

Chapter 327

PUBLIC CONSUMPTION OF MARIJUANA

**[HISTORY: Adopted by the Town Meeting of the Town of Plainville 12-2-2019
STM by Art. 8. Amendments noted where applicable.]**

§ 327-1. Public consumption prohibited.

- A. No person shall smoke, vape, ingest, or otherwise use or consume marihuana (marijuana) or tetrahydrocannabinol (as defined in MGL c. 94C, § 1, as amended) or marijuana products, while in or upon any public place, including but not limited to any street, sidewalk, public way or any way to which the public has a right of access, footpath, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned, leased, occupied by or otherwise under the control of the Town of Plainville, or any place to which members of the public have access as invitees or licensees or any of its boards or officers, or in or upon any bus or other passenger conveyance operated by common carrier, or in any other place accessible to the public, or any private land, building, structure or place without the consent of the owner or person in control thereof; provided, however, that this bylaw shall not be construed to limit the medical use of marijuana.
- B. No person shall, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, or any area owned, leased or occupied by or otherwise under the control of the Town of Plainville, possess an open container of marijuana or marijuana products in the passenger area of any motor vehicle. For purposes of this section, "open container" shall mean that the package containing marijuana or marijuana products has its seal broken or from which the contents have been partially removed or consumed, and "passenger area" shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in a seated position; provided, however, that the passenger area shall not include a motor vehicle's trunk, locked glove compartment or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.

§ 327-2. Violations and penalties.

This bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, enforcement by complaint pursuant to MGL c. 40, § 21D, or by noncriminal disposition pursuant to MGL c. 40, § 21D, by the Plainville Board of Selectmen, or its duly authorized agents, or any police officer. Whoever violates this bylaw shall be punished by a fine of \$300 for each violation. Any penalty imposed under this bylaw shall be in addition to any civil penalty imposed under MGL c. 94C, § 32L.

§ 327-3. Severability.

In the event that any provision, section or clause of this bylaw is hereafter found to be invalid, such decision, invalidity or voidance shall not affect the validity of the

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remaining portion of this bylaw.

to be updated to comply with
RIGL requirements/language

**§ 500-38. Medical marijuana and marijuana establishments. [Added 11-26-2018
STM by Art. 4¹]**

- A. Authority, purpose and intent. These provisions are enacted pursuant to General Laws, Chapter 40A, Section 5, and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution. 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 Plainville residents, the general public, patients seeking treatment, and customers seeking to purchase marijuana for recreational use. The Medical Marijuana and Marijuana Establishments Bylaw is therefore necessary to advance these purposes.
- B. Permitted uses. Subject to the provisions of this Zoning Bylaw, Chapter 40A of the Massachusetts General Laws, 105 CMR 725.000, and M.G.L. Chapter 94G, marijuana establishments will be permitted to provide medical support, security, and physician oversight that meet or exceed state regulation as established by the Massachusetts Department of Health (DPH) and to provide retail sales of marijuana for nonmedical use in a manner that meets or exceeds state regulations in those zoning districts where said use is allowed by special permit.
- C. Definitions. Where not expressly defined in the Plainville Zoning Bylaws, terms used in this section shall be interpreted as defined in 935 CMR 500.002, and otherwise by their plain language.

CANNABIS CONTROL COMMISSION (CCC) — The Massachusetts Cannabis Control Commission established by M.G.L. c. 10, § 76, or its designee.

CRAFT MARIJUANA CULTIVATOR COOPERATIVE — A marijuana cultivator comprised of residents of the commonwealth as a limited liability company or limited liability partnership under the laws of the commonwealth, or an appropriate business structure as determined by the Cannabis Control Commission (hereafter, "the Commission"), and that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to marijuana establishments but not to the consumer.

INDEPENDENT MARIJUANA TESTING LABORATORY — A laboratory that is licensed by the Commission and is: (i) accredited to the most current version of the International Organization for Standardization 17025 by a third-party accrediting body that is a signatory of the International Laboratory Accreditation Accrediting Cooperation with a mutual recognition arrangement, or that is otherwise approved by the Commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Commission pursuant to this chapter.

MARIJUANA CULTIVATOR — An entity licensed to cultivate, process, and

1. Editor's Note: This article also repealed former § 500-38, Temporary moratorium on recreational marijuana establishments, added 6-5-2017 ATM by Art. 52, as amended.

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package marijuana, to deliver marijuana to marijuana establishments, and to transfer marijuana to other marijuana establishments, but not to consumers.

MARIJUANA ESTABLISHMENT — A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related businesses.

MARIJUANA PRODUCT MANUFACTURER — An entity licensed to obtain, manufacture, process, and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments, and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

MARIJUANA PRODUCTS — Products that have been manufactured and contain marijuana or an extract of marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including without limitation edible products, beverages, topical products, ointments, oils, and tinctures.

MARIJUANA RETAILER (MR) — An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell, or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

MEDICAL MARIJUANA TREATMENT CENTER — Also known as registered marijuana dispensary as defined by 105 CMR 725.000.

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 725.00.

REGISTERED MARIJUANA DISPENSARY (RMD) — A use operated by a not-for-profit entity registered and approved by the MA Department of Public Health in 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.

D. Application requirements. The Planning Board shall be the special permit granting authority. The application requirements and procedures shall be conducted pursuant

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This section to be
adjusted to match
NS language for
special permitting.

to § 500-6(B) and § 500-20. All submittal requirements and review standards provided in § 500-6(B) and § 500-20 of this bylaw pertaining to administration, application and submission requirements, fees, powers, hearings and time limits shall be met. In addition, no special permit will be granted by the Planning Board for medical marijuana and/or a marijuana establishment unless an application containing the following additional information is submitted and the adequacy of the contents approved:

- (1) The name and address of each owner of the facility/operation;
- (2) Copies of all documentation demonstrating appropriate application status under state law, or registration or license, issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
- (3) The applicant shall submit proof that the application to the Cannabis Control Commission has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, redacted as necessary, shall be provided as part of the application to the SPGA, and no special permit application shall be deemed complete until this information is provided. No special permit shall be granted by the SPGA without the marijuana establishment first having been issued a provisional license from the Commission pursuant to 935 CMR 500.D.
- (4) 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;
- (5) 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 individual persons associated with the entity as set forth above;
- (6) ~~Site plan review as required by § 500-39 may be required by the Planning Board as part of the special permit application;~~
- (7) In addition to what is normally required in a site plan application pursuant to § 500-39, details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc., which seek to ensure the safety of employees and patrons and to protect the premises from theft or other criminal activity;
- (8) A detailed floor plan of the building that identifies the square footage available and describes the functional areas of the facility.
- (9) A security plan shall be submitted that details any anticipated burden on Town public safety personnel from use of the facility. The plan shall include all

Also add is
typical zoning
requirements by
district also
apply.

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security measures for the site and transportation of marijuana and associated products to and from off-site premises to ensure the safety of the employees and public, and to protect the operation from theft or other criminal activity. The plan shall meet all security requirements of 935 CMR 500.110, and shall be updated annually, with copies provided to the Plainville Police and Fire Departments for approval.

- (10) A management plan, including a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to marijuana establishments, OMMDs, RMDs, and MRs or off-site direct delivery;
- (11) A traffic impact report.
- (12) A resource plan demonstrating best practices utilized for use of energy, water, waste disposal and other common resources to ensure that there will be no undue damage to the natural environment.
- (13) A list of waivers, if any, which were requested by the marijuana establishment and granted by the CCC to any section of the regulations, 935 CMR 500.00.
- (14) The Planning Board may require any additional information it deems necessary in order to adequately ascertain the health, safety, infrastructure, environmental or other pertinent impacts of the proposal.

E. Use regulations. The following regulations shall apply to uses under this section:

- (1) No marijuana shall be smoked, eaten or otherwise consumed or ingested on the premises.
- (2) The hours of operation shall be set by the special permit granting authority, but in no event shall a facility be open to the public, nor shall any sale or other distribution of marijuana occur upon the premises or via delivery from the premises, outside of the following hours:
 - (a) Mondays through Saturdays: 8:00 a.m. to 11:00 p.m.
 - (b) Sundays: 12:00 p.m. to 11:00 p.m.
- (3) Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the marijuana establishment or medical marijuana treatment center is located. No outside storage is permitted.
- (4) All operations relative to the cultivation, processing, testing, product manufacturing, retail, or any other type of state licensed marijuana related business must take place within a fully enclosed building. No marijuana establishment or medical marijuana treatment center shall be located in a trailer, storage freight container, motor vehicle or other similar moveable enclosure.
- (5) No drive-through service shall be permitted.

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Signage can be further regulated to what is displayed.

- (6) All business signage shall be subject to the requirements promulgated by the Massachusetts Cannabis Control Commission, the Massachusetts Department of Public Health, or such other state licensing authority, as the case may be, and the requirements of § 500-29 of this bylaw. No temporary, portable, flag or A-frame signs are permitted. The Planning Board may include additional signage restrictions as a condition of approval.
- (7) No marijuana establishment or medical marijuana treatment center shall be managed by any person other than the licensee or their assign. Such licensee or assign shall be on the premises during regular hours of operation and shall be responsible for all activities within the licensed business and shall provide emergency contact information for the Plainville Police and Fire Departments to retain on file.
- (8) The marijuana establishment shall not create a nuisance to abutters or to the surrounding area, or create any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent, or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area. Violation of this bylaw or the conditions of any special permit issued hereunder shall entitle the Planning Board to notice a public hearing to consider the modification, suspension or revocation of the special permit or any orders or conditions relating thereto.
- (9) Ventilation. All facilities shall be ventilated in such a manner that:
 - (a) No pesticides, insecticides or other chemicals or products used in the cultivation or processing 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 establishments, RMD, OMMD facility or MR or at any adjoining use or property.

F. Restrictions, prohibitions and conditions.

- (1) The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses listed below to the nearest point of the property line of the proposed RMD. The proposed uses shall not be located within 500 feet of the following:
 - (a) A public or private elementary school, middle school, secondary school, preparatory school, licensed day-care center, or any other facility in which children commonly congregate in an organized ongoing formal basis; or
 - (b) Property owned by and operated as part of the campus of any private or public institution of higher learning; or
 - (c) A public library; or

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- (d) A playground or park (Note: This does not include undeveloped conservation land);
- (e) Any dwelling unit.

(2) No RMD, OMMD, or MR shall be located within 500 feet of any other RMD, OMMD, or MR.

(3) No marijuana establishment or medical marijuana treatment center shall be located inside a dwelling, or a building containing a dwelling unit, or inside any building containing transient housing, including a hotel, motel or dormitory.

(4) The proposed use shall not display on-premises signage or other marketing on the exterior of the building or in any manner visible from the public way, which, in the opinion of the special permit granting authority, may promote or encourage the use of marijuana or other drugs by minors.

(5) The permit holder shall file a copy of any incident report required under the CCC Regulations with the Board of Selectmen, with copies to the Zoning Enforcement Officer and the SPGA, within 24 hours of creation by the marijuana establishment. Such reports may be redacted as necessary to comply with any and all applicable laws and regulations.

(6) The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by the CCC or the Division of Administrative Law Appeals, as applicable, regarding the marijuana establishment with the Board of Selectmen, with copies to the Zoning Enforcement Officer and the SPGA, within 48 hours of receipt by the marijuana establishment.

(7) The permit holder shall provide to the Board of Selectmen, the Zoning Enforcement Officer, the SPGA, the Police Chief, and the Fire Chief the name, telephone number and email address of a contact person in the event that the Police Department, Zoning Enforcement Officer or other Town official determines it necessary to contact the applicant after regular business hours. Such contact information shall be kept updated by the permit holder.

(8) The special permit shall be limited to the current applicant and shall become void if the permit holder ceases operating the marijuana establishment or does not control greater than 50% ownership.

(9) The special permit shall become void if the CCC refuses to issue a final license or upon the expiration or termination of the applicant's CCC license.

(10) The permit holder shall notify the Board of Selectmen in writing, with copies to the Zoning Enforcement Officer, the Police Department, and SPGA, within 48 hours of the cessation of operation of the marijuana establishment, notice from the CCC of a denial of a final license, transfer or sale of interest,

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enforcement action taken by the CCC or the expiration or termination of the permit holder's CCC license.

- (11) The permit holder shall not operate, and the special permit will not take effect, until the applicant has entered into a Host Community Agreement (HCA), specific to the adult use marijuana establishment, with the Town. The special permit shall become void upon the expiration or termination of the HCA.
- (12) The applicant/owner agrees to provide the SPGA with any and all documents related to the marijuana establishment if and when requested to do so.

G. Findings. In addition to the findings required under § 500-20 and § 500-39, and all other applicable sections of this bylaw, the special permit granting authority shall find that the proposed use:

- (1) Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations.
- (2) If the proposed use is a Registered Marijuana Dispensary (RMD) or an Off-Site Medical Marijuana Dispensary (OMMD), complies with 105 CMR 725.000 and approved regulations of the MA Department of Public Health.
- (3) Is subject to a signed Host Agreement with the Town of Plainville.
- (4) Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest.
- (5) Provides a secure waiting area.
- (6) Provides adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.
- (7) Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

H. Transfer/discontinuance of use.

- (1) A special permit granted under this section is nontransferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a marijuana establishment, RMD, OMMD, or MR.
- (2) Any marijuana establishment, RMD, OMMD, or MR permitted under this section shall be required to remove all material, plants, equipment, and other paraphernalia in compliance with 105 CMR 725.105 (J) and (O) prior to the expiration of its DPH Registration, immediately following revocation or voiding of its DPH Registration, or following the expiration, revocation or

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voiding of its license issued by the Commission.

- (3) The special permit shall be valid only for the applicant and shall become void if the applicant ceases operating the licensed marijuana establishment for a period of three consecutive months.
- (4) The special permit shall become void if a final license is not issued by the CCC or upon the expiration or termination of the marijuana establishment's CCC license.
- (5) All other applicable provisions of the Plainville Zoning Bylaw shall also apply.

I. Inspections. The Town and its agents, including representatives from the Building, Conservation, Health, Planning, Police, and Fire Department, may conduct unannounced, unscheduled, periodic inspections of the premises of any marijuana establishment or medical marijuana treatment center 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.

J. Conflicts with state law and regulations. If any provision, paragraph, sentence, or clause of this bylaw shall be determined to be in conflict with applicable state law or regulations, the provisions of said state law or regulations shall prevail.

K. Severability. If any section or portion of this bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of this bylaw.

L. Waivers.

- (1) Waivers from the requirements of this section may be requested in writing to the Planning Board. A waiver may be granted by the Planning Board if it determines that:
 - (a) Strict enforcement of this bylaw would do manifest injustice;
 - (b) Any alleged hardship is not self-created; and
 - (c) The granting of a waiver shall not in any way impair public health, public safety or the environment.
- (2) The Planning Board may impose any conditions, safeguards and other limitations on a waiver when it deems it appropriate to protect the public health, public safety or the environment.

M. Restriction on number of facilities. The number of recreational marijuana retailers permissible to be located in the Town shall be limited to 20% of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold pursuant to MGL c. 138, § 15. In the event that 20% of said licenses is not a whole number, the limit shall be rounded up to the

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nearest whole number. 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 Town exceeds the 20% number due to a reduction in the number of licenses issued within the Town under MGL, c. 138, § 15.

North Smithfield Districts

SECTION 5.**DISTRICT USE REGULATIONS****Section 5.1 Establishment of Districts**

For the purpose of this ordinance, the Town of North Smithfield is hereby divided into the following eleven (11) zoning districts:

District	Symbol	Description
Residential	REA	Rural Estate Agricultural
Residential	RA	Rural Agricultural
Residential	RS	Residential - Suburban
Residential	RU	Residential - Urban
Business	BN	Business - Neighborhood
Business	BH	Business - Highway
Business	LC	Limited Commercial
Mixed Use	MU-1	Mixed Use - Commercial
Mixed Use	MU-2	Mixed Use – Industrial
Manufacturing	M	Manufacturing
Open Space	OS	Open Space

North Smithfield District Use

USE	REA	RA	RS	RU	BH	BN	LC	M	MU 1	MU 2	OS
26. Service Establishments, under 3,000 sf. GLA ⁷ without drive-thru	N	N	N	N	Y	Y	N	Y	N	Y	N
27. Retail Sales/Service, 3,000 to 20,000 sf. GLA ⁷ with drive-thru	N	N	N	N	Y	N	Y	N	N	N	N
28. Retail Sales/Service, 3,000 to 20,000 sf. GLA ⁷ without drive-thru	N	N	N	N	Y	N	Y	N	Y	Y	N
29. Retail Sales/Service, over 20,000 to 40,000 sf. GLA ⁷ with drive-thru	N	N	N	N	Y	N	N	N	N	N	N
30. Retail Sales/Service, over 20,000 to 40,000 sf. GLA ⁷ without drive-thru	N	N	N	N	Y	N	N	N	N	N	N
31. Bank or Financial Institution, with drive-thru	N	N	N	N	Y	S	Y	N	S	N	N
32. Bank or Financial Institution, without drive-thru	N	N	N	N	Y	Y	Y	N	Y	N	N
33. Compassion center	N	N	N	N	N	N	N	N	N	N	N
5.4.8. Wholesale business and storage											

North Smithfield District Use

USE	REA	RA	RS	RU	BH	BN	LC	M	MU 1	MU 2	OS
1. Wholesale Business and Storage of Nonflammable and Non-explosive Material in a Building	N	N	N	N	S	N	S	Y	N	Y	N
2. Open Lot Storage, building materials and machinery excluding retail sales	N	N	N	N	N	S	N	N	S ⁵	N	
3. Open Lot Storage, serviceable automotive and boat equipment excluding retail sales ³	N	N	N	N	S	N	N	S ⁵	N		
4. Open Lot Storage, solid fuel, sand and gravel excluding retail sales	N	N	N	N	N	N	Y ⁵	N	N	N	
5. Open Lot Storage, junk and salvage material excluding retail sales	N	N	N	N	N	N	N	N	N	N	
6. Storage of Flammable, Hazardous, or Explosive Materials, not integral to a manufacturing process	N	N	N	N	N	N	N	N	N	N	
7. Retail Outlet for a Wholesale or Storage Use, including the sale of ice, fuel oil, coal, wood on site	N	N	N	S	N	S	S	N	S	N	
8. Self-Storage Facility	N	N	N	S	S	S	N	N	S	N	
9. General Warehouse	N	N	N	N	N	Y	Y	N	Y	N	
10. Non-Residential Cooperative Cultivation	N	N	N	N	N	N	N	N	N	N	
11. Licensed Cultivator	N	N	N	S	N	S	S	N	N	N	
12. Dispensary	N	N	N	S	S	S	S	S	S	S	

Chapter 648

MARIJUANA ESTABLISHMENTS; SALE OF MARIJUANA

[HISTORY: Adopted by the Board of Health of the Town of Plainville 1-23-2019. Amendments noted where applicable.]

§ 648-1. Statement of purpose and authority.

- A. 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
- B. Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority; and
- C. Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and
- D. Whereas, Chapter 55 Acts of 2017 specifically allows municipalities to "adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments" specifically related to "the time, place, and manner of marijuana establishment operations and of any business dealing with marijuana accessories," provided that such restrictions "are not unreasonably impracticable and are not in conflict" with the state statute or regulations regulating to marijuana sales.
- E. Whereas, local oversight and inspection of adult-use marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and
- F. 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
- G. Whereas the Massachusetts Supreme Judicial Court had held that" . . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means." [Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949)]

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

§ 648-2. Definitions.

- A. Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and in General Law, Chapter 94, § 1.
- B. 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, 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 be issued by the Plainville Board of Health.

BOARD OF HEALTH — Town of Plainville Board of Health and its designated Board of Health agents.

BOARD OF HEALTH AGENT — The Health Agent and any Town employee designated by the Board of Health, which will include Board of Health and/or Board of Health staff, and may include 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 —

- (1) 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 defined in Section 1 of Chapter 94C of the General Laws.
- (2) "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, 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

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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.

MINIMUM LEGAL SALES AGE — The age an individual must be before that individual can be sold a marijuana product in the municipality.

NONRESIDENTIAL 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 can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not nonresidential RYO machines.

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.

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.

§ 648-3. Marijuana sales to persons under minimum legal sales age prohibited.

- A. No person shall sell marijuana or marijuana products, or permit marijuana or marijuana products, as defined herein, to be sold to an individual under the minimum legal sales age; or give marijuana or marijuana products, as defined herein, to an individual under the minimum legal sales age. The minimum legal sales age in Plainville is 21.
- B. Each person selling or distributing marijuana or 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.
- C. 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. No person shall sell marijuana accessory or permit marijuana accessory, 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 the Town of Plainville is 21.

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§ 648-4. Additional prohibitions.

- A. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product.
- B. 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.
- C. No person under the minimum legal sales age shall be permitted to enter an 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.
- D. A retail marijuana establishment shall sell primarily marijuana 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.
- E. 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.
- F. All self-service displays of marijuana and marijuana products are prohibited.
- G. All vending machines containing marijuana and marijuana products are prohibited.
- H. An adult-only retail tobacco store and a marijuana operating permit holder may not offer for sale nonresidential roll-your-own machines.
- I. Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores as defined herein.
- J. Any consumption or use of marijuana products, including the sampling of products, on the premises of a marijuana establishment or a retail marijuana establishment, is prohibited.

§ 648-5. Marijuana operating permit.

- A. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana products, as defined herein, within the Town of Plainville without first obtaining a marijuana operating permit issued annually by the Plainville Board of Health. Only owners of establishments with a permanent, nonmobile location in Plainville are eligible to apply for an operating permit at the specified location in the Town of Plainville except:
 - (1) All applicants shall certify that they are in compliance with all local and state laws, regulations (bylaws or ordinances) and be prepared to show proof if requested.

(2) A marijuana delivery-only establishment, if authorized and licensed under state regulation, shall not be required to have a permanent, nonmobile 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 Plainville Board of Health.

B. As part of the marijuana operating permit application process, the applicant will be provided with the Plainville 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.

C. A marijuana establishment must submit a security plan for review to the Plainville Police Department detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises. The marijuana establishment must supply the Plainville Board of Health with a letter from the Plainville Police Chief approving the security plan.

D. All marijuana establishment staff must be properly trained according to 935 CMR 500.000. Certifications must be submitted to the Plainville Board of Health prior to issuance of a permit.

E. A marijuana operating permit is expressly conditioned upon the issuance of a final license issued by the Cannabis Control Commission before operations commence. Failure to obtain said license or revocation of said license shall result in the immediate revocation of the marijuana operating permit.

F. A separate marijuana operating permit, displayed conspicuously, is required for each marijuana establishment, the fee for which shall be determined by the Plainville Board of Health annually.

G. A marijuana operating permit is nontransferable. A new owner of a marijuana establishment must apply for a new permit.

H. 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.

I. 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 and/or the permit holder has not satisfied any outstanding permit suspensions.

J. A marijuana operating permit may be subject to nonrenewal 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. The permit holder may request a hearing pursuant to this regulation prior to nonrenewal.

K. All marijuana operating permits expire annually on December 31. No permit renewal will be denied based on the requirements of this subsection except any

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permit holder who has failed to renew his or her permit within 30 days of expiration will be treated as a first-time permit applicant.

L. The Plainville Board of Health may require the distribution of additional educational materials in marijuana establishments as a condition of issuance of marijuana operating permit.

§ 648-6. Incorporation of state regulations.

A. The manufacture of all edible marijuana products and food 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 comply with 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.

B. Incorporation of 935 CMR 500.00. Marijuana establishments and agents shall comply with 935 CMR 500.000.

§ 648-7. Compliance with all laws required.

A. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all laws, ordinances, regulations or policies applicable to similar activities. This shall include, 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.

B. In no instance shall a marijuana operating permit be issued to any establishment within 500 feet of the grounds of or within a public or private elementary school, middle school, secondary school, preparatory school, licensed day-care center, or any other facility in which children commonly congregate in an organized ongoing formal basis; or property owned by and operated as part of the campus of any private or public institution of higher learning; or a public library; or a playground or park. (Note: This does not include undeveloped conservation land.) The 500-foot distance shall be measured in a straight line from the nearest point of the property line in question to the nearest property line of the proposed marijuana establishment.

C. 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 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.

§ 648-8. Enforcement; violations and penalties.

A. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Plainville Board of Health, its designees and the Plainville Police Department.

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- B. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Plainville Board of Health and its designees. Unscheduled compliance inspections shall be conducted at a minimum of two inspections annually.
- C. It shall be the responsibility of the marijuana operating 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 operating permit suspension, a marijuana operating permit revocation.
- D. 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 Plainville Board of Health or its designated agent. Unless waived by the permit holder, 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.
- E. Prior to issuing any suspension or revocation, the Board of Health shall provide notice 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 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 Plainville Board of Health may suspend or revoke the permit if the Board of Health finds that a violation of this regulation occurred.
- F. Whoever violated any provisions of this regulation may be penalized by the noncriminal method of disposition as provided in MGL c. 40 § 21D.
- G. Each day any violation exists shall be deemed to be a separate offense.

§ 648-9. Variances.

- A. A variance from this regulation may be requested in writing to the Plainville Board of Health. A variance may be granted by the Plainville Board of Health after a hearing at which time the applicant establishes the following:
 - (1) Strict enforcement of this regulation would do manifest injustice; and
 - (2) The granting of a variance shall not in any way impair the public health and safety or the environment.
- B. 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.

§ 648-10. 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.

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§ 648-11. When effective.

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

Chapter 950

MARIJUANA ESTABLISHMENT LICENSING REGULATIONS

[**HISTORY:** Adopted by the Board of Selectmen of the Town of Plainville 12-16-2019.¹ Amendments noted where applicable.]

§ 950-1. Authority and applicability.

These regulations are adopted as allowed under Plainville General Code § 335-3, Rules and regulations. These regulations may be amended or modified from time to time at the discretion of the Board of Selectmen. Pursuant to Plainville General Code Chapter 335, no person shall carry on the business of operating an adult use marijuana establishment as defined in MGL c. 94G and 935 CMR 500, including the cultivation, processing, packaging, delivering, manufacturing, branding, selling or otherwise transferring or testing marijuana or marijuana products within the Town ("marijuana establishments") unless first duly licensed thereof by the Board of Selectmen, which license shall be renewed by said marijuana establishment annually.

§ 950-2. General provisions applicable to all marijuana establishments.

- A. Any marijuana establishments operating within the Town shall at all times have a valid host community agreement ("HCA") and operate in accordance with the terms and provisions thereof.
- B. Marijuana establishments shall not be permitted to operate and no marijuana establishment license (the "license") shall be issued until the marijuana establishment license applicant (the "applicant") has entered into an HCA with the Plainville Board of Selectmen. Licenses shall not be renewed if the HCA has expired, until a new HCA has been executed by the applicant and the Board of Selectmen.
- C. Marijuana establishments shall not be permitted to operate and the license shall not be valid until the applicant has received a marijuana use special permit from the Planning Board and a valid unexpired marijuana operating permit from the Plainville Board of Health. If the Board of Health operating permit expires during the licensing period, then a new marijuana operating permit shall be required prior to the issuance of any license or license renewal.
- D. In addition to the forgoing requirements, prior to the issuance of any license or license renewal, applicants must submit:
 - (1) Proof of a valid certificate of occupancy for the marijuana establishment from the Building Department;
 - (2) Proof of ownership or control of the location; and
 - (3) Proof of a provisional or final license from the Cannabis Control Commission (the "CCC"), and proof that the applicant is in good standing with the CCC.

1. **Editor's Note:** These regulations were adopted as Ch. 328, but were renumbered to maintain the organization of the Code.

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- E. All applicants shall be subject to annual inspections by the police, fire and zoning enforcement officials to confirm compliance with the terms of the special permit, site plan and any applicable security provisions. Confirmation of compliance shall be submitted from each department prior to issuance of a license.
- F. Noncompliance with any of the requirements of the above-listed permits may be grounds for denial, revocation and/or nonrenewal of the license.

§ 950-3. Applications.

- A. Applicants shall file a license application on a form provided by the Board of Selectmen, signed under the penalties of perjury by the applicant, containing such information as the Board of Selectmen may reasonably require from time to time. Each applicant shall pay an application fee as may be reasonably determined from time to time by the Board of Selectmen. Licenses shall be valid for a one-year period, and renewals must be filed 45 days prior to the date of expiration.
- B. The Board of Selectmen, or its designee, should review an application for completeness prior to accepting an application for filing. Once an application is deemed complete, the Board should record the date and time of filing on the application.

§ 950-4. Hearing.

- A. The Board of Selectmen should hold a public hearing within 45 days of the application date, with due written notice provided to the applicant of the time, date and location where such application will be heard.
- B. The Board of Selectmen must act upon the application within 45 days of the close of the public hearing, with due notice provided to the applicant of its written decision.
- C. Prior to the public hearing, the applicant shall disclose:
 - (1) All neighborhood concerns that have been raised throughout the previous year, and shall provide ways to remedy those concerns. These shall include noise, odor or other environmental complaints.
 - (2) All diversion or sales of marijuana products to unauthorized users during the previous year, and shall provide ways to remedy future incidents.
 - (3) All breaches in security that have required a police response, and shall provide ways to remedy those breaches.
 - (4) All enforcement actions that have been required by local officials to ensure compliance with local regulations and permits.
- D. Failure to disclose any concerns or issues raised during the previous year shall be cause for denial and/or revocation of the license.

§ 950-5. Decision.

The Board of Selectmen may approve, deny or approve the license with conditions. Such

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decision shall be based on the evidence taken at the public hearing, consistent with the protection of the health, safety and welfare of the public. The Board of Selectmen may also consider the following:

- A. Whether the applicant has entered into a host community agreement and is in full compliance with terms of that agreement;
- B. Whether the applicant has made timely payment to the Town of all applicable fees and local taxes, including all payments under the host community agreement;
- C. Whether the applicant has obtained a final license from the CCC, has kept such license current and remains a licensee in good standing with the CCC;
- D. Whether the applicant has held a community impact meeting consistent with the CCC's Guidance for License Applicants on Community Outreach and has developed a community mitigation plan that addresses reasonable concerns of abutters and the Town; and
- E. Whether the applicant is in compliance with all local laws and regulations, including, but not limited to, special permit conditions and Board of Health operating permits.

§ 950-6. Violations and penalties; enforcement.

The Board of Selectmen may issue orders as appropriate to aid in the enforcement of this regulation and may enforce these provisions in equity, including the request for injunctive relief, in a court of competent jurisdiction. Any failure to comply with any order issued hereunder shall result in the issuance of a formal warning. Any failure to comply with such a warning shall result in a fine of \$100. Any failure to comply after the issuance of said fine may be punishable by a subsequent fine of \$300. Each day of a continued noncompliance shall constitute a separate violation. Further, the Board of Selectmen may hold a hearing, with notice to the licensee, to determine if such license should be modified, suspended or revoked.

