

TOWN OF LUNENBURG

Office of the Planning Board

Matthew Allison, Chair
 Vice-Chair
 Kenneth Chenis, Clk.
 Tanner Cole, Mbr.
 Paula Bertram, Mbr.



Tel: (978) 582-4147, ext 5
 Fax: (978) 582-4353
 960 Massachusetts Avenue
 Lunenburg, MA 01462

Adam R. Burney
 Land Use Director

Marjorie J. Boggio
 Administrative Assistant

Minutes
 Public Hearing (continued)
 Town Meeting Warrant Article
 March 4, 2019

Posted: Yes
 Place: Town Hall, 17 Main Street, Lunenburg, MA
 Time: 7:29 PM
 Present: Matthew Allison, Kenneth Chenis, Tanner Cole, Paula Bertram, Adam R. Burney

The Hearing continuation was to make alterations to Code of the Town of Lunenburg, Chapter 250: Zoning, (i) Article IV, 4.1.G Use Table; (ii) adding 4.1.O. Non-Medical Marijuana Uses; (iii) deleting 4.15. Temporary Moratorium on Sale and Distribution of Recreational Marijuana and; (iv) create a new 4.15. Non-Medical Marijuana Establishments.

The Board was in receipt of an updated draft of 4.15. which incorporated comments from both Town Counsel and the Building Commissioner.

DRAFT FINAL 4 Mar 2019

4.1O	NON-MEDICAL MARIJUANA USES	RA	RB	O	LB/R	C	OP/I	R	VCD	SS	TT	W
4.1O(1)	Marijuana cultivator	SP-PB	SP-PB	SP-PB	-	-	SP-PB	-	-	-	-	-
4.1O(2)	Marijuana Product Manufacturer	-	-	-	-	-	SP-PB	-	-	-	-	-
4.1O(3)	Marijuana Testing Facility	-	-	-	-	-	SP-PB	-	-	-	-	-
4.1O(4)	Marijuana Retailer	-	-	-	-	SP-PB-	SP-PB	-	-	-	-	-
4.1O(5)	Marijuana Transporter	-	-	-	-	-	SP-PB	-	-	-	-	-
4.1O(6)	Marijuana Researcher						SP-PB					

4.1O Non-Medical Marijuana Uses

4.1O(1) "Marijuana cultivator", an entity licensed to cultivate, process and package marijuana, to deliver marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers.

4.10(2) "Marijuana product manufacturer", an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to Marijuana Establishments and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers.

4.10(3) "Marijuana testing facility", an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

4.10(4) "Marijuana retailer", an entity licensed to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.

4.10(5) "Marijuana Transporter" an entity with a fixed location 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. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

4.10(6) "Marijuana Researcher Facility" an entity licensed to cultivate, purchase, or otherwise acquire marijuana for the purpose of conducting research regarding marijuana products.

250-4.15.A Purpose: The purpose of this Bylaw is to allow state-licensed non-medical Marijuana Establishments to exist in the Town of Lunenburg in accordance with applicable state laws and regulations and impose reasonable safeguards to govern the time, place and manner of Marijuana Establishment operations and any business dealing in marijuana, marijuana products and marijuana accessories in such a way as to ensure public health, safety, well-being, as well as limit undue impacts on the natural environment as it relates to cultivation, processing and manufacturing subject to the provisions of this Zoning Bylaw, M.G.L. c. 40A, and M.G.L. c. 94G.

250-4.15.B Applicability: Where permitted by the Use Regulation Schedule, Section 250-4.1, the types of Marijuana Establishments specified therein may be allowed in designated zoning districts by special permit issued by the Planning Board pursuant to M.G.L. c. 40A, § 9, and Section 250-8.3 of this By-Law. All Marijuana Establishments authorized by special permit shall also require site plan review pursuant to Section 250-8.4; which review shall be undertaken concurrently with the special permit process. The provisions of this Section 250-4.15 shall not apply to Medical Marijuana Treatment Centers, which shall be subject to and governed exclusively by Section 250-4.14.

250-4.15.C Special Permit Required: The Planning Board may grant a Special Permit for Marijuana Establishments, as defined in M.G.L. c. 94G, in accordance with the standards set forth in this section and the general criteria for granting a Special Permit contained in Section 250-8.3 of the Code of Lunenburg.

250-4.15.D Definitions: This Bylaw shall incorporate all definitions promulgated by M.G.L. 94G as amended.

250-4.15.E Requirements

1. It shall be unlawful for any person to operate a Marijuana Establishment without obtaining a special permit to operate pursuant to the requirements of this Bylaw.
2. A separate special permit is required for each different Marijuana Establishment detailed in Section 250-4.1.O. In the case that one or more different types of Marijuana Establishments are proposed, each establishment type shall require a special permit from the Planning Board.
3. The special permit requirements set forth in this Bylaw shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.
4. The issuance of a special permit pursuant to this Bylaw does not create an exception, defense, or immunity to any person or entity in regard to any potential criminal liability the person or entity may have for the production, distribution, or possession of marijuana.
5. A special permit issued for a Marijuana Establishment is not transferable or assignable to a different location or a different type of Marijuana Establishment.

250-4.15.F General Requirements for Marijuana Establishments: The following apply to all Marijuana Establishments as defined in Section 250-4.1.O and in M.G.L. c. 94G, including but not limited to marijuana cultivation, manufacturing, testing, and retail establishments:

- (1) Security, Operations, and Emergency Plans. All Marijuana Establishments shall file a security plan, operation and management plan, and emergency plan with the Lunenburg Police Department: Should the Lunenburg Police Department find the Security Plan deficient, and the applicant is unable to appropriately modify the Plan to the Department's satisfaction, the Lunenburg Police Department shall submit a written document outlining the deficiencies.
 - (a) Security Plan.
 - [1] The petitioner shall submit a security plan to the Lunenburg Police Department, in conformance with the requirements of the Lunenburg Police Department, to demonstrate that there is limited undue burden on Town public safety officials as a result of the proposed business.

- [2] The security plan shall include the details of all security measures for the site and the transportation of marijuana and marijuana products to and from off-site premises to ensure the safety of employees and the public and to protect the premises property from theft or other criminal activity.
- (b) Operation and Management Plan. All Marijuana Establishments shall submit an operation and management plan to the Building Department and Planning Board which shall include, but not be limited to the following elements: Organizational Structure, Location, Property Description, Hours of Operation and Staffing, description of proposed operations, distribution practices, employee safety, general compliance, fire prevention, sanitation and waste disposal requirements, electrical system overview, proposed energy demand and proposed electrical demand off-sets, ventilation system and air quality, proposed water system and utility demand prior to the issuance of a building permit.
- (c) Emergency Response Plan. All Marijuana Establishments shall meet with the Lunenburg Fire Department and the Lunenburg Police Department to discuss and identify emergency plans/contingency plans for the site. A written Emergency Response Plan, including contact information for a facility representative available 24 hours a day, shall be filed with the Lunenburg Fire Department and the Lunenburg Police Department pursuant to M.G.L. c. 94G, § 12.
- (d) Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.
- (2) All Marijuana Establishments shall be within a fully enclosed structure and no marijuana odor shall be detectable at the Marijuana Establishment's property line. The use of chemical masking agents shall not be permitted.
- (3) Marijuana Establishments shall not be located in mobile structures.
- (4) A Marijuana Establishment shall not be located within five hundred (500) feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, pre-existing small and large group child care facilities licensed by the Commonwealth, or within two hundred fifty (250) feet of pre-existing family child care providers licensed by the Commonwealth, municipal active recreation facilities, houses of worship and funeral homes. This setback shall be measured from the nearest portion of the Marijuana Establishment's structure to the property line of the protected use.
- (5) All business signage shall be subject to the requirements to be promulgated by the Cannabis Control Commission and the requirements of Sections 250-6.5 of the Code of Lunenburg, as amended.
- (6) No marijuana shall be smoked, eaten, or otherwise consumed or ingested within any type of licensed Marijuana Establishment or property thereof.
- (7) Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, 935 CMR 500, the Town of Lunenburg's General By-Laws, the Town of Lunenburg's Zoning By-Laws, all applicable local and state building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Planning Board Special Permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.
- (8) All Marijuana Establishments shall be required to permit each individual location/address individually with the Town of Lunenburg.
- (9) 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, lighting, illegal drug activity under State or local law, harassment of passersby, littering, loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or local Traffic 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 any activities that result in police detentions and arrests.
- (10) A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
- (a) prior to surrendering its State-issued license; or
- (b) within ninety (90) days of ceasing operations.
- Applicants shall be required to estimate and submit a detailed breakdown of the total cost for the removal of all Marijuana and marijuana products. This estimate will be reviewed and approved by the Planning Board. Prior to the recording of any Special Permit, the applicant shall place surety with the Town of Lunenburg in the amount of the approved estimate plus twenty percent (20%).
- (11) No use of any special permit or site plan approval issued hereunder shall commence nor shall construction of a Marijuana Establishment authorized hereunder begin unless and until all requisite provisional license(s) and approval(s) under M.G.L. c. 94G and 935 CMR 500.000, *et seq.*, have first been obtained. No Marijuana Establishment shall be permitted to commence operations until the Cannabis

Control Commission has issued a Final License.

- (12) No land, building(s) or structure(s) shall be used for Marijuana-related business or activity except in accordance with a license issued by the Commonwealth of Massachusetts in good standing.
- (13) The requirements of this Section 250-4.15 shall apply to all Marijuana Establishments regardless of the class or type of license issued by the Commonwealth of Massachusetts. All requisite operational, siting and security requirements of the applicable licensing scheme shall be satisfied, and proof thereof submitted to the Planning Board.
- (14) Marijuana plants, marijuana products and marijuana accessories for the ingestion, inhalation, or used to introduce marijuana to the human body shall not be visible from the outside of any structure in which a Marijuana Establishment is located; nor shall any outdoor storage be permitted. The foregoing shall be deemed to prohibit outdoor cultivation by a Marijuana Cultivator.
- (15) No Marijuana-related public events shall be permitted except in accordance with M.G.L. c. 94G and 935 CMR 500.000, *et seq.*, and only if, and as may be authorized by, the Board of Selectmen from time to time.
- (16) The Planning Board, as SPGA, may impose such restrictions on the time, place and manner of Marijuana Establishment operations and of any business dealing in marijuana, marijuana products and/or marijuana accessories as may be necessary to protect the public interest and/or to satisfy the purpose and intent of this By-Law. The Planning Board may consider factors including, but not limited to, project and building design, setbacks, visibility, traffic and pedestrian circulation, outdoor lighting, odor control, security, hours of operation and consistency with nearby and abutting land uses, and may reasonably condition any special permit or site plan approval accordingly.
- (17) Pursuant to M.G.L. c. 40A, § 3, agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution of Marijuana; and, consequently, these activities are not exempt from zoning thereunder.
- (18) All shipping and receiving areas shall be for the exclusive use of the Marijuana Establishment.
- (19) All Marijuana Establishments shall comply fully with the provisions of 935 CMR 500.000, as amended.

250-4.15.G. Access to Premises and Information/Reporting/Record-Keeping

- (1) Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, or an agent from the Planning, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer assigned by the Chief) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected noncompliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection may be subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.
- (2) Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Manager, Police Chief, Board of Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

250-4.15.H Requirements Specific to Marijuana Retailer Establishments. Marijuana retailers shall be subject to M.G.L. c. 94G, § 12 and the following restrictions to ensure there are no undue impacts on the health, safety, and well-being of the public:

- (1) As defined in M.G.L. c. 94G, the number of marijuana retailers shall be limited to no more than 2.
- (2) There shall be no drive/walk-up service window or other mechanical or non-mechanical means that allows the retail sale of marijuana, marijuana products and/or marijuana accessories through the exterior walls of a retail Marijuana Establishment to a customer or customers.

250-4.15.I Requirements Specific to Marijuana Transporters

- (1) No marijuana or marijuana products shall be permitted to be stored in any vehicle. All products must be stored inside a fully enclosed building and in a manner deemed appropriate by the Lunenburg Police Department and the Planning Board.

250-4.15.J Setbacks from Residential Uses

All Marijuana Establishments must be setback from any pre-existing residential use or lot located in a residential zoning district as shown in the chart below. This distance shall be measured from nearest portion of the the Marijuana Establishment’s structure to the property line.

		Zoning District Marijuana Establishment is Located										
	Marijuana Establishment Type	RA	RB	O	LB/R	C	OP/I	R	VCD	SS	TT	W
4.10(1)	Marijuana Cultivator	375 Feet	375 Feet	375 Feet	N/A	N/A	250 Feet	N/A	N/A	N/A	N/A	N/A
4.10(2)	Marijuana Product Manufacturer	N/A	N/A	N/A	N/A	N/A	250 Feet	N/A	N/A	N/A	N/A	N/A
4.10(3)	Marijuana Testing Facility	N/A	N/A	N/A	N/A	N/A	250 Feet	N/A	N/A	N/A	N/A	N/A
4.10(4)	Marijuana Retailer	N/A	N/A	N/A	N/A	250 Feet	250 Feet	N/A	N/A	250 Feet	N/A	N/A
4.10(5)	Marijuana Transporter	N/A	N/A	N/A	N/A	N/A	250 Feet	N/A	N/A	N/A	N/A	N/A
4.10(6)	Marijuana Researcher	N/A	N/A	N/A	N/A	N/A	250 Feet	N/A	N/A	N/A	N/A	N/A

250-4.15.K Special Permit Procedure:

All Special Permits for Marijuana Establishments shall be filed and follow the provisions of Section 250-8.3 of the Code of Lunenburg and the Planning Board Rules and Regulations for Site Plan Approval & Special Permits, as amended. In addition to the requirements listed in the aforementioned documents applicants must also submit the following information:

- (1) Applicant shall submit proof of approval from the Commonwealth of Massachusetts for the proposed Marijuana Establishment by submitting copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the facility as well as Host Community Agreement (HCA) with the Town and approval hereunder shall be conditioned on final approval from the Commonwealth.
- (2) In addition to complying with any other state or town requirement related to good character and criminal background, any person or entity proposed to have interests in the license to operate a Marijuana Establishment shall not have committed any marijuana licensing violation affecting public safety, or received any suspension or revocation of any other state or local marijuana business licenses.
- (3) A statement signed by the organization's chief executive officer disclosing all of its designated owners, including officers, directors, partners, managers, investors or other similarly situated individuals. If any of the above are entities rather than persons, the Applicant must disclose the identity and current contact information of all responsible individuals.
- (4) Evidence that the applicant has site control and the right to use the site for a Marijuana Establishment.
- (5) An Odor Control Plan detailing the Marijuana Establishment’s proposed mitigation measures for the potential odors associated with the operation of their business.

250-4.15.L Special Permit Findings: In addition to the findings for a special permit in Section 250-8.3 of the Code of Lunenburg, the Planning Board must also make the following findings:

- (1) The applicant demonstrates that the Marijuana Establishment will meet all of the permitting requirements of all applicable agencies within the Commonwealth and will be in compliance with all applicable state laws and regulations, including, but not limited to M.G.L.A. c. 94G, § 12 *General Marijuana Establishment Operation*.
- (2) The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Bylaw and any applicable town bylaws.

- (3) The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that storage and location of marijuana and marijuana products is adequately secured.

250-4.15.M Lapse: Notwithstanding the provisions of Sections 250-8.3 & 8.4 of this Bylaw, any special permit issued for a Marijuana Establishment, and any site plan approval received therefor, shall lapse within one (1) year from the grant thereof (plus such time as may be required to pursue or await the determination of an appeal therefrom) if substantial use has not sooner commenced, except for good cause.

250-4.15.N Prohibition: All Marijuana Social Consumption Operations are expressly prohibited anywhere within the Town of Lunenburg; provided, however, that said prohibition shall apply only insofar as the same does not conflict with Massachusetts law, or has not been preempted thereby.

250-4.15.O Revocation: Any violation of this Bylaw or conditions of the Special Permit shall be grounds for the revocation. The Special Permit may be revoked by the Planning Board if the Cannabis Control Commission license is revoked or lapses. The Marijuana Establishment shall notify the Planning Board of the revocation or loss of license(s) in writing within forty eight (48) hours of such happening.

250-4.15.P Severability: If any provision of this section is invalidated by subsequent legislation or regulation, or held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

4.10(3) "Marijuana testing facility", an entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

Carl Luck, 50 Sunset Lane- Approached the Board with numerous questions and concerns. He asked the Board to reconsider the 375 foot setback for craft cultivation cooperative and micro-business, opining that a 375 foot setback would essentially prohibit those two uses unless an individual had a large amount of farmland. The Board responded that number was reached through Board compromise as some Board members wanted 500 feet, and some 250. K. Chenis noted that number could be amended on town meeting floor. The Board does not want to make the bylaw too complicated initially and anticipates the bylaw will evolve/change over time. C. Luck questioned why cultivation would not be allowed outdoors. Board response was due to odor and security issues. C. Luck inquired about social consumption operations. A. Burney responded that the CCC (Cannabis Control Commission) did not do that in the first round of regulations. Within the past month the Cannabis Advisory Committee recommended to the CCC that it move forward with social consumption regulations. C. Luck disagreed with limiting the number of retail establishments to two. C. Luck had the understanding that the Board wanted prohibition to pass at town meeting. K. Chenis clarified that it is important for the bylaw to pass. It will be up to the citizens whether to pass/not pass the individual prohibitions articles. C. Luck felt the Board was required, during the moratorium period, to provide an impact analysis both for and against prohibition. He felt the citizens would not be educated enough and would not understand the revenue stream forfeited by the town if marijuana establishments are prohibited. The Board responded that he misunderstood 250- 4.15. and that the Board needed to address the potential impacts to the Town, which they did.

Joanna Bilotta, 362 Sunset Lane- Felt there shouldn't be any retail establishments in town. She thanked the Board for its time and effort put into the crafting of this bylaw.

K. Chenis made Motion to close the public hearing, P. Bertram Seconded, all aye.

Hearing closed 8:32 PM

Documents used at hearing:
Draft Ch. 250- 4.15.