

## **Zoning Bylaw: Medical Marijuana Facilities**

Town of Chester, MA

### **5.9 Special Requirements for Registered Marijuana Dispensaries and Off-Site Medical Marijuana Dispensaries**

<b>5.9.1 Purpose</b>
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5.9.1.1 To provide for the establishment of Registered Marijuana Dispensaries (hereafter referred to as a RMD) as Medical Marijuana Dispensaries and Off-Site Medical Marijuana Dispensaries (hereafter referred to as an OMMD) in appropriate places and under strict conditions in accordance with the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, and 105 CMR 725.000.

5.9.1.2 To minimize the adverse impacts of RMD/OMMD on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said Facilities.

5.9.1.3 To regulate the siting, design, placement, security, safety, monitoring, modification, and removal of RMD/OMMD.

#### 5.9.1.4 Applicability

5.9.1.4.1 The commercial 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 13.

5.9.1.4.2 No Medical Marijuana Facility shall be established except in compliance with the provisions of this Section 5.9.

5.9.1.4.3 Nothing in this Bylaw shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.

<b>5.9.2 Definitions</b>
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Registered Marijuana Dispensary (RMD): A use operated by a not-for-profit entity registered and approved by the MA Department of Public Health on accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as food, 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. A RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products. 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.

Off-Site Medical Marijuana Dispensary (OMMD) – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved not-for-profit entity which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered Qualifying Patients or their personal caregivers in accordance with the provisions of 105 CMR 725.000.

<b>5.9.3 Requirements for all RMD/OMMD</b>
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The following requirements are common to all RMD/OMMD to be sited in designated locations.

**5.9.3.1 General**

5.9.3.1.1 All RMD/OMMD shall be contained within a building or structure. Facilities shall be ventilated such that 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 facility or at any adjoining use or property.

5.9.3.1.2 RMD/OMMD shall not be located in buildings that contain any medical doctors' offices or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.

5.9.3.1.3 No RMD/OMMD facility shall have a gross floor area in excess of 2500 square feet. A facility may be located in buildings that exceed 2500 square feet of floor area, provided that the gross floor area of the facility shall not exceed 2500 square feet.

5.9.3.1.4 The hours of operation RMD/OMMD 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 8:00 PM and 8:00 AM.

5.9.3.1.5 No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a RMD/OMMD

5.9.3.1.6 No RMD/OMMD 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.

5.9.3.1.7 Signage for the RMD/OMMD shall include the following language: "Registration card issued by the MA Department of Public Health required." The

required text shall be a minimum of two inches in height.

5.9.3.1.8 RMD/OMMD shall provide the Chester Police Department, with the names, phone numbers and email addresses of all management staff and key holders to whom one can provide notice if there are operating problems associated with the establishment. The management staff is required to respond within twenty-four hours of contact by a town official concerning their RMD/OMMD.

5.9.3.1.9 No RMD and OMMD facility shall be located on a parcel which is within five hundred (500) feet (to be measured in a straight line from the nearest points of each property line) of parcels occupied by any school attended by children under the age of 18, child care facility or any other use in which children commonly congregate in an organized ongoing formal basis, or any playground, public athletic field or similar public recreational facility.

### **5.9.3.2 Special Permit Application Requirements**

Special Permit applications for an RMD or OMMD facility shall include the following:

- a. The name and address of each owner of the RMD or OMMD facility/operation;
- b. A copy of its registration as an RMD from the Massachusetts Department of Public Health or documentation that demonstrates that said RMD or OMMD facility, and it's owner/operators, qualify and are eligible to receive a Certificate of Registration and meet all of the requirements of a RMD in accordance with 105 CMR 725.000 of the Massachusetts Department of Public Health.
- c. Evidence that the Applicant has site control and right to use the site for a RMD or OMMD facility in the form of a deed or valid purchase and sales agreement or, in the case of a lease a notarized statement from the property owner and a copy of the lease agreement;
- d. A notarized statement signed by the RMD or OMMD organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers, directors, shareholders, partners, members, managers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons;
- e. Details showing all proposed security measures for the RMD or OMMD 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. Said security measures shall meet or exceed the requirements of 105 CMR 725.000.
- f. A detailed floor plan identifying the areas available and functional uses (including square footage)
- g. All signage being proposed for the facility.
- h. A description of all activities to occur on site, including all provisions for the delivery of medical marijuana and related products to OMMDs or off-site direct delivery to patients.

### **5.9.3.3 Mandatory Findings**

The Special Permit Authority shall not issue a special permit for a RMD/OMMD 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 demonstrates that it will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations; and
- c. The applicant has satisfied all of the conditions and requirements of Section 5.9.3

### **5.9.3.4 Annual Reporting**

Each RMD/OMMD 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 demonstrate continued compliance with the conditions of the Special Permit.

### **5.9.3.5 Special Permit Term Limit**

A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership of the premises as a RMD or OMMD. 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 with all information required in this Section 5.9.

### **5.9.3.6 Abandonment or Discontinuance of Use**

5.9.3.6.1 A Special Permit shall lapse if not exercised within one year of issuance.

5.9.3.6.2 A RMD/OMMD shall be required to remove all material, plants equipment and other paraphernalia:

- a. prior to surrendering its state issued licenses or permits; or
- b. within six months of ceasing operations; whichever comes first.

### **5.9.3.7 Financial Surety**

The applicant shall provide a form of surety, in a form acceptable and approved by the Treasurer of the Town of Chester, either through escrow account, bond or otherwise, to cover costs for the removal of the RMD/OMMD, in the event the Town must remove the facility, in an amount based upon the ability to completely remove all the items noted in 5.9.3.6.2 and properly clean the facility at prevailing wages. The applicant shall submit a fully inclusive estimate of the costs associated with removal. An incentive factor of 1.25 shall be applied to the estimate to ensure compliance and adequate funds for the town to remove all the items and clean the facility at prevailing wages.

#### **5.9.3.8 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.

#### **5.9.3.9 Severability**

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

#### **5.9.3.10 Penalties**

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

**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:

<b>BY LAW NUMBER</b>	<b>LAND USE CLASSIFICATION</b>	<b>STANDARDS &amp; CONDITIONS</b>	<b>R</b>	<b>AR</b>	<b>B</b>	<b>I</b>	<b>COD</b>
3.0.7	<u>BUSINESS</u>						
	5.9 Registered Marijuana Dispensaries and Off-Site Medical Marijuana Dispensaries	See Bylaw 5.9 for additional standards	<i>N</i>	<i>N</i>	<i>SP</i>	<i>SP</i>	<i>SP</i>