

TOWN OF SHELBURNE BOARD OF HEALTH
REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF
MARIJUANA ESTABLISHMENTS AND THE SALE OF MARIJUANA

Adopted June 19, 2018

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved 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 prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, local oversight and inspection of marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas the Massachusetts Supreme Judicial Court had held that “. . . the right to engage in business must yield to the paramount right of government to protect public health by any rational means.”ⁱ

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Shelburne’s residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §31, the Board of Health of Shelburne enacts a Regulation to Ensure the Sanitary and Safe Operations of Marijuana Establishments and the Sale of Marijuana in the Town of Shelburne as follows.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CRM 500.000 and in General Law, Chapter 94, §1.

In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to the issued by the Shelburne Board of Health.

Board of Health: Town of Shelburne Board of Health and its designated board of health agents.

Board of Health Agent: The Director of Public Health and any town employee designated by the board of health, which may include board of health staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent: An individual who has been designated by the owner or operator of any marijuana establishment to be the manager or otherwise in charge of said establishment.

Edible Marijuana Products: A marijuana product that is to be consumed by humans by eating or drinking.

Marijuana: 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 described in section 1 of chapter 94C of the General Laws.

“Marijuana” shall not include 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; hemp; or 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 ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana Establishment: A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Cannabis Control Commission pursuant to 935 CMR 500.050 as a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent marijuana testing laboratory, storefront marijuana retailer, delivery-only marijuana retailer, marijuana primary social consumption establishment, marijuana mixed-use social consumption establishment, marijuana research facility, marijuana transporter and marijuana micro-business.

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 transfer cannabis 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.

Operating Permit Holder: Any person engaged in the cultivation, sale, distribution or delivery of marijuana who applies for and receives an operation permit, or any person who is required to apply for an operation permit pursuant to these regulations, or his or her business agent.

Minimum Legal Sales Age: The age an individual must be before that individual can be sold a marijuana product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual’s own personal consumption or use) that is can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Self-Service Displays: Any display from which customers may select marijuana or a marijuana-infused product without assistance from an establishment.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

C. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell marijuana, as defined therein, to be sold to a person under the minimum legal sales age, or give marijuana products as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Shelburne is 21.
2. Each person selling or distributing marijuana products as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic containing the bearer's date of birth that the purchaser is 21 years of age or older.
3. All retail sales of marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of adult-use marijuana products is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein,

D. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana products, as defined herein, within the Town without first obtaining an Marijuana Operating Permit issued annually by the Shelburne Board of Health. Only owners of establishments with a permanent, non-mobile location in Shelburne are eligible to apply for an operating permit at the specified location in the Town and must meet the following application requirements:
 - a. All applicants shall certify that they are in compliance with all local and state laws, regulations, bylaws and/or ordinances and be prepared to show proof if requested.
 - b. 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 Shelburne Board of Health.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product.
3. No person shall 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.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with the Shelburne regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales regarding federal, state and local laws regarding the sale of marijuana and this regulation.

5. Each applicant who sells, cultivates, delivers or otherwise distributes marijuana is required to provide proof of a current license issued by the Cannabis Control Commission before a Marijuana Operating Permit can be issued.
6. A separate Marijuana Operating Permit, displayed conspicuously, is required for each marijuana establishment. The permit and inspections fees for which shall be determined by the Shelburne Board of Health annually.
7. A Marijuana Operating Permit is transferable only under the following circumstances, both of which require (a) a public hearing (b) verification by the Shelburne Tax Collector that the local property taxes with respect to the real property currently or prospectively occupied by the Marijuana Establishment have been paid in full, and (c) verification that all outstanding Town of Shelburne Board of Health penalties or fees incurred by the current permit holder have been paid in full:
 - a. The Shelburne Board of Health may approve the transfer of a Marijuana Operating Permit to a new owner if (1) the new owner is bound by a fully-signed purchase and sale agreement for the business and (2) the new owner has obtained all required State licenses from the Cannabis Control Commission pursuant to 935 CMR 500.050.
 - b. The Shelburne Board of Health may approve the transfer of a Marijuana Operating Permit to a business's new location if that new location complies with all State and local regulations.
8. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unannounced, periodic inspection of his/her marijuana establishment, including any business conducted off-site, to ensure compliance with this regulation.
9. A Marijuana Operating Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired, without an appeal having been filed and/or the permit holder has not satisfied any outstanding permit suspensions. If a violation was enforced by non-criminal dispositions, any appeal shall be taken pursuant to G.L. c. 40, Sec. 21D.
10. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age two times within the previous permit year and the time to appeal has expired, without an appeal having been filed. The permit holder may request a hearing pursuant to this regulation prior to non-renewal. Hearing will be held pursuant to Section L of this regulation.
11. No person under the minimum legal sales age shall be permitted to enter a marijuana establishment with a Marijuana Operating Permit 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.
12. A retail marijuana establishment shall sell primarily marijuana, marijuana products and marijuana accessories. The sale of other products must be merely incidental. A retail marijuana establishment is prohibited from applying for or otherwise holding tobacco sales permit. A retail marijuana establishment is also prohibited from holding a liquor license or selling or distributing any alcoholic beverage in any form.
13. The Maximum Number of Marijuana Retailers Operating Permits shall be limited to three (3) at any given time. No permit renewal will be denied based on the requirements of this section except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time

permit applicant. All Marijuana Operating Permits expire annually on the thirty-first (31st) day of December.

E. Incorporation of 105 CMR 500.0)0 and 105 CMR 590.000::

The manufacture of all edible marijuana products and food and beverage products containing marijuana shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. Marijuana establishments and agents shall be subject to 105 CMR 500.000, “Good Manufacturing Practices for Food” and 105 CMR 590.000, “Minimum Sanitation Standards for Food Establishments” relative to edible marijuana products.

F. Incorporation of 935 CMR 500.00

Marijuana establishments and agents shall comply with 935 CMR 500.000 “Adult Use of Marijuana”.

G. Out-of-Package Sales:

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 for retail sale.

H. Self-Service Displays:

All self-service displays of marijuana products are prohibited.

I. Vending Machines:

All vending machines containing marijuana products are prohibited.

J. Marijuana Accessories:

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores as defined herein.

K. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, where applicable but not be limited to compliance with food service permit requirements, secondhand smoke regulations, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.
2. In no instance shall a Marijuana Operating permit be issued to any establishment within five hundred (500) feet of a public or private school where children attend classes in kindergarten programs or grades one (1) to twelve (12), inclusive. The 500-foot distance shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment.
3. The cultivation, processing, manufacturing, delivery, sale and use of marijuana shall not exempt any person or entity from complying with all state and local laws, ordinances, bylaws, regulations and policies. Violation of any other such law, not including federal laws relating to marijuana, shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.

4. A marijuana establishment shall submit a security plan for review to the Shelburne Board of Health detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises.
5. Unless specified by any other state or local requirement or agreement as to the hours of operation of a marijuana establishment, the Shelburne Board of Health, in consultation with the Shelburne Police Department, and other Town of Shelburne officials and departments set limitations on the hours of operation of any marijuana establishment.
6. The Shelburne Board of Health may require the distribution of additional educational materials in marijuana establishments.

L. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Shelburne Board of Health, its designees and the Shelburne Police Department.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Shelburne Board of Health and its designees. Compliance inspections shall be conducted at a minimum of three inspections annually.
3. If permissible by local bylaws or ordinance, any fines or fees collected pursuant to this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to the regulation for the operation of marijuana establishments and the sale and use of marijuana.
4. It shall be the responsibility of the Marijuana Operation Permit holder and/or business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of these regulations may receive a written warning citation, a fine, a Marijuana Operation Permit suspension, a Marijuana Operation Permit revocation.
5. Any permit holder or any person or entity charged with violation of any provision of this regulation shall receive a notice of violation from the Shelburne Board of Health or its designated agent. Unless an appeal of such violation notice is waived by the permit holder or any person or entity charged, the Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/or issue a permit revocation order.
6. Prior to issuing any suspension or revocation, the Shelburne Board of Health shall provide notice to the permit holder of the intent to suspend or revoke a 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 permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Shelburne Board of health may suspend or revoke the permit if the Board of Health finds that a violation of this regulation occurred.
7. Alternately, violations of this regulation may be enforced by the non-criminal method of disposition as provided in General Laws Chapter 40, Section 21D and as enabled pursuant to Shelburne's enabling bylaw.

8. Each day any violation exists shall be deemed to be a separate offense.

M. Variances:

1. A variance from this regulation may be requested in writing to the Shelburne Board of Health. A variance may be granted by the Shelburne Board of Health after a hearing at which time the applicant establishes the following:
 - a. Strict enforcement of this regulation would do manifest injustice; and
 - b. 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 variance when it deems it appropriate to protect the public health and safety or the environment

N. Severability:

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

O. Effective Dates:

This regulation shall take effect immediately upon passage by the Board of Health.

Vote by the Shelburne Board of Health on this _____ day of _____ 2018.

Deborah Vincent-Coutinho, Chair _____

Robert Gonzalez _____

Robert Hicks _____

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