

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. B-16

December 3, 2018

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 30 ZONING** as follows:

I. **Delete** the provisions of Sec. 6.10.3 **Registered Marijuana Dispensaries**, and insert in its place the following language:

**6.10.3. Marijuana Uses**

**A. Purpose.** The purpose of this Sec. 6.10.3 is to provide for the limited establishment of Registered Marijuana Dispensaries (“RMDs”) and adult use Marijuana Establishments within the City as they are authorized pursuant to state regulations set forth in 105 CMR 725.000 and 935 CMR 500.000. Since RMDs and Marijuana Establishments are strictly regulated by the Massachusetts Department of Public Health and the Cannabis Control Commission, the intent of this Sec. 6.10.3 is to permit RMDs and Marijuana Establishments where there is access to regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not adversely impact the character of residential neighborhoods and business districts.

**B. Definitions.** Marijuana Uses shall include the following, as defined or amended by 935 CMR 500.000:

1. **Craft Marijuana Cooperative.** A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

2. **Independent Testing Laboratory.** A laboratory licensed by the Commission that is: accredited to the International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and MGL c. 94C, Section 34.
3. **Marijuana Cultivator.** An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers.
4. **Marijuana Establishment.** 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, except a medical marijuana treatment center.
5. **Marijuana Product Manufacturer.** An entity licensed to compound, blend, extract, infuse or otherwise make or prepare a cannabis or marijuana product.
6. **Marijuana Research Facility.** An entity licensed to engage in research projects by the Cannabis Control Commission. A Marijuana Research Facility may cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana products.
7. **Marijuana Retailer.** An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers.
8. **Marijuana Transporter.** An entity, not otherwise licensed by the Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers.
9. **Microbusiness.** A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

10. **Registered Marijuana Dispensary (RMD), also known as Medical Marijuana Treatment Center.** An entity registered under 105 CMR 725.100: *Registration of Registered Marijuana Dispensaries*, 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.
11. **Tier 1 Marijuana Cultivator.** A Marijuana Cultivator that is limited to no more than 5,000 square feet of canopy.

**C. Marijuana uses not Allowed As-of-Right.** Marijuana uses are not included within the definition of retail sales or services, agriculture, manufacturing, research, or any other lawful business permitted as of right or by special permit as provided in this Chapter.

**D. Marijuana uses allowed by special permit.** Use of land, buildings or structures for an RMD or Marijuana Establishment shall be allowed only by special permit in the districts specified in Sec. 4.4.1 subject to the requirements and criteria of this Sec. 6.10.3.

**E. Minimum criteria and limitations on approval.**

1. An RMD shall not be located within a radius of 500 feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, and a Marijuana Retailer shall not be located within a radius of 500 feet from an existing public or private k-12 school, unless the City Council finds that the RMD or Marijuana Retailer is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD or Marijuana Retailer's operation. Such distance shall be measured in a straight line from the nearest property line of the proposed RMD or Marijuana Retailer to the nearest property line of the facility.
2. An RMD or Marijuana Establishment shall be properly registered with the Massachusetts Department of Public Health or Cannabis Control Commission pursuant to 105 CMR 725.100 or 935 CMR 500.100 and shall comply with all applicable state and local public health regulations, public safety code regulations and all other applicable state and local laws, ordinances, rules and regulations. No building permit or certificate of occupancy shall be issued for an RMD or Marijuana Establishment that is not properly registered with the Massachusetts Department of Public Health or Cannabis Control Commission.

The RMD or Marijuana Establishment shall file copies of its initial certificate of registration and each annual renewal certificate with the clerk of the City Council within one week of issuance and shall immediately notify said clerk if its registration is not renewed or is revoked. The RMD or Marijuana Establishment shall provide the Newton Police Department with the names and contact information for all management staff and shall immediately notify the police department of any changes.

3. A special permit granted by the City Council authorizing the establishment of an RMD or Marijuana Establishment shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the RMD or Marijuana Establishment has been authorized by the special permit. If the registration for the RMD or Marijuana Establishment is revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to the issuance of a certificate of occupancy.
4. An RMD or Marijuana Establishment 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 delivery to qualified clients pursuant to applicable state regulations.
5. An RMD or Marijuana Establishment shall be subject to the number of parking stalls required in Sec. 5.1 unless a lesser or greater number of stalls is required by the City Council based on the transportation analysis provided by the applicant. An RMD or Marijuana Retailer shall comply with the parking requirements for Retail uses; a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Microbusiness, or Marijuana Product Manufacturer shall comply with the parking requirements for Manufacturing; and a Marijuana Research Facility or Independent Testing Laboratory shall comply with the parking requirements for Research, Laboratory.
6. All signage shall conform to the requirements of 105 CMR 725.105(L) and 935 CMR 500.105(4) and to the requirements of Sec. 5.2. No graphics, symbols or images of marijuana or related paraphernalia shall be displayed or clearly visible from the exterior of an RMD or Marijuana Establishment. The City Council may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.
7. The RMD or Marijuana Retailer's hours of operation shall not adversely impact nearby uses. The hours of operation shall be set by the City Council as a condition of the Special Permit, but in no case shall an RMD or Marijuana Retailer open before 9:00 a.m. or remain open after 9:00 p.m.

8. The number of Marijuana Retailers shall not exceed 20 percent of the number of liquor licenses issued in the City pursuant to G.L. c.138 § 15 (commonly known as “package stores”).
9. No RMD or Marijuana Retailer shall be located within a radius of one half-mile of an existing or approved RMD or Marijuana Retailer. Such distance shall be measured in a straight line from the nearest property line of the proposed RMD or Marijuana Retailer to the nearest property line of the existing RMD or Marijuana Retailer. The co-location of a RMD and Marijuana Retailer on the same site shall not be subject to this buffer requirement.
10. No RMD or Marijuana Establishment shall be located within a building containing a residential use.
11. No RMD or Marijuana Retailer or co-located facility shall exceed 5,000 square feet of floor area.
12. All RMDs and Marijuana Establishments shall submit a state approved security plan to the Newton Police Department for review and approval.
13. All RMDs and Marijuana Establishments shall submit a state approved emergency response plan to the Newton Police Department and Newton Fire Department for review and approval.
14. All RMDs and Marijuana Establishments shall submit a state approved Operation and Management Plan to the Inspectional Services Department and the Department of Planning and Development for review and approval.
15. An RMD or Marijuana Retailer located at the ground level shall provide at least 25 percent transparency along building’s front façade at ground level and existing buildings shall not be modified to reduce the transparency of the front façade at the ground level to below 25 percent, unless the City Council finds impacts to security and aesthetics have been appropriately mitigated.
16. Any marijuana cultivation shall offset 100 percent of energy used for cultivation through renewable energy, either by any combination of purchasing Renewable Energy Certificates through the State, generating renewable energy onsite, and/or through Newton Power Choice, if available.
17. The RMD or Marijuana Establishment shall be ventilated in such a manner that no:
  - a. Pesticides, insecticides, or other chemicals or products in cultivation or processing are dispersed into the outside atmosphere; or

- b. Odor from marijuana may be detected by a person with a normal sense of smell at the exterior of the building or at any adjoining use or property.
18. A Marijuana Research Facility may not sell marijuana cultivated under its research license.
19. Marijuana Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

**F. Special permit application and procedure.** The procedural and application requirements of Sec. 7.3 shall apply. In addition to the procedural and application requirements of Sec. 7.3, an application for special permit shall include, at a minimum, the following information:

1. **Description of Activities:** 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 infused products (MIP's), research, testing, on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.
2. **RMD Service Area:** Applications for an RMD shall include a map and narrative describing the area proposed to be served by the RMD and the anticipated number of clients that will be served within that area. This description shall indicate where any other RMD's exist or have been proposed within the expected service area.
3. **RMD and Marijuana Retailer Transportation Analysis:** An application for an RMD or Marijuana Retailer shall include a quantitative analysis, prepared by a qualified transportation specialist acceptable to the Director of Planning and Development and the Director of Transportation, analyzing the proposed new vehicular trips, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site. An RMD or Marijuana Retailer that does not provide the number of parking stalls required per this Sec. 6.10.E.6. shall also provide a parking study.
4. **Lighting Analysis:** A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.

5. **Context Map:** A map depicting all properties and land uses within a minimum 1,000-foot radius of the proposed lot, whether such uses are located in the City or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs. The context map shall include the measured distance to all uses described in paragraph D.1 above.
6. **Registration Materials:** Copies of registration materials issued by the Massachusetts Department of Public Health or Cannabis Control Commission and any materials submitted to that Department for the purpose of seeking registration, to confirm that all information provided to the City Council is consistent with that provided to the Massachusetts Department of Public Health or Cannabis Control Commission.

**G. Special Permit Criteria.** In granting a special permit for an RMD or Marijuana Establishment, in addition to finding that the general criteria for issuance of a special permit are met, the City Council shall find that the following criteria are met:

1. Criteria for all marijuana uses:
  - a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot, whether driving, bicycling, walking or using public transportation.
  - b. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
  - c. The RMD or Marijuana Establishment is designed to minimize any adverse impacts on abutters.
  - d. The RMD or Marijuana Establishment has satisfied all of the conditions and requirements in this section.
2. Additional criteria for RMDs and Marijuana Retailers:
  - a. The lot location complies with Sec. 6.10.3.E.1, or the lot is located at a lesser distance if the City Council finds that the lot is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD or Marijuana Retailer's operation.
  - b. Traffic generated by client trips, employee trips, and deliveries to and from the RMD or Marijuana Retailer shall not create a significant adverse impact on nearby uses.

- c. The building and lot have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building’s interior.
- d. The building and lot are accessible to persons with disabilities.
- e. The lot is accessible to regional roadways and public transportation.
- f. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel.
- g. The RMD or Marijuana Retailer’s hours of operation will have no significant adverse impact on nearby uses.

3. Additional Criteria for RMDs only:

- a. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

**H. Severability.** If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

**AND**

II. **Delete** in its entirety the last row, Registered marijuana dispensary, in the “Restricted Uses” portion of the Table appearing in Sec. 4.4.1, **and insert** in its place the following new rows:

<b>Business, Mixed Use &amp; Manufacturing Districts</b>	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Registered Marijuana Dispensary	--	SP	--	SP	SP	SP	--	--	--	--	--	Sec. 6.10.3
Craft Marijuana Cooperative	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3



Independent Testing Laboratory	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Cultivator	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Product Manufacturing	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Marijuana Research Facility	--	--	--	--	--	--	--	--	--	SP	SP	Sec. 6.10.3
Marijuana Retailer	--	SP	--	SP	SP	SP	--	--	--	--	--	Sec. 6.10.3
Marijuana Transporter	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3
Microbusiness	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.10.3

Approved as to legal form and character:

ALLISA O. GIULIANI

City Solicitor

Under Suspension of Rules

Readings Waived and Adopted

18 yeas 3 nays (Councilors Ciccone, Kelley, and Markiewicz) 3 absent (Councilors Cote, Gentile, and Norton)

EXECUTIVE DEPARTMENT

Approved:

(SGD) DAVID A. OLSON

City Clerk

(SGD) RUTHANNE FULLER

Mayor