



TOWN OF WARE

Town Manager

126 Main Street

Ware, MA 01082

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To : Board of Selectmen

From : Stuart Beckley, Town Manager

Subject: Marijuana License Regulations

The Town has been directly approached by three businesses interested in opening a Marijuana establishment in Ware. Two, interested in retail, have submitted Host Community Agreements, which the Town Attorney is reviewing and recommending a standard base form.

In addition, Town Meeting adopted the attached bylaw in May which establishes requirements for an establishment to meet in order to get a license from the Selectmen. The bylaw allows the Board to establish regulations for the issuance of a license. I find the bylaw to be very thorough in its requirements and list of signoffs, which can be used for a license form. One item a regulation or vote would set would be the licensing fee the Board would like to collect for license review/approval.

The bylaw would currently cap the number of retail licenses at 2 for the town based on the number of off premise liquor licenses allowed in the town (7). Does the Board wish to consider that number?

Thank you.

ARTICLE 41

To see if the Town will amend the General By-Laws by adding the following article:

ARTICLE III LOCAL LICENSING OF MARIJUANA ESTABLISHMENTS

Section 15-4.1 PURPOSE

The intent of this section is to permit Marijuana Establishments to operate pursuant to local requirements to ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community. If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

Section 15-4.2 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in the foregoing State laws and regulations shall govern.

- a. Cannabis Control Commission - the Massachusetts Cannabis Control Commission.
- b. Delivery-Only Marijuana Retailer - a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Marijuana Micro-Business. I
- c. Hemp - the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.
- d. Manufacture - to compound, blend, extract, infuse or otherwise make or prepare

a Marijuana Product.

- e. 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 as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) 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; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.
- e. Marijuana Cultivator -an entity licensed by the Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers.
- f. Marijuana Establishment - a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, or any other type of Cannabis Control Commission-licensed Marijuana-related business or entity.
- g. Marijuana Establishment Agent - a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of Marijuana.
- h. Marijuana Independent Testing Laboratory - an entity licensed by the Cannabis Control Commission that is (i) accredited to the most current 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 Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c, 94C, § 34.
- i. Marijuana Product Manufacturer-an entity licensed by the Cannabis Control Commission 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.
- j. 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.

- l. Marijuana Retailer- an entity licensed by the Cannabis Control Commission 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.
- m. Medical Marijuana Treatment Center- an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana- infused products, 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 for medical use.
- n. Mixed Use Social Consumption Marijuana Retailer - a Marijuana. Retailer that is in possession of a Cannabis Control Commission Mixed Use Social Consumption Marijuana. Retailer license (as may be further provided by 935 CMR, any commercial enterprise for which 50% or less of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).
- o. Social Consumption Marijuana Retailer - a Marijuana Retailer licensed by the Cannabis Control Commission to purchase Marijuana and Marijuana. Products from Marijuana Establishments and to sell Marijuana and Marijuana. Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.
- p. Primary Use Social Consumption Marijuana Retailer - a Marijuana. Retailer that is in possession of a Cannabis Control Commission Primary Use Social Consumption Marijuana. Retailer license (as may be further provided by 935 CMR, any commercial enterprise for which 51% or more of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).
- q. Storefront Marijuana Retailer - a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Massachusetts Medical Use of Marijuana Program.

Section 15-4.3

MEDICAL MARIJUANA TREATMENT CENTERS

Medical Marijuana Treatment Centers may be licensed pursuant to Section 15-4 __. 6 below, as the Board of Selectmen may determine in conformity with applicable State and local laws.

Section 15-4.4

CAPS ON THE NUMBER OF BOARD OF SELECTMEN LICENSES FOR MARIJUANA RETAILERS

The Board of Selectmen shall not issue more Marijuana Establishment licenses in each of the

following categories of Marijuana Establishment licenses than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Board of Selectmen pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction: a) Storefront Marijuana Retailers, b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

Section 15-4.5 GENERAL REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Ware's General By-Laws, the Town of Ware's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit).
2. Marijuana Establishments shall execute and maintain a Host Community Agreement with the Town which shall include the conditions for having the Marijuana Establishment within the Town in conformity with applicable law.
3. Marijuana Establishments shall maintain all permits and licenses required by State and local laws, including, but not limited to, a valid, current license in good standing from the Cannabis Control Commission. Any voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license, shall result in an automatic suspension of the Board of Selectmen license pending hearing or the opportunity therefore afforded to the Marijuana Establishment.
4. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.
5. Any Marijuana Establishment licensee wishing to close a place of business or cease operations, whether on a temporary or permanent basis, may do so only if permitted by State law and must submit to the Board of Selectmen a written request for the Board of Selectmen's permission to do so, stating the reason for and length of such closing or inactivity. Failure to provide such notice and to obtain such permission may, after hearing or reasonable opportunity therefor, result in cancellation of the license.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building or fixed structure.
2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft or other optical aids.
3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.
4. No Marijuana Establishment shall allow any person under 21 years of age to volunteer or work for the Marijuana Establishment.
5. The hours of operation of Marijuana Establishments shall be set by the Board of Selectmen. The licensee shall not change its hours of operation without Board approval.
6. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.
7. Marijuana Establishments shall not permit any disorder, disturbance or illegality under State or local law of any kind on the premises.
8. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.
9. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.
10. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

11. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
 - a) prior to surrendering its State-issued license; or
 - b) within six (6) months of ceasing operations.
12. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.
13. Marijuana Retailers are required to engage in patron age verification using legally-acceptable proof of age as may be further specified by the Select Board license.
14. Marijuana Retailers shall not sell or offer for sale Marijuana or Marijuana Products in a quantity that exceeds the limits established by 935 CMR 500.
15. Marijuana Establishments shall not supply Marijuana or Marijuana Products free of charge or in connection with a commercial or promotional endeavor within the Town of Ware. Such endeavors include, but are not limited to, product "giveaways", or distribution of Marijuana or Marijuana Products as an incentive, prize or bonus in a game, contest or tournament involving skill or chance.
16. Marijuana Retailers are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.
17. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Board of Selectmen in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. Security-Specific Requirements

1. Marijuana Establishments shall maintain compliance with any Town Police Department-

approved security and public safety plan as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment (related or unrelated to the business or the establishments), providing access to and transfer of video footage from the establishment's video surveillance system to the Police Department when the Police Department so requests (which request may be made when the Police Department has a reason to believe that such footage may be of assistance in an ongoing investigation related or non-related to the business of the establishment), a requirement to connect an alarm system to a third party monitoring system and to notify the Town's Chief of Police about said third party monitoring system, and any other notifications and security-related measures as may be required by the Police Department and the Board of Selectmen.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing Marijuana is restricted to employees and others permitted by the Marijuana Establishment to access the area and to agents of the Cannabis Control Commission or state and local law enforcement officers and emergency personnel.
3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.
4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Board of Selectmen and agents of the Board of Selectmen from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.
2. Marijuana Establishments shall cooperate and comply with requests for information made by

the Board of Selectmen and its agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Manager, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health (DPH)) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the DPH Certificate of Registration.

Section 15-4.6 MARIJUANA ESTABLISHMENT BOARD OF SELECTMEN LICENSE

- a. No person shall operate a Marijuana Establishment or sell Marijuana within the Town unless licensed to do so by the Board of Selectmen. Unless the Board of Selectmen license states a different duration, a Marijuana Establishment license shall be valid for a term of one year from the first day of January. Each day of operation without a Board of Selectmen license shall constitute a separate violation.
- b. A Board of Selectmen license shall be subject to the Marijuana Establishment's compliance with this Article 15-4__ and with any conditions placed on the Marijuana Establishment's license. An applicant's or licensee's violation of this Article 15-4__ and applicable State and local law shall be good cause for and may result in the Board of Selectmen's denial of an application or sanction of a license to the extent permitted by law, including, but not limited to, the imposition of additional conditions on a license, a reduction or modification of the licensee's approved hours of operations, or a suspension, non-renewal, revocation, forfeiture, or cancellation of a license. No sanction shall be made except after notice and opportunity for hearing.
- c. The Board of Selectmen may issue regulations for the implementation of this By-Law.
- d. The Board of Selectmen shall specify the process and forms to be used by applicants for new and renewed licenses.
- e. All license applications must contain complete and truthful information. Submission of an application containing material false information may be cause for refusing the application or for suspending, canceling or revoking a license already granted. No application will be accepted for filing by the Board of Selectmen until it is fully complete. Annual license fees shall be payable immediately upon approval of the license by the Board of Selectmen. License fees shall not be prorated and are not refundable. Application and license fees shall be in an amount established by the Board of Selectmen pursuant to M.G.L. c. 40, § 22F.
- f. No Board of Selectmen licensee may transfer a license to another person or entity, or transfer the license or operations to another location, without Board of Selectmen approval. A Board of Selectmen licensee must obtain Board of Selectmen approval for a change to or addition of Board Member, Executive, Director and/or Managers, as may be determined by the Board of

Selectmen. Any transfer shall be subject to the terms and conditions of the original license, unless otherwise stipulated by the Board.

- g. A Board of Selectmen licensee must apply for and obtain the approval of the Board of Selectmen or its designee prior to making any structural change to the premises.
- h. The Board of Selectmen licensee shall display its license on the premises in a conspicuous place where it can be easily read.
- i. The Board of Selectmen or its designee may inspect a Marijuana Establishment and affiliated vehicles prior to the issuance of a Marijuana Establishment license or renewal of a license.
- j. All areas of a Marijuana Establishment may be subject to inspection consistent with applicable law.
- k. The Board of Selectmen may, to the extent permitted under applicable law, consider whether an applicant for a license is a suitable and responsible license candidate and other aspects of the application as may be necessary to implement the purposes of this By-Law. An applicant's non-compliance with applicable Massachusetts laws and regulations (including 935 CMR 500), Town by-laws (including this Article and applicable sections of the Town's Zoning By-Law), Town regulations and codes, and any conditions on a license may be cause for denial of an application for a new or renewed Marijuana Establishment license.

Section 15-4.7 FINES

Any person violating this By-Law shall be fined in the amount of \$100 for each violation. Each day of a continuing violation shall count as a separate violation.

Section 15-4.8 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Massachusetts General Laws Chapter 94G or Chapter 94I, or with the regulations promulgated thereunder, including 935 CMR 500.

or act on anything relative thereto.