

PRELIMINARY REPORT OF PLANNING BOARD ON PROPOSED RECREATIONAL
MARIJUANA BYLAW AMENDMENT

January 10, 2018 Special Town Meeting

Article 5

RECREATIONAL MARIJUANA

Article 5. To see if the Town will vote to amend Chapter 255 (Zoning) of the Town's Code in regard to Recreational Marijuana by amending: Section 255-10, Terms Defined, to insert various new terms and their definitions and to reorder the various terms alphabetically; in Section 255-19 Use Regulations Schedule by inserting new uses related to Recreational Marijuana, and in Article VII, Supplemental District Regulations, by inserting a new Section 255-49 Recreational Marijuana Establishments as detailed in the Planning Board's Report to Town Meeting or take any other action thereto.

The proposed changes are as follows:

1. Amend Section 255-10 of the South Hadley Zoning Bylaw by adding the following:

1. ***Cannabinoid*** as defined in Chapter 94G, Massachusetts General Laws.
2. ***Cannabinoid profile*** as defined in Chapter 94G, Massachusetts General Laws.
3. ***Close associate***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
4. ***Consumer***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
5. ***Controlling person***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
6. ***Commission***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
7. ***Craft marijuana cultivator cooperative*** as defined in Chapter 94G, Massachusetts General Laws.
8. ***Cultivation batch*** as defined in Chapter 94G, Massachusetts General Laws.
9. ***Experienced marijuana establishment operator*** as defined in Chapter 94G, Massachusetts General Laws.
10. ***Finished marijuana*** as defined in Chapter 94G, Massachusetts General Laws.
11. ***Hemp*** as defined in Chapter 94G, Massachusetts General Laws.
12. ***Host community***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
13. ***Independent testing laboratory***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
14. ***Laboratory agent***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
15. ***Licensee***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
16. ***Manufacture***, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.

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17. *Marijuana (aka Marihuana)* as defined in Chapter 94G, Massachusetts General Laws.
18. *Marijuana accessories* as defined in Chapter 94G, Massachusetts General Laws.
19. *Marijuana cultivator* as defined in Chapter 94G, Massachusetts General Laws.
20. *Marijuana establishment* as defined in Chapter 94G, Massachusetts General Laws.
21. *Marijuana product manufacturer* as defined in Chapter 94G, Massachusetts General Laws.
22. *Marijuana products*. as defined in Chapter 94G, Massachusetts General Laws.
23. *Marijuana retailer* as defined in Chapter 94G, Massachusetts General Laws.
24. *Marijuana testing facility* as defined in Chapter 94G, Massachusetts General Laws.
25. *Mycotoxin* as defined in Chapter 94G, Massachusetts General Laws.
26. *Process*, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
27. *Processing*, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
28. *Production batch*, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
29. *Residual solvent*, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.
30. *Terpenoid* as defined in Chapter 94G, Massachusetts General Laws.
31. *Unreasonably impracticable*, in regards to Recreational Marijuana, as defined in Chapter 94G, Massachusetts General Laws.

2. **Amend Section 255-19 Use Regulations Schedule by inserting the following new uses related to Recreational Marijuana into the Business Use Classification and/or Industrial Use Classifications and indicate how they are to be permitted or prohibited and insert the footnotes as noted below.**

Uses to be Inserted:

The following uses shall be inserted into the Industrial Use Classification schedule

- Craft marijuana cultivator cooperative
- Marijuana cultivator
- Marijuana product manufacturer
- Marijuana testing facility

The following uses shall be inserted into the Business Use Classification schedule

- Marijuana testing facility
- Marijuana retailer

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Where/How Permitted:

The following uses shall be noted as permitted by Site Plan Review only in the Industrial A and Industrial B zoning districts subject to special restrictions specified in Section 255-49

- Craft marijuana cultivator cooperative
- Marijuana cultivator
- Marijuana product manufacturer
- Marijuana testing facility

The following uses shall be noted as permitted only by Special Permit in the Business A-1, Business A, Business B, and Business C zoning districts subject to special restrictions specified in Section 255-49

- Marijuana testing facility
- Marijuana retailer

Footnotes:

Each of the inserted uses shall include a reference to the following footnote which shall also be inserted on the appropriate portion of the Use Regulations Schedule:

Subject to the provisions of Section 255-49

3. Amend Article VII, Supplemental District Regulations, by inserting a new Section 255-49 Recreational Marijuana

255-49 Recreational Marijuana

A. Purpose - The purpose of this Section is to provide standards for the placement and operation of facilities and establishments associated with the cultivation, production, and sale of marijuana and accessory products by Marijuana Establishments as permitted in Chapter 255-Attachment 1 "Use Regulations Schedule", that address public safety and health and minimize impacts on nearby residential uses.

B. Applicability - This Section applies to all specified Marijuana Establishments, as permitted in Chapter 255-Attachment 1 "Use Regulations Schedule", proposed to be constructed after the effective date of this Section. This Section also pertains to physical modifications that materially alter the type, configuration, or size of these establishments or related equipment.

C. Prohibited Locations –

(1) The building(s) in which a Marijuana Establishment are permitted shall not be located:

(a) Within three hundred (300) feet of any building:

- i. containing another Marijuana Establishment except that a Marijuana Retailer may be located within the same building as a Marijuana

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product manufacturer which is providing some or all of the product for the retailer; or

- ii. in which is located a public or private elementary school, middle school, secondary school, preparatory school, licensed daycare center, or any other facility in which children commonly congregate in an organized ongoing formal basis; or
- iii. owned by and operated as part of the campus of any private or public institution of higher learning, or
- iv. housing a public library; or
- v. any residential use, or

(b) Within a building containing residential units, including transient housing or group housing such as hotels, motels, lodging houses, or dormitories.

- (2) The property which is proposed to be permitted for a Marijuana Establishment, at the time the application is received by the Planning Board, shall not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. If the parcel of land on which a proposed Marijuana Establishment is to be located is developed with one or more building occupied by more than one tenant, then the Planning Board shall interpret “property which to proposed to be permitted” to shall mean only the portion of the building or property which is actually proposed to be used by the Marijuana Establishment.

D. Maximum Number of Marijuana Retail Establishments - There shall be no more than three (3) Marijuana Retailers licensed to operate or operating in the Town of South Hadley. In the event applications for multiple Retail Establishments are submitted which, if approved, would result in more than three (3) such establishments being located in South Hadley, the Planning Board shall delay a decision on any application which would result in more than three (3) such establishments until the appeal period for the third establishment has lapsed.

E. Marijuana Retailer Hours of Operation – Marijuana Establishments engaged in the retail sale of marijuana shall be limited in their hours of operation as follows:

- (1) Monday through Saturday from 8:00 a.m. to 11:00 p.m.
- (2) Sunday from 10:00 a.m. to 11:00 p.m.

However, the Planning Board may limit the hours more restrictively if the Board finds that retail establishments in the immediate area engaged in the sale of off-premise consumed alcohol and/or cigarettes operate more restrictively than specified above.

F. Physical Requirements -

- (1) All aspects of the use/facility 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 and shall not be visible from the exterior of the business.

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- (2) No outside storage is permitted. This prohibition applies to all aspects of the product and waste associated with the Marijuana Establishment.
- (3) Ventilation – all Marijuana Establishments shall be ventilated in such a manner that no:
 - (a) pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere
 - (b) odor from marijuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.
 - (c) Signage shall conform to Section 255-85 of the South Hadley Zoning Bylaw and requirements of State laws and regulations governing such facilities: i.

G. Special Application Requirements - Above and beyond the standard application requirements for Special Permits, an application for a use under this section shall include the following:

- (1) The name and address of each owner of the facility/operation;
- (2) Copies of all required registrations issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
- (3) Evidence that the Applicant has site control and the right to use the site for a facility in the form of a deed or valid purchase and sale agreement, or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
- (4) A notarized statement signed by the organization's Chief Executive Officer and corporate attorney disclosing all of its designated representatives, including officers and directors, shareholders, partners, members, managers, directors, officers, 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;
- (5) In addition to what is normally required in a site plan and/or Special Permit application under Article IX and Article XII of the South Hadley Zoning Bylaw, respectively, details showing all exterior proposed security measures for the premises, 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 (however, this should not be at the same detail as the Security Plan to be submitted to the Chief of Police under G(7) below).
- (6) A Management Plan (inclusive of the Operations Maintenance Plan) as required under the Special Permit Rules and Regulations, including a description of all activities to occur on site, including all provisions for the delivery of Marijuana products to and/or from the site as well as the disposal of waste material.
 - (a) Modifications – Any changes to the plans approved by the Planning Board shall be submitted to the Town Planner/Planning Director for determination if further Planning Board review is warranted prior to issuance of the building permit. If further Planning Board review is deemed warranted, such further review and approval by the Planning Board shall be obtained prior to issuance of the building permit.

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- (b) Updating – Project Proponent shall be responsible for updating the Operations and Maintenance Plan a) whenever personnel with responsibilities identified in the plan change and b) no less than every 5 years .
 - (7) Demonstration that the facility’s security plan has been approved by the Police Chief. This plan must detail all exterior and interior proposed security measures for the premise, including but not limit to; video monitoring and recording, lighting, fencing, and alarms ensuring the safety of employees and to protect the premises from theft or other criminal activity. This plan must provide 24-hour security and monitoring for the facility, particularly, those portions of the building which are deemed by the Police Chief to be most vulnerable to unauthorized entry and least visible from the public ways.
 - (8) A Waste Disposal Plan which provides details for disposal of the waste materials in accordance with applicable local and state laws and regulations.
- H. Deferred Application Review and Decision - In the event that Town Meeting votes to enact a ban on any of the five types of establishments regulated in part by Section 255-49, (Craft marijuana cultivator cooperative, Marijuana cultivator, Marijuana product manufacturer, Marijuana testing facility, and/or Marijuana retailer) the 65 day time period for holding a public hearing under sections 255-128 and 255-147 of the Zoning Bylaw shall not commence until such time as the vote on the Ballot Question is certified by the Town. Further, the Planning Board shall not render any decision on an application for such uses(s) unless and until the Ballot Question vote is certified. If such a ban passes Town Meeting and a subsequent Ballot Question vote, the Planning Board shall deny any application for such an establishment.

OBJECTIVES: The objective of this article is to provide for reasonable and appropriate regulation of Commercial Recreational Marijuana Establishments in light of the Statewide ballot which legalized marijuana for non-medical purposes and the fact that a majority of the votes cast in South Hadley were in favor of such legalization. It seeks to regulate such uses with limits on the number of such establishments to a level which is a fraction of the number of package stores and the number of stores allowed to sell cigarettes.

SUMMARY: This article limits the number of retail establishments to three (3) which is equal to one-third of the package store licenses and 20% of the maximum number of cigarette retailers which could be permitted. It also imposes limits as to how close a marijuana establishment may be to various uses including schools, residences, etc. To limit the number of retail establishments to less than 20% of the package stores requires a Zoning Bylaw approval by Town Meeting followed by a Ballot vote. Nothing in this Bylaw proposal would limit or restrict the noncommercial, personal consumption of marijuana- it only regulates the “commercial aspect” of marijuana.

BACKGROUND: Massachusetts voters approved a ballot question in 2016 which legalized the possession, cultivation, and distribution of marijuana for non-medical purposes. In this voting, approximately 51% of South Hadley’s participating voters voted in favor of the question. This law is codified as Chapter 94G, Massachusetts General Laws. Subsequent to the vote, the State

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legislature amended the act. Part of the amendments delayed the licensing time frame, clarified that cultivation of marijuana is not exempt as an agricultural use from Zoning Bylaws, and limited the local authority to regulate marijuana establishments.

A Cannabis Control Commission established pursuant to Chapter 94G is developing regulations to govern their licensing of marijuana establishments. These regulations are required to be established by mid-March 2018. The Commission is to begin accepting applications April 1, 2018.

Town Meeting enacted a General Bylaw moratorium to allow the Town to establish local Bylaws to regulate marijuana establishments which may be authorized under Chapter 94G, MGL. This warrant article seeks to establish such Zoning Bylaw regulations.

In the course of developing this proposal, the Planning Board and Town Planner researched the limits of the authority of the Town to restrict marijuana establishments with/without a referendum. Chapter 94G, MGL allows the Town to limit the number of such establishments to 20% of the package stores without having a referendum. There are 9 such package stores in South Hadley. Additionally, the Planning Board and Town Planner felt there is relationship to establishments that sell cigarettes. South Hadley may permit up to 15 such establishments. Therefore, the proposed bylaw seeks to limit the number of marijuana retail establishments to 3 which is 1/3 of the package stores and 20% of the maximum number of cigarette retail establishments which could be permitted.

Additional limitations on hours of operation are based on the limitations existing in State law for package stores. However, since the proposed Bylaw would require a Special Permit for retail sale of marijuana products, the Planning Board would be authorized to further restrict the hours of operation of such establishments based on the hours of operation of the licensed packages stores in the area surrounding the proposed site of a marijuana retail establishment.

Articles 4 and 6 of this Special Town Meeting Warrant put forward on behalf of the Selectboard seek to ban all marijuana establishments which might be authorized under Chapter 94G, MGL. Therefore, the proposed amendment under this Article 5 has a provision to ensure that no establishment can be permitted until the referendum on the bans under Articles 4 and 6 are certified – if Town Meeting votes to approve Articles 4 and 6.

RELATIONSHIP TO MASTER PLAN: There is not a clear relationship to the Master Plan, adopted in 2010. Legalization of marijuana was not envisioned when the Master Plan was developed. However, the Master Plan speaks to updating the regulatory structure to reflect desired community outcomes. Since the ballot question allowing non-medical marijuana passed in South Hadley – albeit by a very slight margin – this Article is an attempt to update the regulatory structure in light of a changed legal environment.

PUBLIC HEARING: The Planning Board discussed the potential amendment including several drafts over the course of several meetings during 2017 and held a public hearing on the proposed Zoning Bylaw amendment on Monday, December 4, 2017. A number of persons (in addition to the Planning Board members and Planning Director) were in attendance at this

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hearing. Comments/questions made during the public hearing included:

- clarification of the Selectboard's proposal to have a ballot question which would ban all non-medical marijuana establishments,
- suggestion that the provision of security for marijuana establishments would impose a burden on the Police Department,
- questions as to whether a marijuana establishment could locate in a "40R Smart Growth Zoning District" and why there proposed amendment has a 300 foot spacing requirement,
- note that the Town could impose a 3% tax on the sale of marijuana products and generate revenue.

RECOMMENDATION: The Planning Board, at their December 4, 2017 meeting, voted to recommend approval of this article as revised during the public hearing (and as presented in this report).

Preliminary Report