

Regulation of the City of Haverhill Board of Health Regarding the Sale of Medical Marijuana

A. Statement of Purpose:

Whereas the citizens of Massachusetts voted in November of 2012 to declare there should be no punishment under state law for Qualifying Patients and health care professionals, Personal Caregivers for patients, or Registered Marijuana Dispensary Agents for the medical use of marijuana.

Whereas the City of Haverhill aims to abide by the aim of this law and ensure that Registered Marijuana Dispensaries abide by further regulations to ensure the public health and public safety of our residents.

Now, therefore it is the intention of the City of Haverhill to regulate the sale of medical marijuana as allowed by MGL 94-G, Sections 1-9.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the City of Haverhill Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings. Terms not herein defined shall be used as defined in 105 CMR 725.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

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

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

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.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

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 (hereafter referred to as "License"): A license issued by the City of Haverhill, to be renewed annually, that permits a Registered Marijuana Dispensary to operate.

License Holder: Any entity engaged in the sale of medical marijuana which applies for and receives a License or any entity which is required to apply for a License pursuant to these regulations, or its 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 there from, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. The term also includes Marijuana-Infused Products (MIPs) 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, s. 1.

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use on site by qualifying patients or their personal caregiver (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that is capable of making rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Paraphernalia: “Drug paraphernalia” as defined in M.G.L. Ch. 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’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.

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 whom 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: 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 Qualifying Patients or their qualified caregiver. 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 Department, valid for one year from the date of issue, to a registered Qualifying 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: 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 and is authorized to work at a Registered Marijuana Dispensary. The Registration Card allows access into appropriate elements of a Department-supported, interoperable database in which detailed information regarding certifications and possession criteria are stored. The Registration Card identifies for the Department 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 MGL Ch. 369.

Self-Service Display: Any display from which customers may select a marijuana product without assistance from a Dispensary Agent or store personnel.

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).

Smoking: The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Tobacco Product: Cigarettes, E-Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff, blunt wraps or tobacco in any of its forms.

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 products.

Written Certification: A form submitted to the Department 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.

D. License to Operate a Registered Marijuana Dispensary:

1. Applications for Site Plan and Building Approval Process including but not limited to approvals by Police, Fire, Health & Inspection Services must be completed prior to the issuance of permits.
2. Anyone applying for a license to operate a Registered Marijuana Dispensary must be at least 21 years of age, a U.S. Citizen.
3. No entity shall sell or otherwise distribute marijuana or marijuana products within the city without first obtaining a License to Operate a Registered Marijuana Dispensary (License) issued annually by the City of Haverhill Board of Health. Only Registered Marijuana Dispensaries with a permanent, non-mobile location in city, meeting zoning restrictions and having obtained a special permit from the City Council, are eligible to apply for a License to maintain a supply of marijuana or marijuana products at the specified location in the City of Haverhill.
4. As part of the License application process, the applicant will submit the detailed summary of operating policies and procedures for the Registered Marijuana Dispensary as submitted with their Phase II application per 105 CMR 725.100, including, but not limited to, provisions for security, prevention of diversion, storage of marijuana, transportation of marijuana, inventory procedures, procedures for quality control and testing of product for potential contaminants, procedures for maintaining confidentiality as required by law, personnel policies, dispensing procedures, record-keeping procedures, plans for patient education, and any plans for patient or Personal Caregiver home-delivery.

5. As part of the License 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 and that the applicant is responsible for instructing any and all Dispensary Agents who will be responsible for sales.
6. Each applicant is required to provide proof of a current Registered Marijuana Dispensary registration, issued by the Commonwealth of Massachusetts, before a License can be issued.
7. As a condition to operation pursuant to a license issued by the City of Haverhill Board of Health, the Registered Marijuana Dispensary agrees to provide to the City of Haverhill Board of Health 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 written operating procedures required in 105 CMR 725.105 and 105 CMR 725.110 and shall be made available for inspection at any time by the Board of Health or Haverhill Police Dept.
8. No applicant is permitted to sell alcohol, tobacco products (does not include wrap papers, etc.) and/or Nicotine Delivery Products and must not be in possession of either a tobacco sales permit or a liquor license issued by the City of Haverhill Board of Health.
9. No applicant is permitted to hold a food service permit issued by the city for on-premises food consumption.
10. No applicant is permitted to be a Massachusetts lottery dealer.
11. A separate License is required for each retail establishment selling marijuana and/or marijuana products and for each location, not being the same address as the retail establishment, where the Registered Marijuana Dispensary is approved by the state to cultivate marijuana or prepare MIPs.
12. Each License shall be displayed at the retail establishment in a conspicuous place.
13. Issuance and maintaining a License shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
14. Issuance and maintaining a License shall be conditioned on an applicant's ongoing compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales. If there is a change in the status of the State issued Certificate of Registration, the licensee shall forthwith notify the Board.
15. Applicant agrees to maintain a closed-circuit camera system that records all sales transactions and any recordings from the previous 180 day period must be provided to any law enforcement official or municipal agent who requests such recordings.
16. License Holders agree that a Registered Marijuana Dispensary will not open for business prior to **9:00 a.m.** and shall close no later than **6:00 pm** daily. License holders may be opened prior to 9 a.m. or after 6 p.m. on certain week days with Board of Health approval.

17. No License Holder shall allow any Dispensary Agent to sell marijuana or marijuana products until such Dispensary Agent reads this regulation regarding the sale of marijuana and signs a statement, a copy of which will be placed on file in the office of the License Holder, that he or she has read the regulation.
18. Dispensary Agents must present their Registration Card to any law enforcement official or municipal agent who questions the agent concerning their marijuana-related activities.
19. A License is non-transferable. A new Registered Marijuana Dispensary entity must apply for a new License. No new License will be issued unless and until all outstanding penalties incurred by the previous License Holder are satisfied in full.
20. A License will not be renewed if the License Holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding License suspensions.

E. Marijuana Sales by Registered Marijuana Dispensaries:

1. No person shall sell marijuana from any location other than at a Registered Marijuana Dispensary that possesses a valid License to Operate a Registered Marijuana Dispensary issued by the city except as otherwise authorized by MGL Chapter 94G or 105 CMR 725.
2. Registered Marijuana Dispensaries shall only permit Dispensary Agents to transport marijuana or MIPs on their behalf, whether between dispensaries, dispensary sites, or to registered Qualifying Patients or Personal Caregivers and follow Massachusetts Department of Public Health guidelines found in 105 CMR 725.105 (F) and 105 CMR 725.110(E). The RMD's policies and procedures for the delivery and transportation of marijuana shall be provided to the Haverhill Police Department at any time and shall comply with 105 CMR 725.105 (F) and 105 CMR 725.110 E.
3. Registered Marijuana Dispensaries shall permit entry to the Registered Marijuana Dispensary, to specifically engage in activity expressly or by necessary implication permitted by the MGL Ch. 369 and 105 CMR 725.000, to only registered Qualifying Patients, Personal Caregivers, Dispensary Agents, persons authorized by 105 CMR 725.105(P) and, subject to the requirements of 105 CMR 725.110(C) (4), outside vendors, contractors and visitors.
4. Registered Marijuana Dispensaries shall limit entry to their "Limited Access Areas" to Dispensary Agents and outside vendors, contractors and visitors meeting the requirements found at 105 CMR 725.110(C).
5. Dispensary Agents shall verify the Registration Card of the Card Holder by means of a valid government-issued photographic identification. No separate identification is required for valid Registration Cards bearing a photograph of the Holder.
6. With the exception of deliveries to registered Qualifying Patients and their Personal Caregivers who are card holders all retail sales of marijuana must be face-to-face between the Dispensary Agent and the Card Holder and occur at the licensed location.
7. The fee for a Registered Marijuana Dispensary shall be set annually by the Board of Health.

8. No person shall distribute, or cause to be distributed, any free samples of marijuana or marijuana products. Any means, instruments or devices that allow for the redemption of marijuana or marijuana products are prohibited.
9. Registered Marijuana Dispensaries are prohibited from using self-service displays, vending machines or Non-Residential Roll-Your-Own machines.
10. The entity or other person in charge of a Registered Marijuana Dispensary shall conspicuously post signage at all entrances indicating that the entry to persons not possessing a valid Registration Card is prohibited. The signage shall be approved by the City of Haverhill. The notice shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person approaching the Registered Marijuana Dispensary.

F. Dispensary Agent Permit:

1. No Dispensary Agent shall sell or otherwise distribute marijuana or marijuana products within the City of Haverhill without first obtaining a Dispensary Agent Permit (Permit) issued annually by the Haverhill Board of Health.
2. 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.
3. 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.
4. 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.
5. The fee for a Dispensary Agent permit shall be annually set by the Board of Health.
6. Issuance and maintaining a Permit shall be conditioned on an applicant’s on-going compliance with current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
7. A Permit will not be renewed if the Permit Holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding Permit suspensions.
8. 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.
9. Dispensary Agents shall verify the Registration Card of the Card Holder by means of a valid government-issued photographic identification. No separate identification is required for valid Registration Cards bearing a photograph of the Holder.

10. With the exception of deliveries to registered Qualifying Patients and their Personal Caregivers who are card holders, all retail sales of marijuana must be face-to-face between the Dispensary Agent and the Card Holder and occur at the licensed location.
11. No Dispensary Agent shall distribute, or cause to be distributed, any free samples of marijuana or marijuana products. Any means, instruments or devices that allow for the redemption of marijuana or marijuana products are prohibited. This shall not include low cost or free alternatives or providing minimal amounts of medicine to patients with verified financial hardships.

G. Registration Card Holders

1. A Qualifying Patient, Personal Caregiver or a Dispensary Agent must notify the City of Haverhill Police Department within 24 hours after he or she discovers that his or her Registration Card has been lost or stolen.
2. A Qualifying Patient, Personal Caregiver or a Dispensary Agent must carry his or her Registration Card at all times while in possession of marijuana.
3. A registered Qualifying Patient with a hardship cultivation registration, or his or her Personal Caregiver(s), must abide by the provisions of 105 CMR 725.035.

H. Marijuana Sales by Individuals:

1. The sale of marijuana by any person outside of a Registered Marijuana Dispensary, including Card Holders and Dispensary Agent Permit holders, is prohibited and shall be punishable in accordance with applicable state and local laws.
2. The use of marijuana by persons, who are not Qualifying Patients with registration cards including Personal Caregivers who are card holders but not qualifying patients, shall be punishable in accordance with applicable state and local laws.

I. Marijuana Possession:

1. A Card Holder if in possession of marijuana must present his or her Registration Card to any law enforcement official who questions the patient or caregiver regarding use of marijuana.
2. A Card Holder must not possess an amount of marijuana that exceeds his/her sixty-day supply.
3. Other than Dispensary Agents who are card holders, growing marijuana is prohibited except for those possessing a valid Hardship Cultivation Registration issued by the Commonwealth of Massachusetts pursuant to 105 CMR 725.035.

J. Marijuana Use:

1. The smoking of any marijuana is prohibited in locations governed by the Massachusetts Smoke-Free Workplace Law (MGL Ch. 270 §22) and by any local laws or regulations that further ban smoking.
2. The use of all forms of marijuana by all persons, including Card Holders, is prohibited in public schools, on public school grounds and on public school buses.

K. Violations:

1. It shall be the responsibility of the License Holder, his or her business agent and/or Permit Holder to ensure compliance with all sections of this regulation pertaining to his or her distribution of marijuana and/or marijuana products. The violator shall receive:
 - a In the case of a first violation, a fine of three hundred dollars (\$300.00).
 - b In the case of a second violation within 24 months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the License or Permit shall be suspended for seven (7) consecutive business days.
 - c In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the License or Permit shall be suspended for thirty (30) consecutive business days.
2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the License or Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any License Holder or Permit Holder who engages in the sale or distribution of marijuana or marijuana products while his or her License or Permit is suspended shall be subject to the suspension of all city-issued permits and licenses for thirty (30) consecutive business days.
4. The City of Haverhill Board of Health shall provide notice of the intent to suspend a License or Permit, which notice shall contain the reasons therefore and 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 License Holder or its business agent or Permit Holder shall have an opportunity to be heard at such hearing and shall be notified of the city's decision and the reasons therefore in writing. After a hearing, the city shall suspend the License or Permit if the city finds that a violation of this regulation occurred. For purposes of such suspensions, the city shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All marijuana and marijuana products shall be removed from the retail establishment upon suspension of the License. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this regulation.
5. An individual or person who violates Sections I and J of this regulation shall be subject to a penalty of one hundred dollars (\$100.00) for each violation.

L. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

The penalty for violations of this regulation, which would also violate provisions of City Ordinance Chapter 189, Section 14, shall not supersede those penalties found in Chapter 189 Section 14.

M. Enforcement:

Enforcement of this regulation shall be by the City of Haverhill Board of Health and/or an authorized agent of the City of Haverhill Board of Health.

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the City of Haverhill Board of Health or its designated agent(s) and they shall investigate.

N. Severability:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

O. Effective Date:

This regulation was adopted after a public hearing held on February 17, 2015 and shall take effect on April 1, 2015.

1. _____
Carl F Rosenbloom MD, Chairperson
2. _____
Victor Labranche, DVM, Board Member
3. _____
Peter Carbone, Board Member