

Nicholas Nanopoulos

From: Planning Board [planningboard@townofnewbury.org]
Sent: Monday, March 18, 2019 1:11 PM
To: Nicholas Nanopoulos
Cc: Administrative Assistant
Subject: RE: CANNABIS OVERSIGHT

FROM:
NICK N
LICENSING
BOARD
5/14/19

Hi Nick,

In Newbury, Marijuana Establishments must obtain a Special Permit from the Planning Board and a license from the Board of Selectmen. Please see links below to the relevant sections of our By-Law.

<https://www.ecode360.com/33292868> and <https://www.ecode360.com/15570458> , Section H. Marijuana Establishments.

At spring Town Meeting in April, we will be proposing revisions to the provisions of our Marijuana Establishments By-Law regarding zoning districts in which they can be located and regarding buffer zones – we found that the parameters we set when the by-law was drafted and adopted last year were actually more restrictive than we intended.

If you have any questions, please don't hesitate to call or email.

Best,

Martha

Martha L. Taylor, AIA

Town Planner

Town of Newbury

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From: Nicholas Nanopoulos [<mailto:NNanopoulos@newbedford-ma.gov>]

Sent: Thursday, March 14, 2019 12:06 PM

To: Nicholas Nanopoulos

Cc: Mikaela A. McDermott

Subject: RE: CANNABIS OVERSIGHT

Importance: High

All-

If I could have a moment of your time to consider the following request, It would be greatly appreciated.

The New Bedford City Council is considering an ordinance that would vest the authority for licensing marijuana establishments in the Licensing Board. I am wondering whether any other cities or towns have ordinances or bylaws giving the Licensing Board the authority to license marijuana establishments, and if so, whether they would be willing to share them with New Bedford.

Chapter 78 Marijuana

HISTORY: Adopted by the Annual Town Meeting of the Town of Newbury 4-24-2018 by Art. 18. Amendments noted where applicable.]

§ 78-1 Marijuana license required.

- a. No person shall carry on the business cultivate,^[1] process, package, deliver, obtain, manufacture, process, package, brand, sell or otherwise transfer, or test marijuana or marijuana products, or otherwise operate a Marijuana Establishment as defined by Massachusetts General Laws Chapter 94G within the Town unless first duly licensed thereof by the Board of Selectmen, which license must be reviewed and renewed on an annual basis.

[1] Editor's Note: So in original.

§ 78-2 Limitation on number of licenses issued.

- a. The number of Marijuana Retail Licenses issued in the Town of Newbury shall be limited to twenty (20%) percent of licenses issued in the Town of Newbury for retail sale of alcoholic beverages not to be drunk on the premises where sold, which shall be calculated by rounding up to the next whole number.

§ 78-3 Regulations.

- a. The Board may adopt reasonable rules and regulations related to the issuance of such licenses, including the fees to be paid therefor^[1] and the conditions to be satisfied by any applicant for such a license.

[1] Editor's Note: So in original.

§ 78-4 Applications.

Applicants for a license shall file an application on a form 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.

§ 78-5 Hearing.

- a. The Board of Selectmen must act upon the application at one of their next two regularly scheduled meetings with due written notice provided to the applicant of the time, date and location where such appeal will be heard.

§ 78-6 Decision.

- a. The Board of Selectmen may approve, deny or approve the application with conditions. Such 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, and consistent with the regulations promulgated by such board.

§ 78-7 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 not more than \$100.00. Any failure to comply after the issuance of said initial fine may be punishable by a subsequent fine of up to \$300.00. Each day of continued non-compliance 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.

§ 78-8 Nonpayment of taxes.

a.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party or agent thereof whose name appears on said list furnished to the licensing authority from the Town Collector of individuals delinquent on their taxes and/or water bills. Written notice must be given to the party by the Tax Collector, as required by applicable provision of law, and the party must be given the opportunity for a hearing not earlier than 14 days after said notice.

- b. See Chapter 76 of this Code for specific language on the effect of nonpayment of taxes.

§ 78-9 Authority.

- a. Home Rule Amendment [Art. 89 of the Amendments to the Massachusetts Constitution]; Massachusetts General Laws, Chapter 94G § 3, 935 CMR 500.000.

Prohibition against Nuisances: The RMD 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.

- (10) **Conflicts with State Law and Regulations:** If any provision, paragraph, sentence, or clause of this By-Law shall be determined to be in conflict with applicable State Law or Regulations, the provisions of said State Law or Regulations shall prevail.
- (11) **Severability:** The provisions of this By-Law are severable. If any provision, paragraph, sentence, or clause of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-Law.

H. Marijuana Establishments:

[Added 4-24-2018 ATM, Art. 19]

(1) Purpose:

- (a) To provide a permitting process for the placement of Marijuana Establishments, in accordance with the Regulation and Taxation of Marijuana Act, as amended, and as codified in G.L. c.94G, § 1, et seq. (hereinafter G.L. c. 94G), and the Cannabis Control Commission (hereinafter CCC) Regulations promulgated thereunder, 935 CMR 500.000, as the same may be amended from time-to-time, in locations suitable for lawful Marijuana Establishments;
- (b) To minimize and mitigate adverse impacts of Marijuana Establishments on adjacent properties, public ways, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate, and other land uses potentially incompatible with said facilities, by regulating the siting, design, and placement of Marijuana Establishments.

(2) Definitions:

(a) Definition of Marijuana and Marijuana Establishments:

Craft Marijuana Cultivator Cooperative is 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 Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana or Marihuana is 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; provided that "Marijuana" shall not include:

- 01) 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;
- 02) Hemp; or
- 03) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Cultivator is an entity licensed to cultivate, process, and package marijuana, to deliver marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers, as defined in G.L. c. 94G.

Marijuana Establishment is considered a cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, all as defined in G.L. c. 94G. Said Marijuana Establishment shall be deemed independent of any other definition in this by-law and not a subset or subcategory of any other category. Said Marijuana Establishment may never be considered an accessory use.

Marijuana Product Manufacturer is 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, as defined in G.L. c. 94G.

Marijuana Products are 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, as defined in G.L. c. 94G.

Marijuana Retailer is 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, as defined in G.L. c. 94G, further provided that a Marijuana Retailer may not be considered a Retail Business in any other context.

Marijuana Testing Facility is an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants, as defined in G.L. c. 94G.

- (b) Definition of other terms used in this section: Where not expressly defined in the Code of the Town of Newbury, Chapter 97, Zoning, terms used in this Section shall be interpreted as defined in The Regulation and Taxation Of Marijuana Act, as amended, and as codified in G.L. c.94G, and the CCC Regulations promulgated thereunder, 935 CMR 500.000, et seq., as the same may be amended from time-to-time, and otherwise by their plain language.

(3) General Requirements:

- (a) A Special Permit shall be required for the establishment of a Marijuana Establishment. For the purposes of this Section, the Special Permit Granting Authority (SPGA) shall be the Planning Board.
- (b) All permitted Marijuana Establishments shall have received a provisional license from the CCC and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. Failure to obtain a final license from the CCC shall result in automatic rescission of the special permit as more fully described in 7(e) below. No Building Permit or Certificate of Occupancy shall be issued for a Marijuana Establishment that has not received a provisional license from the CCC.
- (c) The Special Permit shall be valid only for the Applicant(s) (hereinafter Applicant), shall become invalid if the Applicant ceases operating the licensed Marijuana Establishment, and shall not transfer with a change in ownership of the business and/or property.
- (d) The Special Permit shall become invalid if the Applicant fails to obtain a final license from the CCC or upon the expiration or termination of the Marijuana Establishment's CCC license.
- (e) Parking and loading for a Marijuana Establishment shall be in accordance with § 97-7. Off Street Parking, Access, and Loading of Newbury's Zoning By-Law. However, the SPGA may require a greater number of parking spaces and/or loading bays if it finds, based on the application materials submitted to the SPGA regarding operation of the Marijuana Establishment, that the minimum requirements are not sufficient.
- (f) All signage shall conform to the requirements of § 97-8. Sign Regulations of Newbury's Zoning By-Law. Any exterior sign may identify the Establishment, but shall not contain any other advertisement. The SPGA may impose additional restrictions on signage as appropriate for the site, provided such regulations and restrictions do not conflict with state law or any CCC regulation.
- (g) All Marijuana Establishments shall operate within a fully enclosed building that is monitored by surveillance cameras, alarm systems, and all other security measures in accordance with CCC Regulations deemed appropriate to ensure patron and community safety and deter unauthorized access to the premises.
- (h) No products shall be displayed in the Marijuana Establishment's windows or visible from any street or parking lot.
- (i) Industry Best Management Practices shall be utilized to control odors inside and outside all types of Marijuana Establishments. No odors from marijuana or its processing shall be detectable by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining property or use.
- (j) Waste disposal shall be in accordance with the CCC Regulations and State and local regulations. No composting of waste materials may occur at the Marijuana Establishment. Outside storage of general solid waste not containing any usable marijuana shall be screened with a locked fence. Solid waste containing any usable marijuana shall be stored inside a

designated locked, limited-access area located inside the main structure. Liquid waste from processing or disposal of marijuana shall not be discharged to surface waters or groundwater or septic systems. Liquid waste must be stored pending disposal in an industrial wastewater holding tank in accordance with 314 CMR 18.00: Industrial Wastewater Holding Tanks and Containers.

(4) Location:

- (a)** The Zoning Districts in which Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, Marijuana Product Manufacturers, and Marijuana Testing Facilities may be located are the Business & Light Industrial District and the Commercial Highway District, excluding that area of the Commercial Highway District at the Northwestern Junction of the right-of-way of I-95 and Central Street.
- (b)** The Zoning District in which Marijuana Retailers may be located is the Business & Light Industrial District.
- (c)** No Marijuana Retailer may be located within 1,000 feet of the real property comprising any of the following:
 - 01)** A public or private school;
 - 02)** Daycare center; or
 - 03)** A similar facility in which minors commonly congregate (e.g. library, playground, etc.).
- (d)** No Craft Marijuana Cultivator Cooperatives, Marijuana Cultivators, Marijuana Product Manufacturers, and Marijuana Testing Facilities may be located within 500 feet of the real property comprising any of the following:
 - 01)** A public or private school;
 - 02)** Daycare center; or
 - 03)** A similar facility in which minors commonly congregate (e.g. library, playground, etc.).
- (e)** No Marijuana Establishment may be located within 300 feet of the real property comprising a residence.
- (f)** The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Section (4)(c), (4)(d), or (4)(e) above to the nearest point of the property line of the proposed Marijuana Establishment.

(5) Application Process and Requirements:

- (a)** Application Procedures: The application for a Special Permit for a Marijuana Establishment shall be filed at a regularly scheduled Planning Board meeting and with the Town Clerk in accordance with § 97-11.C.(1) of Newbury's Zoning By- Law and with G.L. c. 40A § 9. The application shall be signed by a duly authorized officer of the Applicant.
- (b)** Required Documents: The Applicant shall provide the SPGA with 15 copies of the application and the required fees. All plans and maps shall be prepared, stamped, and signed by a professional engineer or architect licensed to practice in Massachusetts. An application to the SPGA shall include, at a minimum, the following information:
 - 01)** The Applicant's name, address, telephone number, and email address;
 - 02)** 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;
 - 03)** A certified copy of the provisional license issued by the CCC to the Applicant, along with copies of all other materials issued by the CCC to the Applicant, except for those materials that are deemed by the CCC to be confidential and therefore subject to the public records exemption;
 - 04)** A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to, cultivating and processing of marijuana or marijuana products as defined in G.L. c. 94G, § 1, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities;

- 05) A map depicting all properties and land uses within a one thousand-foot (1,000') radius (minimum) of the project site, whether such uses are located in Newbury or within surrounding communities, including, but not limited to, all educational uses, daycare, preschool and afterschool programs, playgrounds, libraries, public parks, houses of worship, and housing facilities owned by a public housing authority;
 - 06) A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of parking, the location of pedestrian and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type, and direction of all outdoor lighting on the site, and any landscape design;
 - 07) A plan or plans showing any proposed stormwater management system, which plan(s) shall meet the submission requirements of Newbury's Stormwater Management Rules and Regulations;
 - 08) Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are strongly recommended, but not required;
 - 09) A written Energy Use/Environmental Plan demonstrating best practices for energy conservation to ensure that there are no undue impacts on the natural environment; the plan shall include proposed energy and water conservation measures, including use of energy efficient lighting where appropriate, measures for controlling odors and effluent, and measures for disposal of solid waste.
 - 10) Traffic Impact Report;
 - 11) A Security Plan, to be submitted to the Newbury Police Department only, including all security measures for the site and for transportation of marijuana and marijuana products to and from off-site premises. The Security Plan shall include a site plan 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;
 - 12) A description of waivers, if any, from the CCC Regulations issued for the Marijuana Establishment.
- (c) Within five business days of the receipt of the application, the SPGA shall refer copies of the application to the Building Commissioner, the Conservation Commission, the Board of Health, the Fire Department, and the Police Department. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 30 days of referral of the application shall be deemed lack of opposition.
 - (d) After notice and public hearing and consideration of application materials, public comments, and the recommendations of other Town boards and departments, the SPGA shall act upon the application.
- (6) Decision Criteria: The SPGA shall issue a special permit for a Marijuana Establishment only if it finds that the Applicant has submitted sufficient information from which it can conclude that:
 - (a) The Marijuana Establishment has received a provisional license CCC as required in (3)(b) above and complies with all applicable state and local laws, regulations, and requirements, including, but not limited to, health and safety regulations, and construction and environmental requirements;
 - (b) The building and site have been designed to be reasonably compatible with other buildings in the area;
 - (c) The siting of the Marijuana Establishment will be accomplished so as to minimize any adverse impacts on abutters and other parties in interest, as defined in G.L. c. 40A, § 11, including but not limited to compliance with the following:
 - 01) proper location in accordance with the distance and location requirements in § 97-5.H (4) above
 - 02) design which ensures sufficient buffering, except to the extent that any part of such buffering is contrary to state law and the CCC Regulations;
 - 03) design which minimizes visual impacts, noise, odors, and light pollution or other undue nuisance;
 - 04) design which creates no hazard or congestion;

- 05) design which shields loading and service areas;
 - 06) design which ensures adequate waste disposal of products containing usable marijuana that does not adversely impact the environment or water resources.
- (d) The Marijuana Establishment will create no substantial harm to the established or future character of the neighborhood or town.
- (e) With due consideration to aesthetics, the Marijuana Establishment is designed to ensure convenient, safe and secure access as follows:
- 01) personal safety of those working at or utilizing the facility;
 - 02) personal safety for clients and invitees; and
 - 03) loading and service areas are designed to be secure;
 - 04) protection of the premises from theft.
- (f) The Applicant has not provided materially false documents or testimony.
- (g) The Applicant has satisfied all of the conditions and requirements of Newbury's Zoning By-Law.
- (7) Special Permit Conditions: The SPGA shall impose conditions reasonably appropriate to improve siting, design, placement, traffic flow, and 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 By-Law. In addition to any specific conditions applicable to the Marijuana Establishment, the SPGA shall include the following conditions in any special permit granted under this By-Law:
- (a) Within 24 hours of creating an Incident Report required by the CCC Regulations, the permit holder shall file a copy of said Incident Report with the Board of Selectmen, with copies to the Zoning Enforcement Officer and the SPGA. Such reports may be redacted as necessary to comply with any and all applicable laws and regulations;
 - (b) 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;
 - (c) 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 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;
 - (d) The Special Permit shall be limited to the current Applicant, shall become invalid if the permit holder ceases operating the Marijuana Establishment, and shall not transfer with a change in ownership of the business and/or property;
 - (e) The Special Permit shall become invalid upon the expiration or termination of the Applicant's CCC license or the failure of the Applicant to receive a final license from the CCC;
 - (f) The permit holder shall notify the Board of Selectmen in writing, with copies to the Zoning Enforcement Officer, the Police Department, and the SPGA, within 48 hours of the cessation of operation of the Marijuana Establishment, notice by the CCC of denial of a final license, or the expiration or termination of the permit holder's CCC license;
 - (g) In the event that the CCC revokes, fails or refuses to issue a final license to the Marijuana Establishment, a Special Permit issued by the Town for the Marijuana Establishment shall be deemed null and void;
- (8) Prohibition against Nuisances: 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.

- (9) Conflicts with State Law and Regulations: If any provision, paragraph, sentence, or clause of this By-Law shall be determined to be in conflict with applicable State Law or Regulations, the provisions of said State Law or Regulations shall prevail.
- (10) Severability: The provisions of this By-Law are severable. If any provision, paragraph, sentence, or clause of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-Law.