

CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

November 12, 2019

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AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEWBURYPORT, MASSACHUSETTS RELATIVE TO RETAIL MARIJUANA ESTABLISHMENTS

Be it ordained by the City Council of the City of Newburyport that the following be changes are made to the Newburyport Zoning Code (NZO) (deletions are indicated by strikethrough):

SECTION V. - USE REGULATIONS
V-D - Table of use regulations.

8. MARIJUANA-RELATED USES															
USE	NUM	CON	HSR-A, HSR-B	R-1	R-2	R-3	B-1*	B-2	B-3	I-1	I-1B	I-2	M	WMD	WMU
Marijuana establishment (with retail sales)	801	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	SP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)	NP ^(a)
Marijuana establishment (without retail sales)	802	NP	NP	NP	NP	NP	NP	NP	NP	NP ^(b)	NP ^(b)	NP	NP	NP	NP
Medical Marijuana treatment center or registered marijuana dispensary (with retail sales)	803	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	SP ^(b)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)	NP ^(c)

^aUse 801 is limited to the marijuana retailer subtype. For further limitations see section XXXI.

V-H - Reserved.

Editor's note— An ordinance adopted Oct. 29, 2018(1), repealed § V-H, which pertained to temporary moratorium on recreational marijuana establishments and derived from an ordinance adopted June 11, 2018.

SECTION XXXI. - LICENSED MARIJUANA BUSINESSES

XXXI-A - Purposes.

The purpose of this section is to provide for the establishment of both medical and recreational marijuana businesses in the City of Newburyport in as much as:

1. Medical marijuana treatment centers (MMTCs), also known as "registered marijuana dispensaries" (RMDs), are authorized in the Commonwealth of Massachusetts pursuant to Chapter 369 of the Acts of 2012 (entitled "An Act for the Humanitarian Medical Use of Marijuana"), M.G.L. Chapter 941 (entitled "Medical Use of Marijuana") and 105 CMR 725 (entitled "Implementation of an act for the humanitarian medical use of marijuana");
2. "Marijuana establishments" for the adult, non-medical use of marijuana, are authorized in the Commonwealth of Massachusetts pursuant to Chapter 334 of the Acts of 2016, as amended by Chapter 351 of the Acts of 2016 and Chapter 55 of the Acts of 2017, as further codified in General Laws Chapter 94G (entitled "Regulation of the Use and Distribution of Marijuana Not Medically Prescribed") and regulations promulgated by the Massachusetts Cannabis Control Commission (CCC) in 935 CMR 500 (entitled "Adult Use of Marijuana");
3. The city seeks to protect the public welfare, health and safety of the residents of Newburyport;
4. These zoning regulations provide for the placement of ~~all medical and recreational~~ certain marijuana-related businesses in suitable locations; and
5. The city seeks to minimize any potential adverse impacts of medical and recreational marijuana-related businesses on adjacent properties, residential neighborhoods, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security and removal of such marijuana businesses.

XXXI-B - Definitions.

Where not expressly defined in this section or elsewhere in the Newburyport Zoning Ordinance, terms used in this section (XXXI) shall be interpreted as defined in the statutes and regulations cited in section XXXI-A § 1 and 2 above.

Commission or *CCC* means the Massachusetts Cannabis Control Commission established by M.G.L.A. c. 10, § 76, or its designee.

Department of public health or *DPH* means the Massachusetts Department of Public Health.

License means the required certificate issued by the commonwealth for a marijuana business.

Licensee means a person or entity licensed by the commonwealth to operate a marijuana business.

Marijuana business means a medical marijuana treatment center, marijuana establishment, or any combination or part thereof.

Marijuana establishment means 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, as set forth in M.G.L.A. c. 94G, § 1 and regulations promulgated thereunder.

Medical marijuana treatment center (MMTC), also known as a registered marijuana dispensary (RMD), means an entity registered under 105 CMR 725.100: Registration of registered marijuana

dispensaries, or licensed by the cannabis control commission pursuant to M.G.L.A. c. 94I, that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

XXXI-C - Special permit required.

Pursuant to M.G.L.A. c. 40A, as well as under the home-rule powers of the city pursuant to Sections 1 and 6 of Article II of the Articles of Amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article LXXXIX of said Articles of Amendment, and in order to mitigate potential secondary adverse impacts, a special permit is required for a marijuana business within the City of Newburyport.

XXXI-D - License requirements and conditions of use.

1. Marijuana businesses shall be properly licensed by the Commonwealth of Massachusetts Cannabis Control Commission (CCC) or Department of Public Health (DPH), as applicable, pursuant to regulations promulgated therefore.
2. No marijuana business shall be permitted for, or otherwise allow, on-premises social consumption.
3. No marijuana business shall be permitted to operate outside of an enclosed building or structure.
4. No marijuana business located within the Business and Industry Park zoning districts (I-1 and I-1B) shall be permitted to conduct in-person retail sales to consumers on premises. This restriction shall not be construed to prohibit the transfer or delivery of marijuana-related products to other locations where in-person retail sales of marijuana-related products are permitted.
5. The total cumulative square footage of all marijuana cultivators permitted within the Business and Industry Park zoning districts (I-1 and I-1B) shall be limited to one hundred thousand (100,000) square feet. The total number of marijuana cultivators in the Business and Industry Park zoning districts (I-1 and I-1B) shall not exceed two (2).
6. The total number of marijuana retailers permissible to be located in the city shall be limited to twenty (20) percent of the number of licenses issued within the city for the retail sale of alcoholic beverages not to be drunk on the premises where sold pursuant to M.G.L.A. c. 138 § 15. In the event that twenty (20) percent of said licenses is not a whole number, the limit shall be rounded up to the nearest whole number.

XXXI-E - Parking requirements.

Parking requirements for marijuana businesses, as those businesses are more particularly defined in M.G.L.A. c. 94G and the regulations promulgated thereunder, shall be as follows:

- "Craft marijuana cooperative": one (1) per employee plus one (1) per three hundred (300) square feet gross floor area
- "Independent testing laboratory": 0.75 per employee in maximum shift plus one (1) per company vehicle
- "Marijuana cultivator": 0.75 per employee in maximum shift plus one (1) per company vehicle

- "Marijuana establishment"; 0.75 per employee in maximum shift plus one (1) per company vehicle, unless otherwise noted
- "Marijuana product manufacturer"; 0.75 per employee in maximum shift plus one (1) per company vehicle
- "Marijuana retailer"; three (3) per one thousand (1,000) square feet of gross floor area (GFA)
- "Marijuana transporter"; 0.75 per employee in maximum shift plus one (1) per company vehicle
- "Medical marijuana treatment center"; one (1) per employee plus one (1) per three hundred (300) square feet gross floor area
- "Microbusiness"; 0.75 per employee in maximum shift plus one (1) per company vehicle
- "Research facility"; 0.75 per employee in maximum shift plus one (1) per company vehicle
- Any other marijuana business: 0.75 per employee in maximum shift plus one (1) per company vehicle

XXXI-F. - Required buffer zones and restrictions on use.

1. *Residential districts.* No marijuana business within the Business and Industry Park zoning district (I-1 and I-1B) shall be located or permitted within two hundred fifty (250) feet of any residential district. Nor shall any Marijuana Business within said district (I-1 and I-1B) be located or permitted northwest of Hale Street. Nor shall any public entrance to a marijuana business located within the Business district (B-1) be located within one hundred (100) feet of any residential district. Nor shall any marijuana business within said district (B-1) be located or permitted at a lot that has easterly frontage along State Street, nor at a lot with westerly frontage along State Street and north of number 149 State Street (Map 34, Parcel 14).
2. *Protected uses.* No marijuana business shall be located or permitted within five hundred (500) feet of any public entrance to the following uses, regardless of whether such use is enclosed within a structure or building, except that in the Business district (B-1) centered around the intersection of State Street and Route 1 (Route 1 Traffic Circle), said minimum distance shall be two hundred fifty (250) feet:
 - a. A pre-existing public or private school providing education in kindergarten or any of grades one (1) through twelve (12);
 - b. A pre-existing nursery school or daycare facility;
 - c. A pre-existing public library;
 - d. A pre-existing public park or playground;
 - e. A pre-existing municipal youth or recreation center;
 - f. A pre-existing public swimming pool; or
 - g. Any similar pre-existing facility in which children commonly congregate in an organized, ongoing, formal basis.

XXXI-G - Permitting procedure and criteria for approval.

Permit granting authority. The planning board shall act as the designated special permit granting authority (SPGA) in administering this section.

Special permit required. Marijuana businesses may be permitted only pursuant to a special permit hereunder. The planning board shall review and may deny, approve, or approve with conditions all applications hereunder in accordance with the procedures listed in section X-H.8. The SPGA shall approve a business if the SPGA determines that the proposed use meets all the requirements of this section and, in addition, the special permit criteria of section X-H.7. Application for a special permit shall be submitted to the SPGA pursuant to the submission requirements, and procedures contained in section X-H.7.

Documentation required to support an application. To support any special permit application under this section, the applicant shall provide as part of the application to the SPGA the following documentation:

1. A copy of its application, registration and/or certificate as a marijuana business from the CCC or DPH (as applicable);
2. A letter from the owner of the property on which the proposed marijuana business is to be located indicating approval of the proposed use and submission of the application to the SPGA.
3. A detailed floor plan of the premises of the proposed marijuana business that identifies the square footage available and describes the functional areas of the proposed use;
4. Detailed site plans that include the following information:
 - a. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of this ordinance;
 - b. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
 - c. Convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;
 - d. Adequacy as to the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises (and anticipated number of visitors), including designated parking for employees and home delivery vehicle(s), as applicable;
 - e. Design and appearance of proposed buildings, structures, freestanding signs, screening and landscaping; and
 - f. Adequacy of water and electrical supply, surface and subsurface drainage and site lighting.
5. A description of any proposed security measures for the marijuana business, including but not limited to security cameras and employee security policies;
6. A copy of proposed waste disposal procedures for the marijuana business;
7. A detailed description and rendering of the applicant's proposed signage to advertise the location of the marijuana business and/or services available at the proposed marijuana business.

8. A traffic impact analysis (traffic study) for the proposed use and site consistent with the requirements of section XV-E(b)(4) of this ordinance; and
9. Documentation regarding the projected use, and adequacy, of public and private utilities and infrastructure required for operation of the proposed marijuana business, including, but not limited to:
 - a. Water.
 - b. Wastewater.
 - c. Electricity.

These materials shall be in addition to those submission materials required in section X-H(7) "special permits."

Traffic and impact studies. To aid the SPGA in its review, the owner shall pay all costs for the SPGA to engage a properly licensed traffic engineer, consulting engineer or other professionals experienced in the review of traffic studies and/or community impact reports, deemed necessary in the opinion of the SPGA to ensure that the proposed marijuana business will not unduly burden the city's water and wastewater systems or result in undue traffic congestion or safety concerns in the immediate vicinity of the proposed facility and/or site. The portions of this section (and its regulations, if any) requiring the payment of consultant fees are promulgated under the concurrent authority of M.G.L.A. c. 44, § 53G.

Signage. All signage shall conform to the requirements of the Newburyport Zoning Ordinance. The SPGA may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts. Use of medical symbols, images of marijuana, related paraphernalia, and text or colloquial references to cannabis and marijuana on any signage is prohibited.

Departmental review. The SPGA shall refer copies of the application to the building department, fire department, police department, board of health, and the department of public works. These boards/departments shall review the application and shall submit their written recommendations to the SPGA. Failure to make recommendations within forty-five (45) days of referral of the application shall be deemed lack of opposition.

XXXI-H - Decision and conditions of approval.

Public hearing and decision. After notice and public hearing (in accordance with section X-H(7) and consideration of application materials, consultant reviews, public comments, and the recommendations of other city boards and departments, the SPGA may act upon such a permit.

Required findings. The SPGA may approve a marijuana business application only if it makes written findings based upon evidence in the record that the applicant has satisfied the requirements of this section and section X-H(7)(A).

Special permit conditions. The SPGA shall impose conditions upon the issuance of a marijuana business special permit reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's marijuana business, the SPGA shall include the following conditions in any special permit granted under this section:

- i. Hours of operation (if any).

- ii. The permit holder shall provide to the building inspector, director of planning and development, director of public health, fire chief and police marshal, the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
- iii. The special permit authorizing the establishment of a marijuana business shall be valid only for the specific registered person or entity to which the special permit was issued, and only for the site on which the marijuana business has been authorized by special permit. If any license for the marijuana business has been revoked or if the license is to be transferred to another controlling entity, or is to be relocated to a different site, a new special permit shall be required.
- iv. A marijuana business shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations. This provision shall not be construed to limit or prohibit the transport of marijuana and marijuana-related products in accordance with CCC regulations.
- v. 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 a marijuana business or a change in the location of the business.
- vi. In the event that the commonwealth's licensing authority suspends the license or registration of a marijuana business, the special permit shall be so suspended by the city until the matter is resolved to the satisfaction of said licensing authority.
- vii. The special permit shall be considered null and void if meaningful construction has not begun on the project within two (2) years of obtaining said permit, or such additional time extension as may be granted at the discretion of the planning board.
- viii. The permit holder shall notify the building inspector, director of planning and development, director of public health, fire chief and police marshal and the spga in writing within forty-eight (48) hours of the cessation of operation of the marijuana business or the expiration or termination of the license holder's certificate or registration with the CCC and/or DPH.
- ix. The permit holder shall at all times comply with regulations regarding marijuana businesses promulgated by the board of health.
- x. The police department, fire department, building inspector, zoning enforcement officer, director of planning and development and director of public health shall have the right to inspect the subject premises to assure compliance with the special permit.
- xi. Prohibition against nuisances: No use or operation shall be allowed at any marijuana business which creates a nuisance to abutters or to the surrounding area, or which creates 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.

Respectfully Submitted,

Councillor Larry G. Giunta, Ward 5

Councillor Thomas F. O'Brien, Ward 6

Councillor Barry N. Connell, At-Large

Larry G. Giunta Jr. Ward 5 City Councilor