



SEP 13 2018

CITY OF NEW BEDFORD

In the Year Two Thousand and Eighteen

AN ORDINANCE

*ZONING FOR MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA
TREATMENT CENTERS*

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Chapter 9 of the New Bedford Code of Ordinances, Comprehensive Zoning, is hereby amended by inserting the following after Section 4900A:

Section 4100B. Marijuana Establishments and Medical Marijuana Treatment Centers

4110B. Purpose.

The purposes of this section are to:

4111B. Allow state-licensed marijuana establishments and medical marijuana treatment centers to operate in the City of New Bedford in accordance with applicable state laws and regulations.

4112B. Minimize the adverse impacts that marijuana establishments and medical marijuana treatment centers might have on adjacent properties, residential neighborhoods, dwellings, schools, substance abuse treatment centers, churches, and other sensitive land uses.

4113B. Provide standards for the placement, design, siting, safety, security, monitoring, modification, and discontinuance of marijuana establishments and medical marijuana treatment centers that will protect the public health, safety, welfare, and the natural environment.

4120B. Definitions.

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.

Independent Testing Laboratory: a laboratory that is licensed by the Cannabis Control Commission and is (a) accredited to the International Organization for Standardization 17025 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 (MMTC), 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.

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; provided, however, that “marijuana” shall not include: (i) 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; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

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, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

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 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 Research Facility: an entity licensed to engage in research projects by the Cannabis Control Commission.

Marijuana Retailer: means 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 Cannabis Control 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 (MMTC): means an entity registered under 105 CMR 725.100 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.

Substance abuse treatment facility: a facility that provides substance abuse treatment programs, as that term is defined in 105 CMR 164.006, licensed by the Massachusetts Department of Public Health.

4130B. **General.**

4131B. Location Requirements and Restrictions.

- (i) Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC).
- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:
 - (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, **excluding chapels located within a cemetery**, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center; or

(b) 200 feet of any dwelling or dwelling unit.

The distance under this provision shall 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 or Medical Marijuana Treatment Center will be located.

- (iii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located inside a dwelling or building containing a dwelling unit or inside any building containing transient housing, including a hotel, motel, or dormitory.
- (iv) Marijuana Establishments shall satisfy the conditions and requirements of all other applicable sections of the Zoning Ordinance, including but not limited to dimensional and parking requirements.

4132B. Physical Requirements and Restrictions.

- (i) All Marijuana Establishments and Medical Marijuana Treatment Centers shall be contained within a building or structure. All operations of a Marijuana Establishment or a Medical Marijuana Treatment Center must take place at a fixed location within a fully enclosed secured building and shall not be visible from the exterior of the building.
- (ii) Except for a Marijuana Transporter, no Marijuana Establishment or Medical Marijuana Treatment Center may be located in a trailer, storage freight container, motor vehicle, or other similar movable enclosure.
- (iii) No Marijuana Retailer or Medical Marijuana Treatment Center that dispenses marijuana or marijuana products to the public shall have a total gross floor area of more than 5,000 square feet.

4133B. Operational Requirements and Restrictions.

- (i) The hours of operation shall be set by the special permit granting authority, but in no event shall a Marijuana Establishment or Medical Marijuana Treatment Center that dispenses marijuana or marijuana products to the public be open to the public between the hours of 7:00 p.m. and 10:00 a.m., Monday through Sunday.
- (ii) No drive-through service shall be permitted at a Marijuana Establishment or Medical Marijuana Treatment Center.

- (iii) No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Marijuana Establishment or Medical Marijuana Treatment Center absent a positive vote by ballot question presented to the voters of the city at a biennial state election pursuant to G.L. c.94G, §3(b). The prohibition on on-site consumption shall also include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site
- (iv) No outside storage of marijuana, related supplies, or promotional materials shall be permitted.
- (v) All Marijuana Establishments and Medical Marijuana Treatment Centers shall be ventilated in such a manner that:
 - a. No pesticides, insecticides, or other chemicals or products used in the cultivation or processing of marijuana are dispersed into the outside atmosphere; and
 - b. 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 Establishment, Medical Marijuana Treatment Center, or any adjoining use or property.

4134B. Marijuana Establishments and Medical Marijuana Treatment Centers shall not be permitted as Home Occupations under section 2500 of Chapter 9 of the New Bedford Code of Ordinances.

4135B. Any Medical Marijuana Treatment Center that received a provisional certificate of registration from the Department of Public Health prior to July 1, 2017 and has entered into a Host Community Agreement with the City shall be exempt from citing and permitting requirements of this ordinance with respect to its medical marijuana operations, but shall obtain a special permit to convert or expand its operations to include a non-medical Marijuana Establishment.

4140B. **Special Permit.**

4141B. General.

- (i) Except as provided in Section 4135B herein, it shall be unlawful for any Marijuana Establishment or Medical Marijuana Treatment Center

to operate in the City without first obtaining a special permit from the Planning Board.

- (ii) A Marijuana Establishment or Medical Marijuana Treatment Center must obtain a new special permit or a modification of its existing special permit for each additional use that is proposed after the initial permitting process.
- (iii) The special permit requirements set forth in this section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law, including site plan review by the Planning Board under Section 5400 of Chapter 9 of the New Bedford Code of Ordinances.
- (iv) No activity shall be conducted at a Marijuana Establishment or Medical Marijuana Treatment Center other than that for which the special permit has been issued.
- (v) A Marijuana Establishment or Medical Marijuana Treatment Center must, prior to seeking a special permit from the Planning Board, file a security plan with the New Bedford Police Department that includes information relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, and video and lighting locations. The security plan shall show the arrangement of pedestrian circulation and access to the public points of entry to the premises from the nearest public or private street or off-street parking area. When Marijuana Establishments and Medical Marijuana Treatment Centers update their security plans, they must share these updates with the New Bedford Police Department. These security plans and updates shall, to the maximum extent permissible under the law, remain confidential.
- (vi) A Marijuana Establishment or Medical Marijuana Treatment Center must, prior to seeking a special permit from the Planning Board, file an emergency response plan with the New Bedford Fire, Police, and Health Departments. When Marijuana Establishments and Medical Marijuana Treatment Centers update their emergency response plans, they must share these updates with the New Bedford Fire, Police, and Health Departments. These emergency response plans and updates shall, to the maximum extent permissible under the law, remain confidential.

4142B. Limit on Number of Marijuana Establishments and Medical Marijuana

Treatment Centers.

- (i) The Planning Board shall limit the number of special permits issued to Marijuana Retailers to 20% of the number of licenses issued within the City under MGL c. 138, §15 for the retail sale of alcoholic beverages not to be drunk on the premises where sold (“the 20% number”). If the 20% number is not a whole number at the time that the Planning Board is considering a special permit application for a Marijuana Retailer, then it shall be rounded up to the next whole number for purposes of determining the maximum allowable number of special permits in the City for Marijuana Retailers. A special permit for a Marijuana Retailer shall not be revoked solely because the total number of special permits issued to Marijuana Retailers in the City exceeds the 20% number due to a reduction in the number of licenses issued within the City under MGL c.138, §15.
- (ii) Other than any Medical Marijuana Treatment Center that received a provisional certificate of registration from the Department of Public Health prior to July 1, 2017 and entered into a Host Community Agreement with the City, there shall be no Medical Marijuana Treatment Centers in the City that dispense marijuana or marijuana products to the public.

4143B. Application.

A special permit application for Marijuana Establishments and Medical Marijuana Treatment Centers must be filed with the Planning Board. In addition to the special permit requirements of Section 5300, as part of the application, each applicant shall submit to the Planning Board:

- (i) The name and address of each owner of the Marijuana Establishment or Medical Marijuana Treatment Center.
- (ii) A list of all executives, managers, officers, directors, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment or Medical Marijuana Treatment Center.
- (iii) Proof of approval from the Commonwealth of Massachusetts for the proposed Marijuana Establishment or Medical Marijuana Treatment Center, including copies of all required registrations, licenses, and permits issued to the applicant for the facility by the state and any of

its agencies, including the Cannabis Control Commission and/or the Department of Public Health, as the case may be. The Planning Board shall not consider or act upon any special permit application that does not demonstrate that the proposed Marijuana Establishment or Medical Marijuana Treatment Center has obtained a preliminary license or provisional certificate of registration from the state or one of its agencies.

- (iv) A copy of any executed Host Community Agreement entered into between the Marijuana Establishment or Medical Marijuana Treatment Center and the City, signed by the Mayor and approved by the City Council.
- (v) Evidence of the applicant's right to use the site in question for a Marijuana Establishment or Medical Marijuana Treatment Center, such as a deed, a copy of the lease agreement with a notarized statement from the property owner attesting to its validity, a real estate contract contingent upon successful licensing and permitting, or a notarized letter of intent by the owner of the property indicating intent to lease the premises to the applicant upon successful licensing and permitting.
- (vi) A detailed description of the proposed activities to occur at the site in relation to the special permit criteria set forth in Sections 4150B and 5320 of Chapter 9 of the New Bedford Code of Ordinances. Such narrative shall include information relating to the cultivation, manufacturing, and processing of marijuana and marijuana products; on-site sales of marijuana products; off-site deliveries; distribution of educational materials; and other programs or activities.
- (vii) A statement from the New Bedford Police Chief or his/her designee, acknowledging review and approval of the applicant's security plan submitted pursuant to Section 4141B(v) above. This statement may be on a form approved by the Planning Board.
- (viii) Statements from the New Bedford Fire, Police, and Health Departments that each department has reviewed and approved the applicant's emergency response plan submitted pursuant to Section 4141B(vi) above. These statements may be on forms approved by the Planning Board.
- (ix) An odor control plan that provides for adequate ventilation, detailing the specific 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 and engineering controls that will be implemented to control such odors, including maintenance of such control.

- (x) A quantitative transportation analysis, prepared by a qualified transportation specialist acceptable to the Planning Board, modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to the site.

4150B. Action by Planning Board.

In addition to the findings required for a special permit in Section 5320 of Chapter 9 of the New Bedford Code of Ordinances, the Planning Board shall make the following specific findings before granting a special permit to a proposed Marijuana Establishment or Medical Marijuana Treatment Center:

4151B. The applicant has demonstrated that the proposed Marijuana Establishment or Medical Marijuana Treatment Center has met all of the permitting requirements of all applicable agencies within the Commonwealth and will be in compliance with all applicable state laws and regulations.

4152B. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance.

4153B. The proposed use is designed to minimize any adverse visual, economic, security, or health impacts on abutters and other parties in interest.

4160B. Transfer/Discontinuance of Use/Lapse.

4161B. A special permit granted under this section is non-transferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a Marijuana Establishment or a Medical Marijuana Treatment Center. A special permit issued for a Marijuana Establishment or Medical Marijuana Treatment Center shall not be transferable or assignable to a different location or to a different type of Marijuana Establishment or Medical Marijuana Treatment Center. A change of the licensee or ownership of the Marijuana Establishment or Medical Marijuana Treatment Center shall require submission of an application for a new special permit application or modification of the existing special permit to the Planning Board for approval.

4162B. Any Marijuana Establishment or Medical Marijuana Treatment Center permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia within ninety (90) days of ceasing operations or immediately following the expiration, revocation, or voiding of its state license. A Marijuana Establishment or Medical Marijuana Treatment Center shall notify the Planning Board and Zoning Enforcement Officer in writing within forty-eight (48) hours of any cessation of operations or expiration, revocation, or voiding of any state license or registration.

4163. A special permit shall lapse if the applicant does not commence construction or operation of the proposed Marijuana Establishment or Medical Marijuana Treatment Facility within one (1) year of the special permit's issuance.

4170B. Inspections.

The City and its agents, including representatives from the Building, Health, Police, and Fire Departments, may conduct unannounced, unscheduled, periodic inspections of the premises of any Marijuana Establishment or Medical Marijuana Treatment Center on weekdays during normal business hours to determine the Marijuana Establishment's or Medical Marijuana Treatment Center's compliance with the requirements of state and local laws, regulations, licenses, and permits, including this section.

4180B. Severability.

If any provision of this Section 4100B is found to be invalid by a court of competent jurisdiction, the remainder of Section 4100B shall not be affected but shall remain in full force. The invalidity of any provision of Section 4100B shall not affect the validity of the remainder of the City's Zoning Ordinance.

Section 2. Table of Uses

The Table of Principal Use Regulations in Chapter 9 of the New Bedford Code of Ordinances, Comprehensive Zoning, is hereby amended by:

(a) Inserting the following in Section C. Commercial:

C. Commercial	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD
32. Marijuana Retailer	N	N	N	N	N	N	PB	PB	PB	N	N

and

(b) Inserting the following in Section D. Industrial:

D. Industrial	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD
19. Craft Marijuana Cooperative	N	N	N	N	N	N	PB	PB	PB	N	N
20. Independent Testing Laboratory	N	N	N	N	N	N	PB	PB	PB	N	N
21. Marijuana Cultivator	N	N	N	N	N	N	PB	PB	PB	N	N
22. Marijuana Product Manufacturer	N	N	N	N	N	N	PB	PB	PB	N	N
23. Marijuana Research Facility	N	N	N	N	N	N	PB	PB	PB	N	N
24. Medical Marijuana Treatment Center	N	N	N	N	N	N	PB	PB	PB	N	N

Section 3.

This ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, June 14, 2018

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

IN CITY COUNCIL, August 16, 2018

Passed to a Second Reading.

Dennis W. Farias, City Clerk

IN CITY COUNCIL, September 13, 2018

Passed, to be Ordained – Yeas 11, Nays 0.

Dennis W. Farias, City Clerk

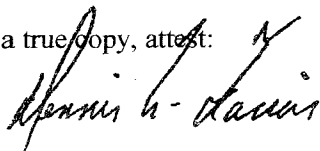
Presented to the Mayor for Approval September 17, 2018.

Dennis W. Farias, City Clerk

Approved September 26, 2018.

Jonathan F. Mitchell, Mayor

a true copy, attest:



City Clerk