

CREATE A NEW SECTION IN THE ZONING BYLAWS – SECTION 23, MARIJUANA ESTABLISHMENTS

§[23]. Marijuana Establishments.

23.1 Purpose. The purpose of this section is to provide for the placement of Marijuana Establishments (MEs) and Medical Marijuana Treatment Centers in suitable locations in the Town of Windsor (the “Town”) in recognition of and in accordance with “The Regulation of the Use and Distribution of Marijuana Not Medically Prescribed,” M.G.L. c. 94G and “Medical Use of Marijuana”, M.G.L. c. 94I. The specific purpose of this section is to safeguard the built environment by permitting compliance with state law in a manner consistent with community and neighborhood concerns, while also ensuring that those entities permitted to operate a ME or Medical Marijuana Treatment Center, as defined herein, comply with the relevant provisions of Chapter 334 of the Acts of 2016, Chapter 351 of the Acts of 2016, Chapter 55 of the Acts of 2017, and the regulations promulgated by the Cannabis Control Commission (CCC) found at 935 CMR 500.000 and 105 CMR 725.000 et seq.

23.2 Definitions.

CRAFT MARIJUANA COOPERATIVE – a Marijuana Cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the commonwealth, or an appropriate business structure as determined by the CCC, and that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and Marijuana Products to deliver marijuana to MEs but not to consumers.

INDEPENDENT TESTING LABORATORY - a laboratory that is licensed by the CCC and 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 commission; (ii) independent financially from any medical marijuana treatment center or any licensee or ME for 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.

LICENSE – The certificate issued by the CCC that confirms that a ME has met all applicable requirements pursuant to St. 2012, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000. A ME may be eligible for a provisional or final license.

MARIJUANA ESTABLISHMENT (ME) – 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 CULTIVATOR – an entity licensed to cultivate, process, and package marijuana; to deliver marijuana to MEs; and to transfer marijuana to other MEs but not consumers.

MARIJUANA CULTIVATION FACILITIES – facilities that a Marijuana Cultivator may be licensed to operate.

MARIJUANA PRODUCT MANUFACTURER – an entity licensed to obtain, manufacture, process, and package marijuana and Marijuana Products; to deliver marijuana and Marijuana Products to other MEs, and to transfer marijuana and Marijuana Products to other MEs but not 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 RETAILER – an entity licensed to purchase and deliver marijuana and Marijuana Products from MEs and to deliver, sell, or otherwise transfer marijuana and Marijuana Products to other MEs and to consumers.

MARIJUANA TRANSPORTER – an entity, not otherwise licensed by the CCC, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to MEs, but not to consumers.

MEDICAL MARIJUANA TREATMENT CENTER – a not-for-profit entity 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 qualifying patients or their personal caregivers.

MICRO-BUSINESS – a ME that is licensed to act as a: licensed Marijuana Cultivator in an area less than 5,000 square feet; licensed Marijuana Product Manufacturer, and licensed marijuana delivery service in compliance with the operating procedures for each such license.

RESEARCH FACILITY – an entity licensed to engage in research projects by the CCC.

23.3 Designated Locations for MEs and Medical Marijuana Treatment Centers.

23.3.1 A Marijuana Cultivator may operate Marijuana Cultivation Facilities on any property within the Town.

23.3.2 All types of MEs, except for marijuana retailers, may be sited in the entire Marijuana Overlay District, as per Figure 1, below.

23.3.3 Marijuana Retailers or Medical Marijuana Treatment Centers may only be sited within the Marijuana Overlay District Retail (hatched area), as per Figure 1, below.

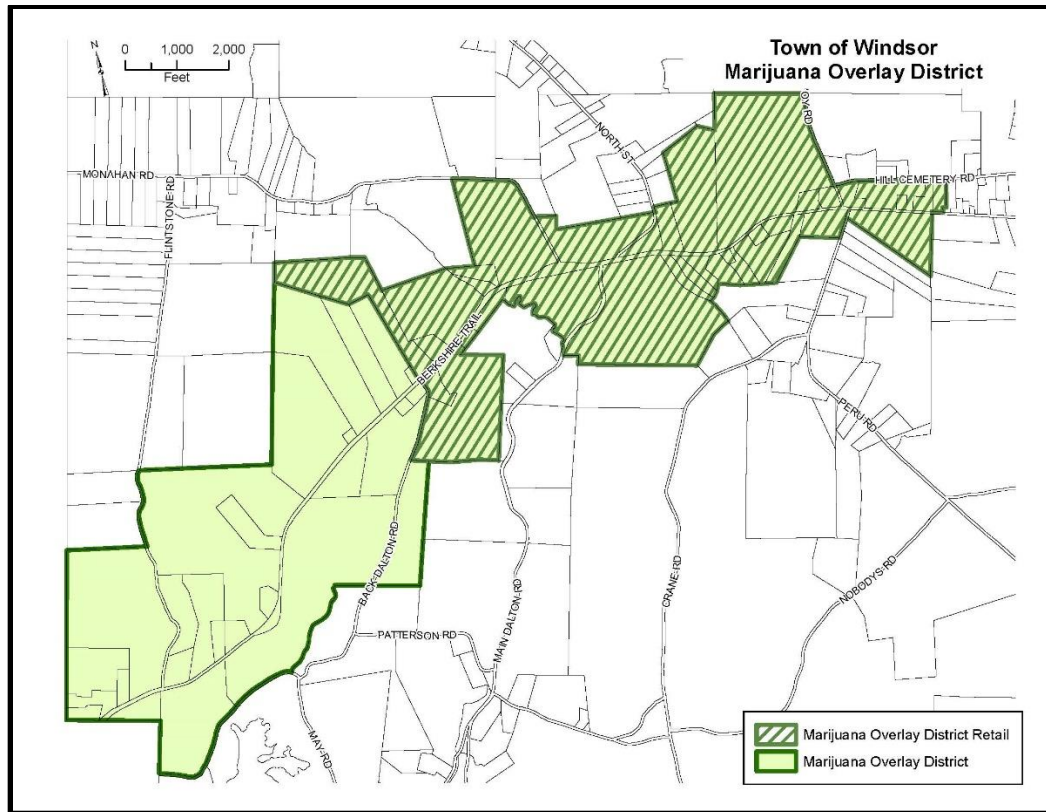


Figure 1

23.3.4 No ME or Medical Marijuana Treatment Center shall be located within 500' of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. This distance shall be measured from the nearest school building to the nearest building used for marijuana purposes. The Special Permit Granting Authority may modify or waive this requirement.

23.4 Designated Number of MEs and Medical Marijuana Treatment Centers.

23.4.1 The total number of MEs operated by a Marijuana Retailer shall not be greater than one (1), except that in no instance shall the number of retailers be fewer than twenty percent (20%), of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises, as set forth in G.L. c. 94G Section 3(a)(ii). Fractions shall be rounded up to the nearest whole number.

23.4.2 The total number of Medical Marijuana Treatment Centers shall not exceed one (1).

23.4.3 There shall be no limit on the number of MEs permitted within the Town, except as per Subsection 23.4.1.

23.5 Special Permit Required. No ME or Medical Marijuana Treatment Center shall be operated or expanded without first obtaining a Special Permit from the Town Special Permit Granting Authority in accordance with Sections 6 and 14 of the Zoning Bylaw.

23.5.1 The Special Permit Granting Authority for any ME or Medical Marijuana Treatment Center shall be the Zoning Board of Appeals.

- 23.5.2 A Special Permit shall only be valid for use by the Applicant and will become null and void upon the sale or transfer of the license of an ME or Medical Marijuana Treatment Center or change in the location of the business.
- 23.5.3 In the event that the Commonwealth's licensing authority suspends the license or registration of a ME or Medical Marijuana Treatment Center, the Special Permit shall be so suspended by the Town until the matter is resolved to the satisfaction of said licensing authority.
- 23.5.4 The Special Permit shall be considered null and void if meaningful construction has not begun on the project within 2 years of obtaining said permit, as determined by the Building Inspector or their designee(s).
- 23.6 Site Plan Review. Applications to operate or expand a ME or Medical Marijuana Treatment Center shall be subject to Sections 6 and 14 of the Zoning Bylaw. The site plan shall be submitted in conjunction with the Special Permit application and joined to the final approval for the Special Permit.
- 23.7 General Requirements for MEs and Medical Marijuana Treatment Centers.
- 23.7.1 Outside storage. No outside storage of marijuana, Marijuana Products, related supplies, or educational materials is permitted, except at open-air, outdoor cultivation facilities.
- 23.7.2 Visibility of activities. All activities shall be conducted indoors, except for open-air, outdoor cultivation facilities or Marijuana Transporters.
- 23.7.3 Paraphernalia. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may be lawfully sold at a Marijuana Retailer. No retail marijuana, Marijuana Products, or paraphernalia shall be displayed or kept by a Marijuana Retailer so as to be visible from outside of the licensed premises.
- 23.7.4 Hours of operation. A Marijuana Retailer may not open earlier than 8:00 AM and shall close no later than 8:00 PM the same day. There shall be no hourly restrictions on any other type of ME or Medical Marijuana Treatment Center, unless imposed by the Special Permit Granting Authority as part of site plan approval.
- 23.7.5 On-site consumption of marijuana. On-site consumption is prohibited on or within the premises of any ME, except for Research Facilities.
- 23.7.6 Sale of alcohol. MEs are prohibited from selling alcoholic beverages.
- 23.8 Design Requirements for MEs and Medical Marijuana Treatment Centers.
- 23.8.1 Permanent location. All marijuana uses, except for Marijuana Transporters and open-air Cultivation Facilities, shall be operated from a fixed location within a fully enclosed building.
- 23.8.2 Signage. All signage must comply with the regulations set forth in Section 7.4.

- 23.8.3 Lighting. Outdoor light levels shall not exceed one (1) foot-candle along property lines, nor ten (10) foot-candles for any location on the property. Any light poles, new or existing, may not exceed eighteen (18) feet in overall height. All outdoor light fixtures must be shielded and aimed down in order to prevent light trespass onto adjacent properties. Cultivation Facilities or Marijuana Treatment Centers may not illuminate growing operations between dusk and dawn, unless within a fully-enclosed, opaque building. The Special Permit Granting Authority may modify this requirement for adequate security or other reasons specified.
- 23.8.4 Landscaping. Marijuana Retailers shall be landscaped to harmonize the building with surrounding uses. Landscaping shall be provided at the rate of one (1) canopy tree for every 30' of lineal road frontage and shall be located within 15' of the front property line(s). Existing trees may count toward this requirement and may be clustered. Landscaping must consist of native, non-invasive plant species. The Special Permit Granting Authority may modify or waive this requirement.
- 23.8.5 Parking. Off-street parking must be provided for as follows. For buildings or sites that contain more than one type of marijuana use, each use shall be calculated separately and parking provided for each on-site, based on gross floor area of the individual uses. These requirements may be modified or waived by the Special Permit Granting Authority.
- 23.8.5.1 Retail uses: 1 parking space for every 250 square feet of gross floor area of the building(s).
- 23.8.5.2 Cultivation, processing, packaging, manufacturing or storage uses: 1 parking space for every 1,000 square feet of gross floor area of the building(s).
- 23.8.5.3 Testing or research uses: 1 parking space for every 350 square feet of gross floor area of the building(s).
- 23.8.6 Drive through facilities. On-site drive through facilities shall be prohibited for any marijuana use.
- 23.8.7 Fencing. Fencing may be required if determined necessary by the Special Permit Granting Authority. In no instance shall barbed-wire fencing be permitted.
- 23.9 Filing Requirements. Applications to permit a ME or Medical Marijuana Treatment Center must be submitted to the Zoning Board of Appeals. Such applications shall include the following:
- 23.9.1 Site Plan. A site plan shall be submitted that includes all information required per Section 14.4 and must also include the following:
- 23.9.1.1 The names, mailing addresses, phone numbers, email addresses, and signatures of the applicant, owner, and operator.
- 23.9.1.2 Physical address (if one exists), and the map, lot, and block number of the proposed site.
- 23.9.2 Security Plan. A security plan shall be submitted, to ensure the safety of employees, patrons, and the public to protect the premises from theft or other criminal activity.

The security plan shall be reviewed and approved by the local Police Chief, or their designee. The Security Plan shall include the following:

- 23.9.2.1 An interior floorplan (including secured areas, windows, doors, etc.)
- 23.9.2.2 Exterior lighting
- 23.9.2.3 Fencing (if any)
- 23.9.2.4 Gates (if any)
- 23.9.2.5 Alarms
- 23.9.2.6 Any other security measures as requested by the Police Chief.

23.9.3 Traffic Study. The Special Permit Granting Authority may require a traffic study that includes an analysis of traffic generation, circulation, and off-street parking demand to determine sufficient parking and optimum configuration for site ingress and egress.

23.9.4 Photometric Plan. A photometric plan may be required by the Special Permit Granting Authority, or their designee, before or after the marijuana use is in operation, in order to determine compliance with subsection 23.8.3.

23.9.5 State License. A copy of the license or registration as a ME from the CCC or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a Certification of Registration and meet all of the requirements of an ME in accordance with the regulations adopted by the CCC, as amended. Proof of license may also be accepted from the State Department of Health under certain circumstances for Medical Marijuana Treatment Centers.

23.9.6 Proof of Site Control. Evidence that the Applicant has site control and the right to use the site for a marijuana use in the form of a deed, valid lease, or purchase & sale agreement or a notarized statement from the property owner certifying the Applicant has firm site control.

23.10 Discontinuance of Use. Any marijuana use under this Section shall be required to remove all material, plants, equipment, and other paraphernalia in compliance with regulations established by the CCC within thirty (30) days after the expiration or voiding of its license.

23.11 No Town liability; indemnification.

23.11.1 The Applicant and all licensees waive and release the Town, its elected officials, employees, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the ME or Medical Marijuana Treatment Center owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.

23.11.2 The Applicant, in receiving approvals issued pursuant to this chapter, and all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the Town, its elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of any ME or Medical Marijuana Treatment Center that is subject of the approval/license.

23.12 Annual Inspections for MEs and Medical Marijuana Treatment Centers.

23.12.1 Any operating ME or Medical Marijuana Treatment Center within the Town shall be inspected annually by the Building Inspector, or their designee(s), to ensure compliance with this section and with any conditions imposed by the Special Permit Granting Authority as a condition of the Special Permit approval.

23.12.2 The first annual inspection shall be more than one (1) year after beginning operation, but not more two (2) years after beginning operation.

23.13 Other laws remain applicable.

23.13.1 License Required. At all times while a permit is in effect the licensee shall possess a valid License.

23.13.2 To the extent that the state has adopted or adopts in the future any additional or stricter law or regulation governing the cultivation, manufacturing, testing, research or retail of marijuana or Marijuana Products, the additional or stricter regulation shall control the ME or Medical Marijuana Treatment Center in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

23.13.3 Any ME may be required to demonstrate, upon demand by law enforcement officers of the Town of Windsor, the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

23.13.4 The issuance of any license pursuant to this chapter shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.

23.13.5 Prior to the issuance of a Special Permit, the ME or Medical Marijuana Treatment Center must have entered into a Host Community Agreement (HCA) with the Town. If, upon review by the Special Permit Granting Authority, the ME or Medical Marijuana Treatment Center is found to not be fully in compliance with the HCA, the Special Permit and/or the local license may be suspended or rescinded. The HCA shall, at a minimum, include or reference the following:

23.13.5.1 A Community Impact Fee, not to exceed 3% of gross sales, may be applied to any Marijuana Retailer, in compliance with G.L. c. 94G, § 3(d).

23.13.5.2 A description of the activities that will occur on site.

23.13.5.3 Hours of operation.

23.13.6 Independent Consultants

23.13.6.1 Due to the complex technical character of the information to be provided by an applicant pursuant to these regulations and the monitoring, testing and inspection of facilities and operations, the Special Permit Granting Authority may hire such consultants as it deems reasonably necessary to assist said authority in making determinations under this Bylaw.

23.13.6.2 In connection with any application for a Special Permit under this Bylaw, the applicant shall be required to pay fees to the Town to cover the reasonable costs of outside consultant review of such application as provided in the rules promulgated by the Board pursuant to Massachusetts General Law (M.G.L.) Chapter 44, Section 53G. Such costs may include consultant fees at reasonable market rates, covering professional and technical services required beyond the Special Permit Granting Authority's capabilities for a proper and thorough review of the application. No Special Permit or building permit shall be issued until all such costs have been paid. Such fees shall be deposited into a segregated account, and unexpended funds shall be returned to the applicant as provided in M.G.L. Chapter 44, Section 53G and any regulations adopted pursuant thereto by the Board.

23.13.6.3 The Special Permit Granting Authority's regulations regarding consultants shall provide for an administrative appeal from the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Special Permit Granting Authority shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Special Permit Granting Authority shall stand. Such an administrative appeal shall not preclude further judicial review if otherwise permitted by law, on the grounds provided for in this section.

23.13.6.4 The consultants shall work under the direction of the Special Permit Granting Authority. Copies of the consultant's findings and reports shall be made available to the applicant not less than seven (7) days prior to any meeting of said authority where the consultant's report will be considered. The applicant shall be given opportunity to respond to the report in writing and at the next meeting.

ADD THE FOLLOWING TO THE ZONING BYLAWS TABLE OF CONTENTS

Table of Contents Section	Description
23	<i>Marijuana Establishments</i>

ADD THE FOLLOWING TO THE END OF SECTION 6.3, SPECIAL PERMIT USES

(s) Marijuana Establishments (see §23)