

**GUIDELINES FOR THE IMPLEMENTATION AND ENFORCEMENT OF BOSTON
PUBLIC HEALTH COMMISSION’S REGULATION TO ENSURE SAFE ACCESS TO
MEDICAL MARIJUANA IN THE CITY OF BOSTON**

APPROVED:

Barbara Ferrer

Barbara Ferrer
Executive Director
Date: _____

I. GUIDELINES

1. The Boston Public Health Commission (“Commission”) is authorized to issue guidelines for the implementation of Medical Marijuana Regulations promulgated on November 19, 2013. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulations shall control.

II. PERMITTING

A. Operating Permit

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.
 - a. Until further notice, the annual permit fee shall be \$10,000. This fee shall not be refunded in the event that an Operating Permit is not issued or is revoked in accordance with this regulation.
3. Upon submission of a complete Operating Permit application, the Commission or its subsidiary programs or designees shall conduct an inspection of the proposed RMD. An Operating Permit will only be issued upon a satisfactory inspection.
4. The RMD operator shall post the Operating Permit in a clear and conspicuous manner.
5. Each applicant is required to sign a statement declaring that the applicant has read said regulation.

B. Dispensary Agent Permit

1. 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 the 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.

- a. An RMD may apply for a Dispensary Agent permit on behalf of its agents.
 - b. Submission of a copy of a Dispensary Agent Permit Application submitted to the Massachusetts Department of Public Health shall be deemed sufficient to meet the Dispensary Agent Permit application requirements.
2. Each applicant is required to provide proof of a current Dispensary Agent registration, issued by the Commonwealth of Massachusetts.
 3. Each Dispensary Agent Permit 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.
 4. Each applicant is required to sign a statement declaring that s/he has read the regulation and agrees to abide by its provisions, the provisions of guidelines as may be amended, and all other applicable laws.
 5. 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.
 - a. Until further notice, the annual Dispensary Agent Permit fee shall be \$500 per Agent. This fee shall not be refunded in the event that a Dispensary Agent Permit is not issued or is revoked in accordance with this regulation.

C. General

1. 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.
2. No Dispensary Agent or Operating Permits issued under this regulation may be transferred to any other person or entity.
3. The issuance or renewal of any Dispensary Agent and Operating Permit under this regulation may be conditioned upon the approval of any plan or compliance with this Regulation or any guideline or requirement issued under the authority of this Regulation. Any permit may be revoked for failure to comply with this Regulation or any guideline or requirement issued under the authority of this Regulation.

III. REQUIREMENTS AND PROHIBITIONS

Legal Compliance:

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, Trans Fat Regulation, and any and all requirements associated with zoning and permitting.

- a. Applicants must have a Certificate of Occupancy issued by Boston's Inspectional Services Department. Because RMDs are either a forbidden use or a conditional use under the Boston Zoning Code, all RMD applications will be referred to the Zoning Board of Appeal. No Operating Permit shall become effective until a Certificate of Occupancy is presented to the Commission.
2. A complete list of all other required permits and approvals will be included in the application and is incorporated by reference to these Guidelines.
3. 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.
 - a. In the event that any of these listed uses come into existence within 500 feet of a RMD after that RMD is permitted, there will be a presumption that the RMD shall continue to exist.
4. 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 penalties described herein. Nothing in this Regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.
5. 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.
 - a. All RMDs shall inform as soon as possible the Commission if their state registration is revoked, if a renewal application is denied, or if it is subject to any pending administrative process or legal action at the federal, state, or level of any kind, including any proceeding that may result in the revocation of the RMD's state registration.
 - b. All RMDs shall notify the Commission if any Dispensary Agent's state dispensary agent registration is revoked, if a renewal application is denied, or if they are subject to any pending administrative process or legal action at the federal, state, or level that may result in the revocation of the RMDs state registration.
 - c. In the event that a RMD is required to cease operations for any reason, the RMD shall promptly wind down business operations in a manner that protects community safety and patient access. This shall include moving all inventories to a secure off-site location as soon as possible, and in no event later than 14 days after business operations are ceased, and notifying all current patients and personal caregivers as soon as possible. In the period between the cessation of business operations and the relocation of all inventories, a 24-hour security presence shall be maintained at the RMD site.

Security Plan, Hours of Operation:

6. 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 procedures 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, and City of Boston Inspectional Services Department may set limitations on the hours of operation of any RMD.

- a. The Executive Director, in consultation with the Boston Police Department, shall review all security plans and may set further operational requirements in order to address specific issues presented by the operation of an RMD in light of abutting uses and other local circumstances affecting client safety and risk of theft.
- b. Conditions relating to hours of operation and enhanced security measures shall include, but not be limited to lighting, alarms, fencing, gates, delivery procedures, and security details. The review of security plans may take into account the specific features surrounding the site.
- c. In the absence of any other limitation set through this permitting process or any other requirement, in no event may an RMD be open for business between the hours of 8:00pm and 7:00am.

Community Relations:

7. 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.
 - a. Community meetings held by RMDs shall be advertised through direct mail or other written communication to all abutters, neighborhood associations, the Boston Public Health Commission and the Mayor's Office. A notice of the same shall be advertised in the local community newspaper.
 - b. A report outlining the number of attendees, a summary of comments received, and proposed responses and plans to address comments shall be submitted to the Commission prior to submitting annual permit renewal.

Consumer accessibility and affordability:

8. 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), or any patient or personal caregiver residing in the city of Boston who requests delivery due to any other circumstance that prevents them from physically accessing a RMD.
 - a. No RMD shall refuse delivery to a certified patient or personal caregiver who resides within Boston's city limits and meets the description stated above.
9. 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.

- a. Verified financial hardship means that an individual is a recipient of MassHealth, or Supplemental Security Income, or the individual's income does not exceed 300% of the federal poverty level, adjusted for family size.
- b. A certification of verification of financial hardship in the form and manner determined by the Massachusetts Department of Public Health shall be presented to the RMD to verify eligibility.
- c. In determining the adequacy of a plan for providing reduced cost or free marijuana to patients with documented financial hardship, the Boston Public Health Commission may consider the extent to which the plan adequately ensures access as well as any potential effect on the price of marijuana sold outside of the medical marijuana system. The Boston Public Health Commission may issue further guidance describing preferred policies and procedures for the provision of marijuana to registered qualifying patients with verified financial hardship, hardship income levels and preferred reduced pricing level. Any such guidance is incorporated to these guidelines by reference.

Signage:

10. 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.

Required signage in a form issued by the Commission may include, but not limited to: notice of this Regulation; contact information for consumer complaints; language describing the requirement that a registration card is required to enter the establishment; no smoking language; and language restating that diversion of medical marijuana is a crime punishable under state and federal law.

Other restrictions:

11. 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.
12. 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.

Data Reporting:

13. RMDs shall submit data and reports to the Boston Public Health Commission in a form and manner determined by the Executive Director.
 - a. Upon application for any permit, all application materials submitted to the Massachusetts Department of Public Health shall be submitted to the Boston Public Health Commission.
 - b. The applicant shall disclose the source or sources of the funds in its control as required by 105 CMR 725.100(B)(1)(b). Such disclosure shall be made by attaching to the application certified copies of contracts, notes, promissory notes, mortgages which provide the source of the funding.
 - c. Prior to application for a renewal permit, an annual report must be submitted that contains detailed information about the population served, including racial, demographic, and geographical distribution of patients to the fullest extent that does not disclose protected health information.
 - d. Additional information may be required by the Commission. RMD staff shall comply with all requests for information.

IV. ENFORCEMENT AND PENALTIES

1. Issuance and maintaining a Dispensary Agent Permit or Operating Permit shall be conditioned on an applicant's ongoing compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
2. 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.
3. Authority to inspect RMDs for compliance and to enforce this regulation shall be held by the Commission, its subsidiary programs or designees, the City of Boston Inspectional Services Department, and the Boston Police Department.
4. 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.
5. 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.
6. 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 notice of violation, 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.
7. 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.
8. 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.

9. 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. Upon the determination that an application for a Dispensary Agent Permit or Operating Permit does not meet the criteria set forth in the regulation or is otherwise unacceptable, the BPHC will immediately notify the applicant and provide a written denial setting forth the particular reasons for the denial.
 - a. Upon receipt of the denial, the applicant shall have ten (10) days to correct the deficiencies in the application or file an appeal of the denial.
2. All appeals of any determination that an application for a Dispensary Agent Permit or Operating Permit does not meet the criteria set forth in the regulation or is otherwise unacceptable shall be filed with the Executive Director. Upon receipt of an appeal the Executive Director, the Executive Director shall appoint a hearing officer to conduct an investigation into the application. The hearing officer may conduct a hearing and take statements as may be necessary. The hearing officer may certify a technical issue for review and opinion from a panel of relevant City agencies and other individuals or organizations with relevant expertise. During the appeal process the hearing officer may, upon application by the entity, issue a provisional permit for operations not affected by the issues on appeal. Upon completion of the investigation, the hearing officer shall issue a finding of facts and recommendations to the Executive Director.
 - a. The decision of the Executive Director shall be the decision of the Boston Public Health Commission.
3. 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).
4. 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.
5. 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.
6. 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.

7. 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. These guidelines shall take effect immediately upon signature by the Executive Director.

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), *A Regulation to Ensure Safe Access to Medical Marijuana in the City of Boston*.