

Form 7-PBN



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ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

MUNICIPAL LAW UNIT
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SPRINGFIELD, MASSACHUSETTS 01103-1629

Notice of Planning Board Hearing

Relative to Proposed Zoning By-Law Amendments Pursuant to M.G.L. c. 40A, § 5

The Planning Board of the Town of Westport will hold a public hearing to discuss proposed amendments to the town's zoning by-laws. The public hearing will be held as follows:

Place: Town Hall Annex, 856 Main Road, Westport, MA 02790

Date: Thursday, January 25, 2018

Time: 7:30 pm

The subject matter of the proposed amendments is/are as indicated below (*attach additional sheets if necessary*). The complete text and maps relative to the proposed amendments are available for inspection during regular business hours at the following place(s):*

Place: Town Clerk's Office, Town Hall, 816 Main Road, Westport, MA 02790

Place: Town Hall Annex, 856 Main Road, Westport, MA 02790

ITEM A2. To see if the Town will amend the Town Zoning By-Laws by inserting the following and updating the Table of Use Regulations to prohibit Recreational Marijuana:

ARTICLE 27

RECREATIONAL MARIJUANA ESTABLISHMENTS

27.1

PURPOSE

Consistent with G.L.c 94G sec. 3(a)(2), all types of recreational marijuana establishments as defined in G.L. C. 94G, Section 1, to include marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, shall be prohibited within the Town of Westport.

To amend the TABLE OF USE REGULATIONS by adding the Recreational Marijuana Establishments use in proper alphabetical order as follows:

TABLE OF USE REGULATIONS

X = Prohibited unless allowed in Underlying District

Y = Allowed By Right

N = Prohibited

SPBA = Special Permit Board of Appeals

SPPB = Special Permit Planning Board

* Note: The above information is *strictly required* by M.G.L. c. 40A, § 5.

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SPA-PB = Site Plan Approval Planning Board

<u>USES</u>	<u>RESIDENTIAL/ AGRICULTURAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>	<u>STOD (Art. 22)</u>
RECREATIONAL MARIJUANA ESTABLISHMENTS	N	N	N	N

Consistent with G.L.c 94G sec. 3(a)(2), all types of marijuana establishments as defined in G.L. C. 94G, Section 1, to include marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers or any other type of licensed recreational marijuana-related businesses, shall be prohibited within the Town of Westport.

To see if the Town will vote to amend the **TOWN OF WESTPORT ZONING BY-LAWS, ARTICLE 1, PURPOSE AND DEFINITIONS, SECTION 1.1. DEFINITIONS** by making the following changes:

Item B1. By adding to the **Definitions, Section 1.1**, the underlined text as follows:

Agriculture and Agricultural - shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

The growing, cultivation, distribution or dispensation of marijuana is not agriculture or an agricultural use or activity, nor is it considered a farm enterprise or farm related experience.

Item B2. By inserting to Definitions, Section 1.1, the following definitions in alphabetical order:

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; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in Section 1 of M.G.L. Chapter 94C; provided, however, that “marijuana” shall not include: (i) 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 seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Establishment - a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

Independent Testing Laboratory – a laboratory that is licensed by the Cannabis Control Commission.

Marijuana Cultivator – an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer to other marijuana establishments, but not to consumers.

Marijuana Product Manufacturer – an entity licensed to obtain, manufacture, process

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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 no to consumers.

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.

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.

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.

Item B3

To see if the Town will amend the Town Zoning By-Laws by inserting the following to 4.0.1 Residence/Agriculture Districts, subparagraph B:

By inserting into **Use Regulations, Section 4.0.1 Residence/Agriculture Districts, subparagraph B.1.** the underlined text as follows:

- B.** Accessory use on the same premises, including, but not limited to the following:
 - 1.** Use of room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, candy making, or for the practice, by a resident, of a recognized profession. Recreational and Medical Marijuana Establishments are not permitted as home occupations.

Item B4

To see if the Town will amend the Town Zoning By-Laws by inserting the following:

ARTICLE 27

RECREATIONAL MARIJUANA FACILITIES AND USES

27.1

PURPOSE

The purpose and intent of this Article is to regulate the siting of Recreational Marijuana Establishments, by minimizing the adverse impacts on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with said Centers.

27.2

AUTHORITY

Recreational Marijuana Establishments, may be allowed by Special Permit from the Westport Planning Board provided the Planning Board finds that:

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1. The Establishment is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. Chapter 40A, Section 11.
2. The Establishment is designed to maximize security measures including but not limited to lighting, fencing, visibility and gates. Alarms shall connect to the Police Station for security.
3. The Establishment demonstrates that it will meet 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.
4. The applicant has satisfied all of the conditions and requirements of this Section.
5. The Establishment will be designed and operated to minimize noise and odors.
6. The applicant has demonstrated that there is sufficient water supply and that all waste will be properly disposed.

27.3

REQUIREMENTS

1. Non-Retail Recreational Marijuana Establishments shall only be located in the Science and Technology Overlay District.
2. Retail Recreational Marijuana Establishments shall only be located in the Business District.
3. All Recreational Marijuana Establishments shall be contained within a permanent building or structure.
4. No other use shall be permitted on a lot containing a Marijuana Cultivator or a Product Manufacturer Establishment.
5. Buildings and parking areas shall be clearly visible from the street.
6. Cultivation shall be located entirely within one or more fully enclosed buildings with conventional or post framed opaque, rigid walls and roof covering. Use of greenhouses, hoop houses, and similar non-rigid structures is prohibited.
7. Recreational Marijuana Establishments shall meet the requirements listed in the district in which it is located.
8. The hours of operation of a Recreational Marijuana Establishment shall be set by the Special Permit Granting Authority, but in no event shall said establishment be open between the hours of 8:00 PM and 8:00 AM.
9. Site Plan Approval under Article 15 is required for all Recreational Marijuana Establishments.
10. The total number of marijuana retailers shall not exceed 20 percent of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under Section 15 of M.G.L.s Chapter 138. The number of all other types of marijuana establishments shall not exceed two or the number of medical marijuana treatment centers registered to engage in the same type of activity in the Town, which ever is greater.

27.4

WAIVER OF COMPLIANCE

The Planning Board acting as the Special Permit Granting Authority, under this Section may waive strict compliance with the dimensional requirements, provided the Board finds that the waivers are in the public interest and not inconsistent with the purpose and intent of this Section.

27.5

TERM LIMIT

A special permit granted under this Section shall have a term limited to the duration of the

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applicant's ownership of the premises as a Recreational Marijuana Establishment. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit.

27.6

LAPSE

A special permit shall lapse if not exercised within two years of issuance.

Item B5

To amend the TABLE OF USE REGULATIONS by adding the Recreational Marijuana Establishments use in proper alphabetical order as follows:

TABLE OF USE REGULATIONS

X = Prohibited unless allowed in Underlying District

Y = Allowed By Right

N = Prohibited

SPBA = Special Permit Board of Appeals

SPPB = Special Permit Planning Board

SPA-PB = Site Plan Approval Planning Board

<u>USES</u>	<u>RESIDENTIAL/ AGRICULTURAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>	<u>STOD (Art. 22)</u>
RECREATIONAL MARIJUANA ESTABLISHMENTS				
INDEPENDENT TESTING LABORATORY	N	SPPB/SPA-PB	N	N
MARIJUANA CULTIVATOR	N	N	N	SPPB/SPA-PB
MARIJUANA PRODUCT MANUFACTURER	N	N	N	SPPB/SPA-PB
MARIJUANA RETAILER	N	SPPB/SPA-PB	N	N

Item C1

By deleting Article 26 in its entirety and replacing with the following:

Article 26

TEMPORARY MORATORIUM OF RECREATIONAL MARIJUANA ESTABLISHMENTS AND RELATED USES

26.1

PURPOSE

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016, and (as amended on December 30, 2016 by Chapter 351 of the Acts of 2016 and thereafter, on July 28, 2017 by Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018, and to begin accepting applications for licenses no later than April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment") as defined in G.L.c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulations of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational

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Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

26.2

DEFINITION

“Recreational Marijuana Establishment” shall mean a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

26.3

TEMPORARY MORATORIUM

For the reasons set forth above and notwithstanding any other provision of the Zoning By-Law to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

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