

Zoning Bylaw:
ADULT USE MARIJUANA BYLAW
Town of Chester, MA

Section 5.12 ADULT USE MARIJUANA ESTABLISHMENTS

5.12.1 Purpose

It is recognized that the nature of the substance cultivated, processed, and/or sold by marijuana establishments may have objectionable operational characteristics and should be located in such a way as to ensure the health, safety, and general well-being of the public as well as legally authorized adult customers seeking to legally purchase marijuana for their own use. The specific and separate regulation of Marijuana Establishments is necessary to advance these purposes and ensure that such facilities are not located within close proximity of minors and do not become concentrated in any one area within the Town of Chester.

Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws and 105 CMR 725.000, Marijuana Establishments will be permitted to provide the opportunity for the legal cultivation, product manufacturing and retail sale of marijuana for non-medical adult marijuana use in a manner that complies with state regulations.

5.12.2 Applicability

Nothing in this section shall be construed to supersede federal and state laws governing the sale and distribution of marijuana.

This bylaw does not apply to the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to General Laws, Chapter 128, Sections 116-123.

5.12.3 Definitions

Cannabis Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, the preparation and maintenance of soil and other media and promoting the growth of cannabis by a cannabis cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for cannabis cultivation. Such use is not agriculturally exempt from zoning. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning. (Note: this term is not defined in 935 CMR 500.)

Cannabis or Marijuana or Marihuana: All parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana or Marihuana (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.

Cannabis or Marijuana Products: Cannabis or marijuana and its products unless otherwise indicated. These include products have been manufactured and contain cannabis or 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 edible products, beverages, topical products, ointments, oils and tinctures.

Ceases to Operate: Marijuana Establishment closes and does not transact business for a period greater than 60 days with no substantial action taken to reopen. The Commission may determine that an establishment has ceased to operate based on its actual or apparent termination of operations.

Commission: The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, § 76, or its designee. The Commission has authority to implement the state marijuana laws, which include, but are not limited to, St. 2016, c. 334 as amended by St. 2017, c. 55, M.G.L. c. 94G, and 935 CMR 500.000.

Community Host Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Cannabis Establishment and a municipality setting forth additional conditions for the operation of a Cannabis Establishment, including stipulations of responsibility between the parties and an up to 3% host agreement revenue sharing. (Note: this term is not defined in 935 CMR 500.)

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.

Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

Host Community: A municipality in which a Marijuana Establishment is located or in which an applicant has proposed locating an establishment.

Marijuana Independent Testing Laboratory: A laboratory that is licensed by the Commission and is:

- (a) 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;
- (b) independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- (c) qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

Licensee: A person or entity licensed by the Commission to operate a Marijuana Establishment under 935 CMR 500.000.

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

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, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Marijuana Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center. Marijuana establishments permitted in accordance with these regulations are considered to be a commercial and/or manufacturing use and are not considered being subject to any agricultural exemptions under zoning.

Marijuana Microbusiness: A collocated Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Marijuana Process or Processing: To harvest, dry, cure, trim and separate parts of the cannabis or marijuana plant by manual or mechanical means, except it shall not include manufacture as defined in 935 CMR 500.002.

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 Research Facility: An entity licensed to engage in research projects by the Commission.

Marijuana Retailer: An entity licensed to purchase and transport 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.

Marijuana Transporter: An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary (RMD): A not-for-profit entity registered under 105 CMR 725.100: Registration of Registered Marijuana Dispensaries, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or 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 cannabis or marijuana for medical use.

Propagation: The reproduction of cannabis or marijuana plants by seeds, cuttings, or grafting.

Provisional Marijuana Establishment License: A certificate issued by the Commission confirming that a Marijuana Establishment has completed the application process.

Public Place: Any area maintained for or used by the public and any place that is open to the scrutiny of others or where there is no expectation of privacy

RMD Applicant: A previously Registered Marijuana Dispensary with a final or provisional certificate of registration in good standing with the DPH.

5.12.4 Additional Requirements/Conditions

The following requirements shall apply to all Marijuana Establishments and will be discussed as part of the Host Community Agreement approval process and, as needed, included in the agreement:

- a. Use:
 - i. Any type of Marijuana Establishment may only be involved in the uses permitted by its definition and may not include other businesses or services.
 - ii. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the premises.
 - iii. The hours of operation shall be set as part of the Host Community Agreement, but in no event shall a marijuana establishment facility be open to the public, and no sale or other distribution of marijuana shall occur upon the premises or via delivery from the premises, between the hours of 8:00 p.m. and 8:00 a.m.
 - iv. No marijuana establishment may commence operation or apply for a building permit prior to its receipt of all required permits and approvals including, but not limited, to its Final License from the Cannabis Control Commission.

- v. The number of adult use marijuana retail establishments permitted to be located within the Town of Chester shall not exceed four.

b. Physical Requirements:

- i. All aspects of the marijuana establishment, except for the transportation of product or materials, relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building or greenhouse (with the exception that outdoor marijuana cultivation is permitted in Agricultural-Residential (AR) zoned parcels pursuant to meeting all requirements of 935 CMR 500, including sections 935 CMR 500.110 and 120) and shall not be visible from the exterior of the business. They may not be permitted to be located in a trailer, storage freight container, motor vehicle or other similar type potentially movable enclosure.
- ii. Ventilation – all marijuana establishments (except outdoor marijuana cultivation) shall be ventilated in such a manner that no:
 - 1. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere, and
 - 2. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the marijuana business or at any adjoining use or property.
- iii. Signage shall be displayed on the exterior of the marijuana establishment’s entrance in plain sight of the public stating that “Access to this facility is limited to individuals 21 years or older.” in text two inches in height. All other signage must comply with all other applicable signage regulations in the Zoning Bylaw Section 5.1 and 935 CMR 500
- iv. Cannabis plants, products, and paraphernalia shall not be visible from outside the building in which the cannabis establishment is located and shall comply with the requirements of 935 CMR 500. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen and the Board shall consider the surrounding landscape and view to determine if an artificial screen would be out of character with the neighborhood.

c. Location:

- i. Marijuana establishments are encouraged to utilize existing vacant buildings where possible
- ii. No marijuana establishment shall be located on a parcel which is within three hundred (300) feet (to be measured in 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) of a parcel occupied by a pre-existing public or private school (existing at the time the applicant’s license application was received by the Cannabis Control Commission) providing education in kindergarten or any of grades 1-12.
- iii. No marijuana retailer shall be located on a parcel which is within three hundred (300) feet (to be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the marijuana retailer is or will be located) of a parcel occupied by another marijuana retail facility.
- iv. No marijuana establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories.
- v. No marijuana establishment is permitted to utilize or provide a drive-through service.

d. Other Host Community Agreement discussion requirements:

In addition to the requirements of section 5.12.4 a through c, application requirements for a Host Community Agreement shall also discuss the following, to the extent possible, with the understanding that not all specific details may be available:

- a. If it is in conjunction with an approved RMD, a copy of its registration as an RMD from the Massachusetts Department of Public Health in accordance with 105 CMR 725.000 or from the Cannabis Control Commission in accordance with 935 CMR 500.
- b. Liability Insurance Coverage or Maintenance of Escrow as required in 935 CMR 500.
- c. Address of proposed establishment and state of obtaining site control by purchase or lease.
- d. Disclosure of all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons.
- e. Proposed exterior security measures for the marijuana establishment including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and to protect the premises from theft or other criminal activity. Lighting measures to minimize light pollution to surrounding properties.
- f. Proposed floor plan identifying the areas available and functional uses (including square footage).
- g. All signage being proposed for the facility.
- h. Pedestrian/vehicular traffic impact to establish the marijuana establishment's impacts at peak demand times, including a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic, including but not limited to, along the public right of ways will not be unreasonably obstructed.
- i. An odor control plan discussing the odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative of odor control including maintenance of such controls.
- m. A description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to marijuana establishment or off-site direct delivery and level of activity expected outside of the approved hours of operation.
- n. Other requirements relative to the marijuana establishment's:
 - i. Marketing and advertising
 - ii. Waste disposal
 - iii. Transportation and delivery of marijuana or marijuana products
 - iv. Energy efficiency and conservation
 - v. Security and Alarms
 - vi. water usage
 - vii. noise level expected both during and outside hours of operation and any noise abatement measures, if necessary
 - viii. employment opportunities
 - ix. revenue sharing

e. Reporting Requirements:

- i. Prior to the commencement of the operation or services provided by a marijuana establishment, it shall provide the Police Department, Fire Department, and Building Inspector with the names, phone numbers and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems

- associated with the establishment. All such contact information shall be updated as needed to keep it current and accurate.
- ii. The local Building Inspector, Board of Health, Police Department, and Fire Department shall be notified in writing by the marijuana establishment facility owner/operator/manager:
 - 1. A minimum of 30 days prior to any change in ownership or management of that establishment.
 - 2. A minimum of 12 hours following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the establishment.
 - iii. Permitted marijuana establishments shall file an annual written report to, and appear before, the Board of Selectmen no later than January 31st of each calendar year, providing a copy of all current applicable state licenses for the facility and/or its owners and demonstrate continued compliance with the requirements of this bylaw and Host Community Agreement.
 - iv. The owner or manager of a marijuana establishment is required to respond by phone or email within twenty-four hours of contact by a town official concerning their marijuana establishment at the phone number or email address provided to the Town as the contact for the business.
- f. Issuance/Transfer/Discontinuance of Use
- i. A Host Community Agreement (HCA) shall be issued to the marijuana establishment owner.
 - ii. A HCA shall be issued for a specific type of marijuana establishment on a specific site/parcel.
 - iii. A HCA shall be non-transferable to either another marijuana establishment owner or another site/parcel.
 - iv. A HCA shall have a term limited to the duration of the applicant's ownership/control of the premises as a marijuana establishment, and shall lapse/expire if:
 - 1. the marijuana establishment ceases operation (not providing the operation or services for which it is permitted) for 365 days, and/or
 - 2. the marijuana establishment's registration/license by the Cannabis Control Commission expires or is terminated.
 - v. The marijuana establishment shall notify the Town Administrator in writing within 48 hours of such lapse, cessation, discontinuance or expiration or revocation.
 - vi. A marijuana cultivation or product manufacturing establishment shall be required to remove all material, plants equipment and other paraphernalia prior to surrendering its state registration/license or ceasing its operation.

5.12.6 Professional Fees

The town may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a technical expert/consultant will be at the expense of the applicant.

5.12.7 Conflict with Other Laws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

5.12.8 Severability

The invalidating of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

5.12.9 Penalties

Any person who fails to comply with any provision of this bylaw or a building permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

DRAFT

OTHER REQUIRED ZONING AMENDMENTS

1. Amend the Chester Zoning Bylaw by amending the Table 1: Chester Schedule of Use Regulations by adding the following under Section 3.0.7, Business:

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS & CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>	<u>COD</u>
3.0.7	<u>BUSINESS</u>						
	5.12 Adult Use Marijuana Establishments	Outdoor cultivation is only allowed in zone AR; see Bylaw 5.12 for additional standards	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>