

To see if the Town will vote to amend the Town’s General Bylaws by striking Chapter 173, Article II, Marijuana Establishments, and the Town’s Protective Zoning By-Law by striking Chapter 240, Section 240-5.5. Marijuana establishments prohibited, in their entirety and inserting in the Town’s Protective Zoning By-Law a new Chapter 240, Article XV, MARIJUANA BUSINESSES, to read as follows, or take any action relative thereto:

## ARTICLE XV

### **Marijuana Businesses**

#### **§ 240-15.1. Purpose; scope.**

- A. The purpose of this Article is to allow for the placement of recreational and medical marijuana businesses in suitable locations within the Town of Whitman in accordance with and subject to the provisions of M.G.L. c. 40A, M.G.L. c. 94G, and M.G.L. c. 94I, and to impose reasonable safeguards to minimize potential adverse impacts of marijuana businesses on adjacent properties, residential neighborhoods, schools and other places where children congregate and other land uses potentially incompatible with adult use marijuana activities, and to ensure proper consideration of public health, safety, well-being, and undue impacts on the built and natural environments.
- B. This Article shall not restrict the cultivation of industrial hemp as is regulated by the Massachusetts Department of Agricultural Resources pursuant to M.G.L. c. 128, §§ 116-123. Nothing in this Article shall be construed to supersede federal and state laws governing the possession, sale and/or distribution of marijuana.

#### **§ 240-15.2. Definitions.**

The terms used in this Article shall have the definitions set forth in M.G.L. c. 94G, § 1 and M.G.L. c. 94I, § 1, as may be amended from time to time, which are incorporated herein by reference, unless a contrary definition clearly applies or is otherwise specified herein. In addition, the following terms used in this Article are further defined as follows:

“Recreational marijuana establishment”, a “marijuana establishment” as defined by M.G.L. c. 94G, § 1.

“Recreational marijuana retailer”, a “marijuana retailer” as defined by M.G.L. c. 94G, § 1.

“Marijuana business”, includes both “marijuana establishments” as defined by M.G.L. c. 94G, § 1 and “medical marijuana treatment centers” as defined by M.G.L. c. 94I, § 1.

#### **§ 240-15.3. Designated locations for marijuana businesses.**

The locations designated by the Town of Whitman where marijuana businesses may be sited are as follows:

- A. Marijuana businesses may be sited as-of-right in the Highway Business District and that portion of the Industrial District to the north of South Avenue, as shown on the Zoning Map pursuant to M.G.L. c. 40A, § 4, subject to the issuance of a special permit in accordance with § 240-12.7.E (2) and site plan approval in accordance with § 240-7.2.
- B. Marijuana businesses are prohibited in all other zoning districts within the Town of Whitman.
- C. The total number of recreational marijuana establishments under M.G.L. c. 94G and medical marijuana treatment centers under M.G.L. c. 94I permitted to be located within the Town shall not exceed a maximum of five, of which no more than three may be recreational marijuana retailers under M.G.L. c. 94G.

**§ 240-15.4. General requirements.**

The following general requirements are established for all proposed operations of marijuana businesses:

- A. Permanent location. Each marijuana business and any part of its operation, including, but not limited to, cultivation, processing, packaging, and sales, shall be operated from a fixed location within a fully enclosed building and its operations shall not be visible from the exterior of the premises. No marijuana business shall be permitted to operate from a movable, mobile or transitory location.
- B. Outside storage. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted.
- C. Hours of operation. Hours of operation of marijuana businesses shall be specified in the Host Community Agreement required by § 240-15.8.D. Set hours of operation shall apply to all sales, delivery, and dispensing activities for the business.
- D. Signage. Marijuana businesses may develop a logo to be used in labeling, signage, and other materials. Use of medical symbols, images of marijuana, related paraphernalia, and colloquial references to cannabis and marijuana are prohibited from use in signs visible from the exterior of the building.

A marijuana business shall not display on the exterior of the facility advertisements for marijuana or any brand name, and may only identify the building by the registered name.

A marijuana business shall not utilize graphics related to marijuana or paraphernalia on the exterior of the marijuana business or the building in which the marijuana business is located.

All signage and advertising for marijuana businesses shall comply with all applicable state laws, as well as the provisions of § 240-9 of this Chapter and all other applicable provisions

of this Code and any relevant regulations promulgated by the Cannabis Control Commission. All signs shall also be subject to approval by the Board of Appeals.

- E. On-site consumption of marijuana. The use, consumption, ingestion or inhalation of marijuana or marijuana products on or within the premises of any marijuana business is prohibited.
- F. Visibility of activities. All activities of any marijuana business including any recreational marijuana retailer or marijuana product manufacturer, shall be conducted indoors.
- G. Paraphernalia. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers, may lawfully be sold at a recreational marijuana retailer. No retail marijuana, marijuana products, or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside the licensed premises.
- H. Control of emissions. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a marijuana business must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a retail marijuana store or marijuana manufacturing or testing facility, the owner of the subject premises and the licensee shall be liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
- I. Special permit and site plan approval. Marijuana businesses shall be required to obtain a special permit and site plan approval in accordance with the provisions of this Article and § 240-7.2 and § 240-12.7.E(2). Applications for special permits and site plan approvals for marijuana businesses will be processed in the order that they are filed with the Town. Special permits and site plan approvals shall be non-transferable to another marijuana business owner or site/parcel.
- J. Contacts. Prior to the commencement of the operation or services provided by a marijuana business it shall provide the Police Department, Fire Department, Zoning Enforcement Officer and the Board of Appeals with the names, phone numbers and email addresses of all management staff and keyholders, including a minimum of two (2) operators or managers of the facility identified as contact persons to whom one can provide notice if there are operating problems associated with the business. The marijuana business shall provide to such official a written update to such contact information immediately upon any changes to keep it current and accurate.
- K. Notification. The marijuana business shall notify the Zoning Enforcement Officer, Board of Health, Police Department, Fire Department and Board of Appeals in writing immediately following a violation or potential violation of any law or any criminal or potential criminal activities or attempts of violation of any law at the marijuana business.

- L. Violations. Any violation will be corrected within 30 days and if not corrected within the required time, all operations of the marijuana business shall be suspended until the violation is corrected.

**§ 240-15.5. Special permit required.**

No recreational marijuana retailer or independent testing laboratory shall be operated without first obtaining a special permit in accordance with this section. The special permit granting authority for purposes of this Article shall be the Board of Appeals. In addition to the standard requirements for the issuance of a special permit, issuance of a special permit under this Article is subject to the following:

D. Prior to the issuance of a special permit hereunder, the Board of Appeals must find:

- (1) the marijuana business is consistent with and does not derogate from the purposes, intent, conditions and requirements of this Article and the Protective Zoning By-Law;
- (2) the marijuana business meets or exceeds all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations;
- (3) the marijuana business facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;
- (4) the marijuana business provides adequate security measures to ensure that no customers will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation is adequately secured on-site or via delivery; and,
- (5) the marijuana business facility adequately addresses issues of traffic demand, circulation flow, parking and queuing, particularly at peak periods at the facility, and its impact on neighboring uses.

E. A special permit shall only be valid for use by the applicant and will become null and void upon the sale or transfer of the license of a marijuana business operating under a special permit or upon a change in the location of the business.

F. In the event that the Commonwealth's licensing authority suspends the license or registration of a marijuana business operating under a special permit, the special permit shall be so suspended by the Town until the matter is resolved to the satisfaction of said licensing authority.

**§ 240-15.6. Site plan required.**

All proposed uses under this Article shall be subject to the Board of Appeals' site plan approval process pursuant to § 240-7.2. In addition to the standard application requirements for site plan approval, such applications for marijuana businesses shall include the following:

- A. The name and address of each owner of the facility/operation.
- B. A copy of an approved Host Community Agreement.
- C. A copy of the license or registration as a recreational marijuana establishment or medical marijuana treatment center, as applicable, from the Massachusetts Cannabis Control Commission or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a certification of registration and meet all of the requirements of a recreational marijuana establishment or medical marijuana treatment center, as applicable, in accordance with the regulations adopted by the Commission, as amended.
- D. Evidence that the applicant has site control and the right to use the site for a marijuana business.
- E. As part of the applicant's site plan, details showing all proposed exterior security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees, patrons, and the public and to protect the premises from theft or other criminal activity.
- F. The proposed plan shall provide appropriate landscaping and urban design features to harmonize the proposed project with abutting uses so as to protect and enhance the aesthetics and architectural look and character of the surrounding neighborhood.
- G. The Board of Appeals may require a traffic study that includes an analysis of on-site circulation and parking demand to justify the number of proposed parking spaces and the optimum configuration for site ingress and egress.
- H. An odor control plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative of odor control including maintenance of such controls.
- I. A Management Plan including a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to the marijuana business or off-site direct delivery

**§ 240-15.7. End of use.**

- A. Special permits and site plan approvals under this Article shall have a term limited to the duration of the applicant's ownership/control of the premises as a marijuana business and shall lapse/expire if:
  - (1) the marijuana business ceases operation (not providing the operation or services for which it is permitted) for 365 days, and/or
  - (2) the marijuana business's registration/license by the Cannabis Control Commission expires or is terminated.
- B. Any marijuana business under this Article shall be required to remove all material, marijuana products, equipment, signs, and other paraphernalia in compliance with regulations established by the Cannabis Control Commission prior to expiration of its license or immediately following the lapse, cessation, discontinuance, expiration or revocation of its use, licensure and/or registration. The license holder shall notify the Whitman Board of Selectmen's Office, the Zoning Enforcement Officer, and the Board of Appeals in writing within 48 hours of such lapse, cessation, discontinuance, expiration or revocation.

**§ 240-15.8. Other laws remain applicable.**

- A. Business license required. At all times while a permit is in effect the licensee shall possess a valid business license as required by the Whitman Town bylaws.
- B. To the extent the state has adopted or adopts in the future any additional or stricter law or regulation governing the sale, distribution or testing of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the business or operation of any recreational marijuana retailer in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
- C. The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.
- D. Prior to the issuance of a special permit or site plan approval, the marijuana business must have entered into a Host Community Agreement with the Town. If, upon review by the Board of Selectmen, the marijuana business is found to not be fully in compliance with the Host Community Agreement, any local licenses and/or permits may be suspended or rescinded.