

ORDINANCE:

AN ORDINANCE AMENDING CHAPTER 27 OF THE REVISED
ORDINANCE OF THE CITY OF BROCKTON CONCERNING THE REGULATION
AND ZONING OF MARIJUANA:

Be it ordained by the City Council of the City of Brockton as follows:

Article III. General Regulations and Permitted Modifications, is hereby amended
by adding the following:

Section 27-24.4 Adult use of marijuana

1. *Purpose.* The purpose of this section is to control the local cultivation, production, and distribution of marijuana as allowed by Massachusetts General Law Chapter 94G: Regulation of the use and distribution of marijuana not medically prescribed, as amended by Chapter 55 of the Acts of 2017: An act to ensure safe access to marijuana, and governed by 935 CMR 500.000: Adult use of marijuana and the Brockton City Ordinance for the Establishment of Licensing and Regulation for Adult Use Marijuana Establishments.
2. *Definitions.* Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and in General Laws c. 94G, §1.
 - a. Medical Marijuana Treatment Center also known as a Registered Marijuana Dispensary (RMD): means an entity registered under 105 CMR 725.100 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.
3. Allowed uses.
 - a. Principal Permitted: Pursuant to standards enumerated herein, Craft Marijuana Cultivator Cooperative, Marijuana Cultivator, Marijuana Products Manufacture, Marijuana Independent Testing Laboratory, Marijuana Transporter, Marijuana Research Facilities, and other similar Marijuana Enterprises, with the exception of Marijuana Retailers, shall be principal permitted uses in I-1 Industrial Park Zones. Notwithstanding the aforementioned, the location shall not be considered a Principal Permitted Use if the location is within one hundred

(100) feet of a residential use, in which case the use shall only be allowed under Section 27-24.4(3)(b) Special Permit. Access to all retail locations must be designed and constructed to comply with applicable disability access requirements including but not limited to, the Americans with Disabilities Act (ADA).

- b. Special Permitted Uses: Pursuant to standards enumerated herein, Marijuana Retailer and the retail sale of Marijuana Accessories shall be special permitted uses in C-2 General Commercial Zones and C-3 Central Business Zones only.
 - i. Marijuana Retailer operations shall not be conducted or located on the ground floor in C-3 Zones.
 - ii. Marijuana Retailer hours of operation shall be no earlier than 8 a.m. and not later than 8 p.m.
 - iii. Access to all retail locations must be designed and constructed to comply with applicable disability access requirements including but not limited to, the Americans with Disabilities Act (ADA).
- c. Notwithstanding anything herein to the contrary, nothing in this Ordinance shall be construed as preventing a Medical marijuana treatment center with a special permit to operate in the Humanitarian Medical Use of Marijuana Overlay Districts (HMMOD) pursuant to Ordinance Section 27-24.3 as of July 1, 2017 from applying for a permit and/or license to operate as a Marijuana Establishment at the same location as the Medical marijuana treatment center permitted in the HMMOD.
- d. Seventy five percent (75%) of the recreational Marijuana Retailer licenses shall be reserved for establishments to be located in C-2 zoning Districts. Twenty five percent (25%) of the recreational Marijuana Retailer licenses shall be reserved for establishments to be located in the C-3 Zoning District. Registered Marijuana Dispensaries ("RMD") provisionally licensed no later than July 1, 2017 are exempt from this provision.

4. *Prohibited uses.* Marijuana Establishments are prohibited from R-1 Single-Family Residential Zones, R-2 and R-3 Multi-Family Residential Zones, C-1 Neighborhood Commercial Zones, C-4 Planned Shopping Center Zones, C-5 Office Zones, C-6 Regional Shopping Center Overlay Zones, C-7 Sports and Convention Complex Zones, C-8 Highway Commercial Zones, and Thatcher Street Smart Growth Overlay District.

5. *Conversion.* RMDs registered no later than July 1, 2017 that engage in the cultivation, manufacture, or sale of marijuana or marijuana products to a marijuana establishment for adult use engaged in the same type of activity shall also be subject to these regulations.

6. *Operational Requirements, Restrictions, and Conditions.*

- a. Prohibition Against Nuisances: Marijuana Establishments shall be located, constructed, and operated in such a way as to minimize any noise, safety, odor, and environmental impacts. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.
- b. Odor Control and Ventilation: All premises shall be equipped with odor control filtration and ventilation system(s) based on the then current industry-specific best control technologies and best management practices. No operable windows or exhaust vents shall be located on any building façade. Exhaust vents on rooftops shall direct exhaust away from residential uses or zones. The building, or portion thereof, used for marijuana retailing shall be designed or equipped to prevent detection of marijuana odors and other objectionable odors from the property line. All Marijuana Establishments shall be ventilated in such a manner that no:
 - i. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere;
 - ii. No odor from marijuana cultivation, processing, sale, storage or consumption can be detected by a person with an unimpaired and otherwise normal sense of smell at any adjoining use or adjoining property to the marijuana establishment; and
 - iii. The exhaust system to control odor shall be designed by a licensed professional air quality/environmental engineer recognized by the Commonwealth.
- c. Building: Marijuana Establishment uses shall be located only in a permanent building and not within any mobile facility. No outside storage is permitted. Marijuana waste shall also be stored within a permanent building. All sales shall be conducted either within the building or, if allowed by applicable state regulations, by home deliveries to qualified clients pursuant to applicable state and local regulations.

- i. The use of a walk-up or drive-thru window service is strictly prohibited.
 - ii. Marijuana Establishments may only use their designated square footage for the purposes of operating such an establishment, as encompassed in this Ordinance and Ordinance Section 27-24.3.
 - iii. No Marijuana Retailer shall have a gross floor area in excess of 5,000 square feet.
 - iv. All Marijuana Establishments submit a secure solid waste disposal and recycling plan to be approved by the City of Brockton Board of Health.
- d. Visibility: No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.
- e. Dimensional Requirements: Except where it is explicitly stated otherwise in this Section, a Marijuana Establishment shall conform to the dimensional requirements applicable to non-residential uses within the base zoning districts.
- f. Location (Buffer Zone): No Marijuana Retail Establishment shall be within:
 - i. Five hundred (500) feet of another presently existing or permitted Marijuana Dispensary or Recreational Retail Facility; or
 - ii. Five hundred (500) feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12.
 - iii. The distance under this section shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Retail Establishment is or will be located. Where any portion of a lot is within a required separation, the entire lot shall be considered to be within the required separation.
- g. Co-Location:
 - i. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the retailer.
 - ii. The simultaneous operation of a marijuana medical dispensary and an adult use recreational dispensary on the same lot or building is strictly prohibited. All Registered Medical Dispensaries registered no later than July 1, 2017 are exempt from this provision.
 - iii. Marijuana retailing shall not be co-located on the same parcel or within the same building with any retail shop that sells tobacco or marijuana paraphernalia, i.e. Vape Shops.
- h. Age Requirement: No persons under the age of twenty-one (21) shall be permitted to be present in the building, or portion thereof, occupied by any Marijuana Establishment.

- i. Hours of Operation: Operations, including deliveries to and from any Marijuana Establishment, may not occur within the hours of 8:00 p.m. to 8:00 a.m.

7. *Special Permit/ Site Plan Review*. All Marijuana Establishments require Site Plan Review. Marijuana Retail operations require a Special Permit from the Zoning Board of Appeals.

- a. Site Plan Review Procedure: An application for Site Plan Review shall be submitted and administered in accordance with the provisions of ARTICLE XV - SITE PLAN REVIEW of the Brockton Zoning Ordinances. Site Plan approval for all Marijuana Establishments shall be subject to the requirements indicated herein and shall be in addition to the provisions of ARTICLE XV - SITE PLAN REVIEW. The applicant shall submit a copy of its provisions or final license, if issued by the Cannabis Control Commission ("CCC"), along with any materials submitted to the Cannabis Control Commission for the purpose of seeking such license.
- b. Special Permit Procedure: The special permit shall conform to this Section of the Zoning Ordinance and to M.G.L. Chapter 40A, Section 9, as well as to regulations which the Zoning Board of Appeals shall adopt from time to time for carrying out its requirements under this Section. An application for special permit under this Section shall be submitted and administered in accordance with the provisions of Ordinance Section 27-49.

8. *Materials for Review*. In addition to the materials required under ARTICLE XV - SITE PLAN REVIEW, an application to the Planning Board of the City of Brockton, as a part of a public hearing for a Site Plan Review, shall include, at a minimum, the following information:

- a. Description of Activities: The applicant shall submit 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 (MIPs), on-site

sales, off-site deliveries (if allowed by state regulation), distribution of educational materials, and other programs or activities.

- b. Service Area: A map and narrative describing the area proposed to be served by the Marijuana Establishment and the anticipated number of customers that will be served within the area. This description shall indicate where any RMDs and/or Marijuana Establishments, including Marijuana Retailers, exist or have been proposed within the expected service area.
- c. Context Map: The applicant shall submit a context map depicting all properties and land uses within a one thousand foot (1,000') radius (minimum) of the project site, whether such uses are located in Brockton or within surrounding communities, including but not limited to all educational uses. Required Buffer Zones as defined under provision 7(i) of this Section shall also be included for review.
- d. Transportation Analysis: The applicant shall provide a Transportation Demand Management Plan to establish the impacts of the peak traffic demand and shall adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses. The transportation demand management plan shall also model expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.
- e. Security Plan: The applicant shall submit a security plan that has been reviewed and approved by the Brockton Police Department that indicates that the site is designed as such that it provides convenient, safe and secure access and egress for clients

and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users. The applicant shall also submit a security plan for review and approval by the Brockton Police Department for its transportation vehicles if applicable to their license issued by the Massachusetts Cannabis Control Commission or Massachusetts Department of Public Health. The Security Plan shall not be considered public document subject to the Massachusetts Public Records Law or Freedom of Information Act.

- f. Site Plan: A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of the automobile and bicycle parking, the location of pedestrian, bicycle and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site, stormwater facilities, and landscape design including landscape buffers along abutting properties and public ways.
- g. Building Elevations and Signage: For all new buildings, architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used, shall be submitted by the applicant. Perspective drawings and illustrations of the site from public ways and abutting properties are also required. For existing buildings and structures, any changes to the exterior of the building shall be shown along with location of proposed entrances, loading areas and signage. All signage and advertising materials shall be consistent with underling zoning requirements and comply with the provisions and prohibitions within 935 CMR 500.

- h. Emergency Response Plan. All Marijuana Establishments shall meet with the Brockton Fire Department and the Brockton Police Department to discuss and identify emergency plans/contingency plans for the site prior to the issuance of a certificate of occupancy. A written Emergency Response Plan shall be filed with the Brockton Fire Department and the Brockton Police Department pursuant to M.G.L. c. 94G, §12. All Marijuana Establishments shall designate a single on-site staff member as the community liaison with direct interaction with on-site security and City police. Emergency Response Plans shall not be considered public document subject to the Massachusetts Public Records Law or Freedom of Information Act.
- i. Solid Waste Disposal and Recycling Plan. All Marijuana Establishments shall submit a secure solid waste disposal and recycling plan to be approved by the City of Brockton Board of Health

9. *Special Permit Criteria.* In granting a Special Permit for a Marijuana Retailer, in addition to the general criteria for issuance of a Special Permit as set forth in Ordinance Section 27-49, the Zoning Board of Appeals shall find that the following criteria are met:

- i. The building and site are designed such that they provide convenient, safe and secure access and egress for customers and employees arriving to and from the site using all modes of transportation, including drivers, pedestrians, bicyclists, and public transportation users.
- ii. Loading, refuse, and service areas are designed to be secure and shielded from abutting uses.
- iii. The building and site 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.

10. *Conditions of Approval.* Special Permits and/or Site Plan Approval under this Ordinance shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this Section. In addition to any specific conditions applicable to the Marijuana Retailer the following conditions shall be included in any permits or approvals granted under this Section:

- a. Licensed to Operate: All permitted Marijuana Establishments shall be properly licensed by the CCC and shall comply with all applicable state and local regulations, laws, and rules at all times. No Building Permit or Certificate of Occupancy shall be issued for a Marijuana Establishment that is not properly licensed with the CCC.
- b. Limitation of Approval: A Special Permit and/or Site Plan approval authorizing the location of a Marijuana Establishment shall be valid only for the licensed entity to which the Special Permit or Site Plan approval was issued and only for the site at which the Marijuana Establishment has been authorized by the Special Permit or Site Plan approval.
- c. Operations and Security Measures: The Marijuana Enterprise shall comply with all regulations promulgated by the CCC, as well as any additional security measures imposed by the City of Brockton Zoning Board of Appeals or Planning Board.
- d. Host Community Agreement: The applicant shall provide documentation in the form of a single-page certification signed by Mayor of the City of Brockton and the applicant evidencing that the applicants for licensure and host municipality have executed a Host Community Agreement.
- e. Hours of Operation: The hours of operation may be set by the Zoning Board of Appeals,

but in no event shall a Marijuana Establishment that dispenses marijuana or marijuana products to the public be open earlier than 8 am and not later than 8 pm.

f. Validity of Permits and Cessation of Operations:

- i. The Special Permit and/or Site Plan approval shall lapse one (1) year from the date the Zoning Board of Appeals files its decision with the City Clerk, pursuant to M.G.L. c. 40A, §9 if a substantial use thereof has not sooner commenced.
- ii. The Special Permit and/or Site Plan approval shall be limited to the permit holder and shall lapse if the permit holder ceases operating the Marijuana Establishment. Any changes in the entity of the Special Permit holder, to the scope and scale of operations, or other material facts stated in the initial application to the CCC, shall be submitted to the City of Brockton Planning Board and Zoning Board of Appeals. If the City of Brockton Planning Board determines that there are substantial changes to the original approval, the City of Brockton Planning Board or Zoning Board of Appeals may require the permit holder to file an application for major modification to the current permit, which shall be acted upon following a public hearing.
- iii. The Special Permit and/or Site Plan approval shall automatically lapse upon the expiration or termination of the permit holder's license issued by the CCC.
- iv. The permit holder shall notify the City of Brockton Planning Board and Zoning Board of Appeals in writing within forty-eight (48) hours of the

AMENDMENT

I motion to accept the Recommendation by the Planning Board as follows:

6. Operational Requirements, Restrictions and Conditions

b. Odor Control and Ventilation iii

The exhaust system to control odor shall be designed by a licensed professional air quality/environmental engineer recognized by the Commonwealth.


Councillor
Councillor Robert F. Sullivan

cessation of operation of the Marijuana Establishment or the expiration or termination of the permit holder's license issued by the CCC.

11. *Inspections.* The City of Brockton and its agents, including, but not limited to, representatives from the Building Department, Board of Health, Fire Departments, Compliance Officer/Code Enforcement Officer, and Police Departments, may conduct unannounced unscheduled, periodic inspections of the premises of any Marijuana Establishment to determine the Marijuana Establishment's compliance with the requirements of state and local laws, regulations, licenses, and permits, including this Section.



Councillor Thomas Monahan

In City Council March 26, 2018

Read and Referred to Standing
Committee on Ordinance/Planning



City Clerk

In City Council December 27, 2018

Councillor Sullivan motioned to refer to Planning and was properly seconded. The motion carried by a hand vote.



City Clerk

In City Council January 28, 2019

Hearing held.

Councillor Asack motioned to postpone to next City Council meeting and was properly seconded.

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The motion carried by a hand vote.

Anthony J. Zeoli
City Clerk

In City Council February 11, 2019

Passed to a third reading, as amended, by a hand vote.

Anthony J. Zeoli
City Clerk

In City Council February 25, 2019

Councillor Beauregard motioned to amend relative to the buffer zone and was properly seconded. The motion failed by a hand vote with eleven members present with three voting in the affirmative. Councillors Asack, Cruise Derenoncourt, Eaniri, Farwell, Lally, Monahan and Rodrigues voting in the negative.

Councillor Sullivan motioned to amend by accepting Planning Board recommendations and was properly seconded. The motion carried by a roll call vote taken by "yeas" and "nays"; eleven members present and all voting in the affirmative.

Councillor Cruise motioned to file for reconsideration with the wish that it not prevail and was properly seconded. Reconsideration failed by a hand vote.

Anthony J. Zeoli
City Clerk

SENT TO MAYOR FOR APPROVAL

February 26 2019
APPROVED
Bill Caputo
MAYOR