The initial escrow deposit amount shall be set by the Special Permit Granting Authority on a case-by-case basis, when such consultants or counsel are deemed necessary. Any unexpended monies in the escrow account will be returned to the applicant only after all obligations are satisfied. Failure to fulfill escrow requirements may render an Application incomplete and be considered sufficient grounds for its denial.

1.6.4.1 The Applicant may appeal the selection of a consultant(s) whose fees are to be paid from the escrow deposit to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Pursuant to M.G.L. c. 44, § 53G, the required time limits for action upon the Application by



the Special Permit Granting Authority shall be extended by the duration of the appeal. If no decision is made by the Board of Selectmen within one month following the filing of the appeal, the Special Permit Granting Authority's selection shall stand.

1.6.4.2 The escrow deposit shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account shall be administered in accordance with M.G.L. c. 44, § 53G, and may be expended only for the purposes described above.

1.6.5 **Mandatory Findings.** The Special Permit Authority shall not issue a special permit for a Medical Marijuana Facility unless it finds that:

- (a) the Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
- (b) the Facility is fully permitted by all applicable agencies within the Commonwealth of Massachusetts and is in compliance with all applicable state laws and regulations;
- (c) in the case of retail sale or distribution, the Facility is serving a measurable demand for Marijuana for Medical Use that is currently unmet within the municipality;
- (d) the applicant has not provided materially false documents or testimony; and
- (e) the applicant has satisfied all of the conditions and requirements of Sections 1.5 and 1.6 herein;

1.6.6 **Annual Reporting.** Each Medical Marijuana Facility permitted under this Bylaw shall as a condition of its special permit file an annual report to the Special Permit Granting Authority and the Town Clerk no later than January 31st, providing a copy of all current applicable state licenses for the Facility and/or its owners, and containing a statement under oath that answers each of the questions set forth under Section 1.6.3(a) above for the preceding calendar, as well as the Facility's best good faith estimate for the then-current calendar year.

1.6.7 If required by the Special Permit Granting Authority, a full transcription or recording of the oral hearings shall be made at the Applicant's expense.



- 1.6.8 A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership and use of the premises as a Medical Marijuana Facility. A special permit may be transferred only with the approval of the Special Permit Granting Authority in the form of an amendment to the special permit.
- 1.6.9 Any violation of this Section shall be grounds for revocation of a special permit issued under this Section.

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