

**A REGULATION TO ENSURE SAFE ACCESS TO MEDICAL MARIJUANA
IN THE CITY OF BOSTON**

Whereas, Massachusetts voters approved the legal cultivation, processing, distribution, sale and use of marijuana for medical purposes through Chapter 369 of the Acts of 2012, An Act for the Humanitarian Medical Use of Marijuana; and

Whereas, nothing in that Act or its implementing regulations at 105 CMR 725 supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes; and

Whereas; the prevention of the illegal sale and use of marijuana, particularly by the city’s youth, is a public health priority; and

Whereas; Registered Marijuana Dispensaries and similar clinics in other jurisdictions have been found to present unique and challenging threats to public health and safety; and

Whereas, the state regulation at 105 CMR 725.600 allows for lawful local oversight and regulation, including fee requirements; and

Whereas, reasonable and effective local oversight of the cultivation, processing, distribution, sale and use of marijuana for medical purposes is needed to protect community health and safety while ensuring legitimate patient access;

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Boston residents, particularly the most vulnerable, and pursuant to the authority granted to it under M.G.L. c 111 § 31, the Board of Health enacts a Regulation to Ensure Safe Access to Medical Marijuana in the City of Boston as follows:

I. GUIDELINES

1. The Boston Public Health Commission (“Commission”) may issue guidelines for the implementation of these regulations, including but not limited to definitions of terms used in these regulations and in the guidelines. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulations shall control.

II. PERMITTING

1. Any proposed Registered Marijuana Dispensary (“RMD”) shall obtain an Operating Permit in the form and manner prescribed by the Office of Environmental Health of Boston Public Health Commission, as may be further set forth in the Guidelines.
2. In order to support execution of responsibilities set forth in this regulation, an annual Operating Permit fee shall be assessed in an amount that shall be set by the Boston Public

Health Commission's Executive Director ("Executive Director") and may be amended at the discretion of the Executive Director.

3. The RMD operator shall post the Operating Permit in a clear and conspicuous manner.
4. No Dispensary Agent shall sell or otherwise distribute marijuana or marijuana products within the city of Boston without first obtaining a Dispensary Agent Permit issued annually by the Commission. For purposes of this regulation, Dispensary Agent will include board member, director, employee, executive, manager, or volunteer of a Registered Marijuana Dispensary, who is at least 21 years of age and who has received approval from the state under 105 CMR 725.030. Employee includes a consultant or contractor who provides on-site services to a Registered Marijuana Dispensary related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of marijuana.
5. As part of the Permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation.
6. Each applicant is required to provide proof by means of a valid government-issued photographic identification containing the bearer's date of birth that the applicant is 21 years old or older.
7. Each applicant is required to provide proof of a current Dispensary Agent registration, issued by the Commonwealth of Massachusetts, before a Permit can be issued.
8. In order to support execution of responsibilities set forth in this regulation, a Dispensary Agent Permit fee shall be assessed in an amount that shall be set by the Executive Director and may be amended at the discretion of the Executive Director.
9. All Dispensary Agent and Operating Permits expire annually on December 31st and shall be valid for a maximum term of one year, renewable annually on January 1st.
10. No permit issued under this regulation may be transferred to any other person or entity.

III. REQUIREMENTS AND PROHIBITIONS

1. The cultivation, processing, distribution, sale and use of marijuana for medical purposes shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not be limited to compliance with Food Service Health Permit requirements, Weights and Measures requirements, Regulations for the Control of Noise in the City of Boston, Public Nuisance Properties Ordinance, Clean Air Works Workplace Smoking and E-Cigarette Regulation, and any and all requirements associated with zoning and permitting.
2. In no instance shall an Operating Permit be issued to any RMD that is within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.
3. The cultivation, processing, distribution, or sale of marijuana for medical purposes shall not exempt any person or entity from complying with all state and local laws, ordinances,

regulation and policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this Regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.

4. The issuance of an Operating Permit under this regulation shall be conditioned on Registration approval by the Massachusetts Department of Public Health as required by state law and regulation. Any revocation of an RMD's state registration shall result in an automatic suspension of that RMD's Operating Permit.
5. RMDs shall submit a security plan for review to the Boston Public Health Commission detailing all security measures taken to ensure patient and community safety and eliminate unauthorized access to the premises. The Boston Public Health Commission may issue guidelines or other procedure setting forth specific security requirements. Unless specified by any other state or local requirement or agreement as to the hours of operation of a RMD, the Executive Director, in consultation with Boston Police Department, City of Boston Inspectional Services Department, neighborhood associations, community organizations and residents, may set limitations on the hours of operation of any RMD.
6. Each RMD must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the RMD's operating practices, policies and plans.
7. RMDs must offer a secure patient or personal caregiver home delivery system that serves every address within Boston's city limits and provides patient or personal caregiver home delivery service to any patient or personal caregiver residing in the city of Boston who suffers a physical incapacity to access transportation as described by 105 CMR 725.035(A)(2).
8. A RMD shall submit a plan for review to the Boston Public Health Commission detailing its plans to provide reduced cost or free marijuana to patients with documented verified financial hardship as required by 105 CMR 725.100(A)(6). If said plan is deemed insufficient to ensure adequate patient access, no Operating Permit shall be issued.
9. The Executive Director may set further limitations on signage and advertising of RMDs, and may require the distribution of educational materials. Signage limitations may include, but need not be limited to those set forth in 105 CMR 725(105)(L), including restrictions on the use of images related to marijuana or marijuana paraphernalia, size and visibility of marijuana displays from outside a RMD. Educational materials to be distributed may include a "patients' bill of rights" along with information on addiction and treatment resources.
10. A RMD may not sell any products other than marijuana. For purposes of this subsection, "marijuana" may include Marijuana Infused Products, marijuana seeds, and other products that facilitate the use of marijuana for medical purposes, such as vaporizers.

RMDs may not sell any tobacco product, or other nicotine delivery product, including e-cigarette cartridges or liquids that contain nicotine.

11. RMDs shall submit data and reports to the Boston Public Health Commission in a form and manner determined by the Executive Director.
12. The issuance or renewal of an Operating Permit may be conditioned up the approval of any plan or compliance with this Regulation or any guideline or requirement issued under the authority of this Regulation.
13. Issuance and maintaining a Dispensary Agent Permit shall be conditioned on an applicant's ongoing compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
14. A Dispensary Agent Permit will not be renewed if the Permit Holder has failed to comply with any corrective action plan and/or has not satisfied any outstanding Permit suspensions.
15. Dispensary Agents must present their state Registration Card and Dispensary Agent Permit to any law enforcement official or municipal agent who questions the agent concerning their marijuana-related activities.
16. Inhaling, exhaling, burning or carrying any lighted or vaporized substance in any manner or form, including marijuana used for medical or any other purpose in a workplace shall constitute a violation of this regulation and shall be subject to the fines and penalties stated in the Clean Air Works Workplace Smoking and E-Cigarette Use Regulation.

IV. ENFORCEMENT AND PENALTIES

1. Authority to inspect RMDs for compliance and to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or designees, the City of Boston Inspectional Services Department, and the Boston Police Department.
2. Any person may register a complaint under this Regulation to initiate an investigation and enforcement with the Boston Public Health Commission, its subsidiary programs or designees. Unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.
3. Any fines or fees collected under this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to the regulation of medical marijuana.
4. It shall be the responsibility of the RMD Occupancy Permit holder and/or individual in charge of the RMD to ensure compliance with all applicable sections of this regulation. Any RMD found to be in violation of any of the provisions of these regulations may receive a written warning citation, Operating Permit suspension, Dispensary Agent Permit suspension, Operating Permit revocation, or Dispensary Agent revocation. For any violation, the Commission or its designee may order the RMD permit holder appear for a hearing and/or enter into a corrective action plan to address any and all violations and prevent future violations.

5. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Boston Public Health Commission or a City of Boston department or agency from suspending or revoking any license or permit issued by and within the jurisdiction of such department or agency for repeated or egregious violations of this regulation.
6. Boston Public Health Commission may file a complaint in any court of competent jurisdiction and/or pursue any other remedy as warranted by law to enforce the provisions of this regulation.

V. APPEALS

1. Any RMD Operating Permit holder, Dispensary Agent, or any person or entity charged with violation of any provision of this regulation shall receive a citation from a designated agent of the Commission. Such citation and any subsequent hearing notification shall be deemed a Notice of Action within the meaning of 801 CMR 1.02(6).
2. Unless waived, the Commission shall conduct an Administrative Hearing before a designated hearing officer and in accordance with procedures approved by the Commission's Executive Director, to determine the facts of the violation, the appropriate corrective action measures, term of suspension, if any, and/or issue a permit revocation order.
3. Any RMD Operating Permit holder, Dispensary Agent, or any person or entity cited for violation of this regulation wishes to appeal the findings or rulings of the Hearing Officer he/she shall file a written appeal, and any supporting memoranda and documents, within twenty-one (21) days of the date the Hearing Officer's decision is issued. The Commission shall file any response to the appeal within fifteen (15) days of the date of receipt of the appeal is filed.
4. The Commission's Executive Director or his/her designee shall review the appeal and may hear oral argument. The Executive Director or his/her designee shall make a written finding and recommendation. The Executive Director's decision shall be the final decision of the Commission.
5. Failure to comply with any corrective action plan, suspension or revocation, shall result in automatic suspension of the permit.

VI. RETALIATION

1. No person, retailer, or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

VII. SEVERABILITY

1. If any provision, clause, sentence, paragraph or word of this Regulation or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provisions or application and to this end the provisions of this Regulation are declared severable.

VIII. EFFECTIVE DATE

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

AUTHORITY

M.G.L. c. 111, 31; M.G.L. c. 111, App. §§2-1, 2-3, 2-6(b) and 2-6(j), 2-7(a)(1) and 2-7(a)(15).