

**Worcester Board of Health Regulation to Ensure Safe Access to Medical
Marijuana Dispensaries**

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 Humanitarian Medical Use of Marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, especially to youth, is a public health priority; 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; and

Whereas, local oversight is necessary to enable the city to further regulate, improve compliance, deter illegal sales, and eliminate illegal use of marijuana by non-approved persons;

Now Therefore, to preserve, promote and protect the well-being of residents of the City of Worcester, and pursuant to the authority granted to it under G.L. c. 111, § 31, the Board of Health hereby enacts a Regulation to Ensure Safe Access To Medical Marijuana Dispensaries in the city of Worcester as follows:

(a) **Guidelines.** The Division of Public Health, the Worcester Police Department, the Worcester Fire Department, the Department of Inspectional Services, or any other department involved in regulating Registered Marijuana Dispensaries may issue guidelines for the implementation of this regulation.

(b) **Definitions.** The following words and phrases, when used in this regulation, shall have the following meanings:

Board of Health (the Board) – Established pursuant to Article 10, § 14, of the Revised Ordinances of the City of Worcester and G.L. c. 111, § 31, the Board of Health shall have the authority to promulgate guidelines and regulations concerning the medical activities of the division of public health.

Card Holder - Any registered Qualifying Patient, Personal Caregiver, or a Dispensary Agent of a Registered Marijuana Dispensary who has been issued and possesses a valid Registration Card.

Commissioner – The department head of the Health and Human Services Department of the City of Worcester, under which the Division of Public Health falls.

Dispensary Agent – A 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.

Hardship Cultivation Registration – A registration issued to a registered Qualifying Patient under the requirements of 105 CMR 725.035.

License to Operate a Registered Marijuana Dispensary (Operating License or License – A license issued by the City of Worcester Board of Health, to be renewed annually, that permits a Registered Marijuana Dispensary to operate.

License Holder – Any person or entity engaged in the sale of marijuana who applies for and receives a License or any person who is required to apply for a License pursuant to this regulation, or his or her business agent.

Marijuana – All parts of the plant *Cannabis sativa* L., 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. It does not include 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, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. The term also includes Marijuana-Infused Products except where the context clearly indicates otherwise.

Marijuana-Infused Product (MIP) – A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils and tinctures. These products, when created or sold by a

Registered Marijuana Dispensary, shall not be considered a food or a drug as defined in M.G.L. c. 94, § 1.

Paraphernalia – “Drug paraphernalia” as defined in M.G.L. c. 94C, § 1.

Personal Caregiver – A person, registered by the Massachusetts Department of Public Health, who is at least 21 years old, who has agreed to assist with a registered person’s medical use of marijuana, and is not the registered Qualifying Patient’s certifying physician. An employee of a hospice provider, nursing, or medical facility or a visiting nurse, personal care attendant, or home health aide providing care to a Qualifying Patient may serve as a Personal Caregiver, including to patients under 18 years of age as a second caregiver.

Public Health Division – Established pursuant to Article 10 of the Revised Ordinances of the City of Worcester, a division of the Health and Human Services Department, established to preserve, promote and protect the physical and mental health of the people of the city by providing public health services. As part of its duties the Public Health Division keeps the Board of Health informed and administers its affairs.

Qualifying Patient – A Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed certifying physician as having a debilitating medical condition, or a Massachusetts resident under 18 years of age who has been diagnosed by two Massachusetts licensed certifying physicians, at least one of who is a board-certified pediatrician or board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 105 CMR 725.010(J).

Registered Marijuana Dispensary (RMD) – A not-for-profit entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils or ointments) transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered Qualified Patients or their Personal Caregivers. Unless otherwise specified, Registered Marijuana Dispensaries refers to the site(s) of dispensing, cultivation, and preparation of marijuana.

Registration Card – An identification card issued by the Massachusetts Department of Public Health, valid for one year from the date of issuance, to a registered Qualified Patient, Personal Caregiver, or Dispensary Agent. The

Registration Card verifies either that a certifying physician has provided a written certification to the Qualifying Patient and the patient has been registered with the Department of Public Health: that a patient has designated the individual as a Personal Caregiver; that a patient has been granted a hardship cultivation registration; or that a Dispensary Agent has been registered with the Department of Public Health and is authorized to work at a RMD. The Registration Card identifies for the Department of Public Health and law enforcement authorities, those individuals who are exempt from Massachusetts criminal and civil penalties for the medical use of marijuana in compliance with 105 CMR 725.000 and G.L. c. 369.

Sixty-Day Supply – That amount of marijuana, or equivalent amount of marijuana in MIPs, that a registered Qualifying Patient would reasonably be expected to need over a period of 60 calendar days for his or her personal medical use, which is ten ounces, subject to 105 CMR 725.010(I).

Written Certification – A form submitted to the Massachusetts Department of Public Health by a Massachusetts licensed certifying physician, describing the Qualifying Patient's pertinent symptoms, specifying the patient's debilitating medical condition, and stating that in the physician's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient.

(c) Operating License –

- (1) No RMD shall sell or otherwise distribute Marijuana within the city of Worcester without first obtaining a License issued annually by the Board of Health. The Board of Health shall issue a License to an applicant only after determining that the applicant demonstrates compliance with these regulations and any other applicable regulations the Board of Health may adopt. Every RMD shall apply for an Operating License on a form approved by the Board of Health and as may be set forth in this regulation or any regulations issued by the Board of Health.
- (2) The annual license fee shall be determined by the Board of Health. This fee shall not be refunded in the event that an Operating License is not issued or is revoked in accordance with this regulation or any other applicable law;
- (3) The RMD operator shall post the Operating License in a clear and conspicuous manner inside the RMD;

(4) As part of the 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. No License holder shall allow any Dispensary Agent to sell marijuana products until the employee acknowledges, in writing, receipt of this regulation and the state law regarding the sale of marijuana, a copy of which will be placed on file in the office of the License holder and made available to the Board of Health upon request;

(5) All Operating Licenses shall expire annually on December 31st and shall be valid for a maximum term of one (1) year, renewable annually on January 1st;

(6) As a condition of issuance, the RMD agrees to provide to the Board of Health, or designee, a copy of their Certificate of Registration, annual renewals thereafter, any changes to the business as described in 105 CMR 725.100(F) and current operating procedures as required in 105 CMR 725.105; and

(d) Transfer of Licenses. License holders shall have no property interest in any License issued under this regulation. No License shall be transferable, except as set forth herein, and with written approval of the Board of Health.

(1) Licenses may be transferred incident to the relocation of a RMD upon written approval by the Board of Health.

(e) Requirements and Prohibitions – all License Holders must comply with the following:

(1) Issuance and maintaining the Licenses shall be conditioned on an applicant's consent to unannounced, periodic inspections of the RMD to ensure compliance with this regulation and any other applicable laws or regulations.

(2) The cultivation, processing, distribution, sale and use of marijuana for medical purposes shall be conducted in compliance with all laws, ordinances, regulations or policies applicable to similar activities, including the City's Weights and Measurers ordinance.

(3) The cultivation, processing, distribution, sale or use of marijuana for

medical purposes shall not exempt any person or entity from complying with all state and local laws, ordinances, regulations and policies. Nothing in this regulation gives any immunity under federal law.

(4) In no instance shall a License be issued to any RMD that is within a radius of three hundred (300) feet of a public or private, primary or secondary school, licensed daycare center, public library, public park or playground, or another RMD. The 300' distance under this note shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

(5) The issuance of a License shall be conditioned on the registration approval by the Massachusetts Department of Public Health and any revocation of a RMD or Dispensary Agent's state registration shall result in an automatic suspension of the RMD's city issued License.

(6) RMDs shall submit a security plan for review by the Board of Health , Worcester Police Department, Worcester Fire Department, and the Department of Inspectional Services detailing all security measures taken to ensure patron and community safety and to eliminate unauthorized access to the premises. The Board of Health, or designee, Police Department, Fire Department, Department of Inspectional Services and any other officer or employee authorized by the city manager may issue guidelines or other procedures setting forth specific security requirements.

(7) A RMD shall submit a plan for review to the Board of Health, or designee, detailing its plan to provide reduced cost or free medical marijuana to patients with documented verified financial hardship as required by 105 CMR 725.100(A)(6).

(8) In connection with any License issued, the Board of Health 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) and the city of Worcester Sign Ordinance (Article IV, Section 6 of the Worcester Zoning Ordinance).

(9) A RMD shall conspicuously post signage, which shall be provided by the Board of Health, or designee, at all entrances indicating that entry to persons not possessing a valid Registration Card is prohibited. The notice shall be no smaller

than 8.5' by 11' and shall be posted conspicuously in the retail establishment in such a manner so that it may be readily seen by a person approaching the RMD.

(10) A RMD may not sell any products other than marijuana, Marijuana Infused Products, marijuana seeds, and other products that facilitate the use of marijuana for medical purposes, such as vaporizers, and such products as defined in the definitions section of this regulation and in 105 CMR 725.004 .

(11) RMDs shall submit quarterly data and reports to the Board of Health, or designee in a form and manner acceptable to the Board of Health, or designee.

(12) Dispensary Agents must present their state Registration Card to any law enforcement official or municipal official who questions the agent concerning their marijuana related activities.

(13) All RMDs must obtain a certificate of occupancy by the Department of Inspectional Services prior to opening.

(14) All RMDs must provide parking within three hundred (300) feet of the Licensed establishment.

(15) RMDs will not open for business before 8:00 a.m. and shall close no later than 7:00 p.m. daily.

(16) All retail sales of marijuana must be face-to-face between the Dispensary Agent and the Card Holder and must occur at the licensed RMD location unless one is a Qualifying Patient or Personal Caregiver residing in Worcester county, and who suffers from a physical incapacity to access transportation and home delivery is provided by a Dispensary Agent of the RMD as described in 105 CMR 725.035(A)(2).

(17) The sale of marijuana by any person outside of a RMD, including Card Holders and Dispensary Agents, is prohibited and shall be punishable with applicable state and local laws.

(18) Marijuana product sales to Dispensary Agents of the RMD, employees who are involved in the day to day operations of the RMD, are prohibited.

(19) RMDs shall only permit Dispensary Agents with a state Registration Card to transport marijuana or MIPs on their behalf, whether between RMDs, RMD sites, or to registered Qualifying Patients or Personal Caregivers and shall follow the Massachusetts Department of Public Health guidelines found in 725.110(E).

(20) No License shall be issued to an RMD unless such RMD has a Host Agreement with the city of Worcester.

(f) Enforcement & Penalties. This section may be enforced by civil process, criminal process or by non-criminal disposition as provided in General Laws, Chapter 40, § 21D. Each day constitutes a separate violation.

(1) Authority to inspect RMDs for compliance and to enforce this regulation shall be held by the Board of Health, Commissioner, or designee, Department of Inspectional Services, Police Department, Fire Department or any other agency designated by the Board.

(2) The City Manager, acting through the Chief of Police, Commissioner or designee, or any officer or employee of the city under the jurisdiction of the City Manager, shall have authority to enforce the provisions of this regulation and shall have all the powers and duties afforded by chapter 369 of the General Laws as it relates to the regulation of medical marijuana, but not limited to: the regulation of the cultivation, processing, distribution, sale and use of marijuana for medical purposes, and may exercise such powers and duties to the fullest extent possible to secure compliance with this regulation and said General Laws.

(3) Any person may file a complaint under this section to initiate investigation and enforcement with the Board.

(4) Unscheduled compliance inspections shall be conducted by the Worcester Police Department, Worcester Fire Department, Division of Public Health and Department of Inspectional Services.

(5) It shall be the responsibility of the RMD License Holder and/or

registered Dispensary Agent and/or individual in charge of a RMD to ensure compliance with all applicable sections of this regulation and any and all city regulations, ordinances and laws of the Commonwealth.

(g) Violations.

(1) Any person in violation of this regulation shall be punished as set forth below:

(a) Any person operating an RMD without a license issued under this section or in violation of any rules or regulations of the Board of Health, or condition imposed by the Board of Health shall be assessed a fine of three hundred dollars (\$300.00). Each day of unlicensed operation shall constitute a single and separate violation.

(b) For any violation, the Board of Health may order the RMD License Holder and/or a registered Dispensary Agent to enter into a corrective action plan to address any and all violations and to prevent future violations.

(c) In addition to the monetary fines and penalties described above, any person or entity, License or registered Dispensary Agent, who violates any of the provisions of subsections (c), (e) or (f) of this regulation shall be subject to the modification, suspension or revocation of any License issued under authority of those subsections by the Board of Health.

(d) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of a License for up to thirty (30) consecutive business days.

(e) The Board of Health shall provide notice of its intent to suspend or revoke any License, which notice shall contain the reasons therefor together with the alleged violations. The notice shall establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The hearing shall be conducted by the Board, or its designee, as the Board in its sole discretion may determine. The alleged violator, or License Holder, or its agent and legal counsel shall have an opportunity to be heard at such hearing. The alleged violator, or License Holder shall be notified of the decision and the reasons therefore in writing. For purposes of any such modification, suspension or revocation, the Board, or its designee, shall make the determination notwithstanding any separate criminal or non-criminal

proceedings brought in court hereunder or under the General Laws for the same offense.

(f) All marijuana and marijuana products shall be removed from the RMD during any suspension of a License. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this regulation with each day constituting a separate offense punishable by a fine or penalty of three hundred dollars (\$300.00) or by injunctive relief.

(g) **Retaliation.** 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 person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

(h) The provisions of this regulation shall take effect upon adoption by the Board.

Adoption Date: ~~August 1~~ June 5, 2017

Implementation Date: August 1, 2017

Signatures:










