

CHAPTER 7

REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF MARIJUANA ESTABLISHMENTS AND THE SALE OF MARIJUANA

SECTION 1 STATEMENT OF PURPOSE:

The purpose of this regulation is to protect the public health and welfare by ensuring local oversight and inspection of Marijuana Establishments by the Board of Health consistent with the authority given to municipalities under Chapter 55 of the Acts of 2017 and 935 CMR 500.000.

Therefore, in furtherance of its mission to protect, promote and preserve the health and well-being of all Billerica residents and pursuant to the authority granted to it pursuant to G.L. c. 111, §31, the Billerica Board of Health enacts a Regulation to Ensure the Sanitary and Safe Operation of Marijuana Establishments and the sale of Marijuana.

SECTION 2 DEFINITIONS:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000, 935 CMR 510.000, and G.L. c. 94G, §1. In addition, for the purposes of this regulation, the following words shall have the following meanings:

7.2.001 ADULT – ONLY RETAIL TOBACCO STORE: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Billerica Board of Health.

7.2.002 BOARD OF HEALTH OR BOARD: Town of Billerica Board of Health and its designated board of health agents.

7.2.003 BOARD OF HEALTH AGENT: The Director of Public Health and any town employee designated by the Board of Health, which may include Board of Health and health department staff, law enforcement officers, fire officials and code enforcement officers.

7.2.004 BUSINESS AGENT: An individual who has been designated by the owner or operator of any Marijuana Establishment to be the manager or otherwise in charge of said establishment.

7.2.005 COLOCATED MARIJUANA OPERATIONS (CMO): A Medical Marijuana Treatment Center (MTC) operating under registration license issued pursuant to 935 CMR 501.000, Medical Use of Marijuana, and a Marijuana Establishment operating under at least one license pursuant to 935 CMR 500.000: Adult Use of Marijuana, on the same Licensed Premises. Colocated Marijuana Operations pertain to cultivation, product manufacturing, and retail, but not any other adult-use license.

7.2.006 CUSTOMER: a consumer or patient who is legally on the premises of a Marijuana Establishment, CMO, or MTC to purchase Marijuana, Marijuana Products, or Marijuana Accessories.

7.2.007 DISPENSARY AGENT: Means a board member, director, employee, executive, manager, or volunteer of a MTC, a Marijuana Establishment, or Colocated Marijuana Operations, who is at least 21 years of age and who has received approval from the Cannabis Control Commission, as applicable. Employee includes a consultant or contractor who provides on-site services to a MTC or

Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing or dispensing of marijuana.

7.2.008 **EDIBLE MARIJUANA PRODUCTS:** A marijuana product that is to be consumed by humans by eating or drinking.

7.2.009 **LICENSED PREMISES:** All land and buildings associated with the operation of the Marijuana Establishment, MTC, or CMO.

7.2.010 **MARIJUANA:** 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; clones 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 94G of the General Laws; provided that “Marijuana” shall 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, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any other ingredient combined with adult-use marijuana to prepare topical or oral administrations, food, drink or other products.

7.2.011 **MARIJUANA ACCESSORIES:** Equipment, products, devices or materials of any kind that are intended or designed for use in planting, Propagating, cultivating, growing, harvesting, Manufacturing, compounding, converting, producing, Processing, preparing, testing, analyzing, packaging, Repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

7.2.012 **MARIJUANA ESTABLISHMENT:** Any type of Marijuana-related business licensed by the Cannabis Control Commission (CCC) pursuant to 935 CMR 500.000 and 935 CMR 501.000, including a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent testing laboratory, marijuana retailer, marijuana social consumption establishment, marijuana research facility, marijuana transporter, marijuana micro-business, marijuana courier, marijuana delivery operator, marijuana research facility, registered marijuana dispensaries (RMD) and a collocated marijuana operations (CMOs). [This definition includes RMDs and CMOs which are now regulated by the CCC].

7.2.013 **MARIJUANA ESTABLISHMENT OPERATION PERMIT:** A permit issued by the Board of Health, renewed annually for a fee set by the Board of Health, that permits a Marijuana Establishment to operate within the Town of Billerica. A separate Marijuana Establishment Operation Permit is required for each establishment.

7.2.014 **MARIJUANA PRODUCTS:** 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, and marijuana-infused products defined in 935 CMR 500.002.

7.2.015 **MARIJUANA RETAILER:** An entity licensed under the CCC to purchase, repack, white label, transport, Marijuana or Marijuana Products to from Marijuana Establishments and to sell and or otherwise transfer the same to Customers. Unless authorized by CCC and the Board of Health, Marijuana Retailers are prohibited from offering Marijuana or Marijuana Products for the purposes of on-site social consumption on the License Premises of a Marijuana Establishment.

7.2.016 **MINIMUM LEGAL SALES AGE:** The age an individual must be before that individual can be sold a marijuana product in the municipality.

7.2.017 **NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINE:** A mechanical device made available for use (including to an individual who produces rolled marijuana products solely

for the individual's own personal consumption or use) that can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

7.2.018 OPERATING PERMIT HOLDER: Any person engaged in the cultivation, sale, distribution, transportation of marijuana who applies for and receives a Marijuana Establishment Operation Permit, or any person, or his or her agent, who is required to apply for a Marijuana Establishment Operation Permit pursuant to these regulations.

7.2.019 PERSON: Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

7.2.020 MEDICAL MARIJUANA TREATMENT CENTER (MTC) (formerly known as a REGISTERED MARIJUANA DISPENSARY (RMD)): An entity formerly and validly licensed under 935 CMR 501.101, that acquired, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), repackages, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of marijuana for medical use.

7.2.021 SELF-SERVICE DISPLAY: Any display from which customers may select Marijuana or a Marijuana-infused product without assistance from an establishment.

7.2.022 VENDING MACHINE: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes Marijuana or Marijuana Products.

SECTION 3 MARIJUANA SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED:

7.3.001 No person shall sell or permit Marijuana, Marijuana Products, or Marijuana Accessories to be sold to a person under the minimum legal sales age; or give Marijuana, Marijuana Products, or Marijuana Accessories, to a person under the minimum legal sales age. The minimum legal sales age in Billerica is 21 with the exception of Registered Qualifying Patients with the Medical Use of Marijuana Program in possession of a Medical Registration Card.

SECTION 4 MARIJUANA OPERATING PERMIT:

7.4.001 No person shall sell, package, cultivate, marijuana or marijuana products, as defined herein, within the Town of Billerica without first obtaining a Marijuana Operating Permit issued annually by the Billerica Board of Health. Marijuana establishments in the Town of Billerica must certify that they are in compliance with all local and state laws, regulations, bylaws, and establish proof of a current and valid license from the CCC to operate.

7.4.002 As part of the Marijuana Establishment Operation Permit application process, each applicant shall provide a certification that the applicant has read this Board of Health Regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales about federal, state and local laws regarding the sale of marijuana, including this regulation.

7.4.003 A separate Marijuana Establishment Operation Permit is required for each Marijuana Establishment, the fee for which shall be determined by the Billerica Board of Health. Marijuana Establishment Operation Permits shall be posted in a conspicuous place at the Licensed Premises.

7.4.004 A Marijuana Establishment Operation Permit is non-transferable. Each new owner of a Marijuana Establishment must apply for a new permit.

7.4.005 Marijuana Establishments shall submit an annual report to the Board of Health that includes the following information: a list licensed dispensary agent employees with the certification that each has received their Agent Registration Card from CCC, and the Marijuana Establishment's written plans and policies for the safe and sanitary handling of marijuana products, odor management, waste disposal, and age restriction of customers to prevent diversion to minors.

7.4.006 Unless specified by any other state or local requirement or agreement as to the hours of operation of a marijuana establishment, the Billerica Board of Health, in consultation with the Billerica Police Department, and other Town officials and departments may set limitations on the hours of operation of any marijuana establishment.

7.4.007 A Marijuana Establishment Operation Permit may be denied, suspended, revoked, or not renewed for any person whose name appears on a list of parties who have failed to pay any municipal taxes, assessments, betterments and other municipal charges, in accordance with the procedure set forth in the Town's General Bylaws.

7.4.008 All Marijuana Operating Permits shall expire on December 31st each year. Applications for renewal shall be submitted to the Board by November 30th. Any applicant who fails to apply for renewal by the date specified herein will be deemed to have surrendered the permit and any subsequent application will be treated as a new application.

SECTION 5 REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS:

7.5.001 All Marijuana Establishments shall be ventilated in such a manner that no pesticides, insecticides or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere, and so that no nuisance odors from marijuana or its processing escape from the Marijuana Establishment to surrounding properties. All Marijuana Establishments shall submit an Odor Management Plan to the Board of Health.

7.5.002 All Marijuana Establishments shall comply with the provisions of 935 CMR 500.105(11) and 935 CMR 501.105(11) for storage of all Marijuana Products. Marijuana Establishment storage area shall be maintained in a sanitary condition, free from all pest infestations.

7.5.003 All Marijuana Establishments shall comply with the provisions of 935 CMR 500.105(12) and 935 CMR 501.105(2) for disposal of all recycles, organic waste and solid waste. All Marijuana Establishments shall have written Waste Disposal plans that shall be available for inspection by the Board of Health upon request.

7.5.004 All exterior waste receptacles located on the Marijuana Establishment's Premises shall be locked and secured to prevent unauthorized access. Exterior dumpsters must be located in a suitable area and be constructed on a level four (4) inch thick minimum, concrete surface large enough to fit dumpsters and enclosed so as to not to create nuisance conditions to abutter and the general public. Enclosure must not be less than six (6) feet in height. Waste receptacle area shall be maintained in a clean and sanitary condition.

7.5.005 All Marijuana Establishments shall comply with the provisions of 935 CMR 500.105(4) and 935 CMR 501.105(4) for advertising requirements.

7.5.006 All Marijuana Establishments shall comply with the provisions of 935 CMR 400.105(9) for recordkeeping and records of the Marijuana Establishment shall be available for inspection by the Board of Health upon request.

7.5.007 All Marijuana Establishments Licensed Premises covered shall be kept in a clean and sanitary condition and free of all pest infestations.

7.5.008 Marijuana Establishments shall not invite the members of the public or Customers to private areas of the Licensed Premises which are used for storage, packaging, office, or for any similar non-public use. Only owners, employees, and vendors who service the Marijuana Establishment shall be in these areas.

7.5.009 The interior of the Marijuana Establishment shall be sufficiently illuminated, and all exits shall be properly designated by lighted signs, "Exit". The exterior of the Marijuana Establishment shall be sufficiently illuminated.

7.5.010 No Marijuana, Marijuana Products, or Marijuana Accessories may be displayed to be visible to a person from the exterior of a Marijuana Establishment.

7.5.011 No Marijuana or Marijuana Products shall be consumed, smoked, vaped, eaten or ingested on the Licensed Premises. All Marijuana Establishments shall comply with all state and local laws, rules and regulations governing the smoking of tobacco.

SECTION 6 REQUIREMENTS FOR THE HANDLING, LABELING, AND PACKAGING OF MARIJUANA:

7.6.001 All Marijuana Establishments authorized to process Marijuana shall do so in a safe and sanitary manner and shall comply with the requirements of 935 CMR 500.105(3)(a).

7.6.002 All Edibles shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 CMR 590.000: State Sanitary Code Chapter X: Minimum Sanitation Standards for Food Establishments, and with the requirements for food handlers specified in 105 CMR 300.000: Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements; and all Marijuana Products made to resemble a typical food or Beverage product shall be packaged and labelled as required by 935 CMR 500.105.

7.6.003 All Marijuana Establishments, including those that develop, process, or package Edibles, shall comply with sanitary requirements. All Edibles shall be prepared, handled, stored and packaged in compliance with the sanitation requirements in 105 CMR 590.000: *State Sanitary Code Chapter X: Minimum Sanitation Standards for Food Establishments*.

7.6.004 Prior to being sold or transferred all Marijuana, Marijuana Products, and repackaged Marijuana and Marijuana Products shall be labeled in accordance with the provisions of 935 CMR 500.105(5) and 935 CMR 501.105(5). A Marijuana Establishment shall ensure the placement of a legible, firmly affixed label on which the wording is no less than 1/16 inch in size on each package of Marijuana that makes it available for retail sale.

7.6.005 All Marijuana and Marijuana Products shall be sold in a child-resistant packaging, this packaging shall comply with 935 CMR 500.105 and 935 CMR 501.105.

SECTION 7 ADDITIONAL MARIJUANA RETAILER SALE REQUIREMENTS:

7.7.001 A Marijuana Establishment shall inspect proof of identification for all Customers entering the Licensed Premise to determine the person's age. No Marijuana Establishment shall permit a Customer under the age of 21 years on the premises, with the exception of Registered Qualifying Patients with the Medical Use of Marijuana Program in possession of a Medical Registration Card.

7.7.002 A Marijuana Establishment Retailer shall comply with the provisions of 935 CMR 500.14(12) for samples of marijuana and marijuana products from vendors. No person shall accept or redeem, offer to accept, or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides Marijuana or a Marijuana Product without charge.

7.7.003 All self-service displays of Marijuana and Marijuana Products are prohibited.

7.7.004 All vending machines containing Marijuana and Marijuana Products are prohibited.

7.7.005 All Non-Residential Roll-Your-Own (RYO) Machines are prohibited from customer use.

7.7.006 Marijuana Establishments shall comply with the provisions of 935 CMR 500.140(6) and make available educational materials about Marijuana Products to Customers. All RMDs and CMOs shall comply with the provisions of 935 CMR 501.140(6) and make available education about Marijuana to Registered Qualifying Patients and their Personal Caregivers.

7.7.007 Marijuana Accessories, as defined herein, shall only be sold in Marijuana Establishments and Adult-Only Tobacco Stores.

7.7.008 Upon closing hour, a sign shall be placed in the door or visible near the door of the Licensed Premises, indicating that the Marijuana Retailer is closed.

7.7.009 No outside area on the Licensed Premises shall be used a gathering place for Customers.

SECTION 8 PROHIBITING MARIJUANA USE IN PUBLIC PLACES:

7.8.001 Consumption of Marijuana and marijuana products in public places is prohibited in the Town of Billerica.

SECTION 9 COMPLIANCE WITH ALL LAWS:

7.9.001 All cultivation, processing, manufacturing, delivery, sale, transportation and use of marijuana shall be conducted in compliance with all state and local laws, ordinances, regulations or policies. These shall include, where applicable, but shall not be limited to, compliance with Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 935 CMR 500.000, 935 CMR 501.000, secondhand smoke laws and regulations, electronic cigarette laws and regulations, nuisance laws and regulations and all requirements associated with zoning and other local permitting. Violation of any such laws, shall constitute a violation of this regulation and be subject to enforcement described herein. Nothing in this regulation give any immunity under federal law or poses an obstacle to federal enforcement of federal law.

SECTION 10 ENFORCEMENT AND PENALTIES:

7.10.001 The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

7.10.002 The Board of Health may suspend, revoke or refuse to renew any permit issued pursuant to this regulation for any violation of this regulations, or any other applicable General Law, regulation or by-law. Violations shall include, but not be limited to providing marijuana products to persons under the minimum legal sales age and refusing to consent to inspection by designated Town officials. Such revocation, suspension or non-renewal may take place after a hearing held by the Board of Health of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application. The Marijuana Operation Permit holder and/or business agent shall be responsible for any violations whether they or not they are directly involved in the activity and whether or not they have knowledge of the violation.

7.10.003 Notwithstanding the hearing requirement set forth above, any Board of Health Agent may summarily suspend any permit based on the existence of an imminent threat to public health, safety and welfare. Any permit holder receiving a summary suspension order shall immediately cease and desist from the permitted business. The Board will conduct a public hearing, of which the permit holder is given seven (7) days written notice. After such hearing, the Board may affirm, reverse or modify the summary suspension order.

7.10.004 A Marijuana Operating Permit will automatically be suspended, revoked or not renewed if the permit holder's state license has been suspended, revoked or not renewed.

7.10.005 Upon a finding of a violation as set forth herein, permit holders may be subject to discipline based on the following guidelines:

First Violation:	Permit Suspension, 1 to 7 days
Second Violation:	Permit Suspension, 7 to 30 days
Third Violation:	Permit Suspension of 30 days or Revocation of Permit
Fourth or subsequent violation:	Revocation of Permit

Only offenses which have occurred within the thirty-six months preceding the date of violation shall be used in calculating the number of offenses for purposes of the sentencing guidelines.

The sentencing guidelines are only a guide. The Board may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.

The sentencing guidelines shall not be construed so as to limit the Board's authority to consider alternative dispositions, or further conditions on a permit, or even alternate penalties.

7.10.006 This regulation may be enforced by any Town police officers or agents of the Town's Board of Health. Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If noncriminal disposition is elected, then the non-criminal fine for each such violation, if not otherwise specified, shall be:

First Offense:	\$100
Second Offense:	\$200
Third and	

Subsequent Offenses: \$300

Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

7.10.007 Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

7.10.008 To the extent permitted by law, 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 the operation of marijuana establishments and the sale and use of marijuana.

7.10.009 Any person who desires to register a complaint pursuant to this regulation may do so by contacting the Board of Health or its designated agent(s) and the Board will investigate at its discretion.

SECTION 11 VARIANCES:

7.11.001 A variance from this regulation may be requested in writing by the Billerica Board of Health. A variance may be granted by the Billerica Board of Health after a hearing at which time the applicant establishes the following:

- a. Strict enforcement of this regulation would do manifest injustice; and
- b. The granting of a variance shall not in any way impair the public health and safety or the environment.

7.11.002 The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

SECTION 12 ADOPTION OF STATE CODE:

7.12.001 The Board of Health adopts the Massachusetts Cannabis Control Commission Adult Use of Marijuana 935 CMR 500 and Medical Use of Marijuana 935 CMR 501.000 by reference and any future revisions as a local regulation.

SECTION 13 SEVERABILITY:

7.13.001 If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

SECTION 14 EFFECTIVE DATE:

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

The Board of Health held a Public Hearing on this Regulation on July 12, 2021.

The Board of Health adopted this Regulation on July 12, 2021, by a 4-0 vote.

Promulgation of this Regulation was advertised in the Lowell Sun on January 27, 2022.